

**RULES OF PROCEDURE UNDER CHAPTER 28 (DISPUTE SETTLEMENT) OF
THE COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR
TRANS-PACIFIC PARTNERSHIP**

1. The Rules of Procedure (Rules), including the Appendices and Annex, are established pursuant to Article 28.13 (Rules of Procedure for Panels) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (Agreement) and shall apply to dispute settlement under Chapter 28 (Dispute Settlement) unless the disputing Parties agree otherwise.

2. Where a procedural question arises that is not covered by these Rules, the panel may adopt, in consultation with the disputing Parties, and drawing on these Rules where possible, an appropriate procedure that is not inconsistent with the Agreement or these Rules.

Definitions

3. For the purposes of these Rules:

approved person means an individual who is:

- (a) an authorised representative of a participating Party designated in accordance with Appendix 1;
- (b) an authorised employee of the responsible office;
- (c) a panellist;
- (d) an assistant; or
- (e) an expert;

assistant means an individual who, under the terms of appointment of a panellist, conducts research or provides support for the panellist;

authorised employee of the responsible office means an individual employed or appointed by the responsible office, including interpreters, translators, court reporters or other individuals that it retains for the purposes of a panel proceeding, who the responsible office has authorised to work on the dispute;

authorised representative means:

- (a) an official of a participating Party; or
- (b) a legal counsel or other advisor or consultant to a participating Party whom the Party has authorised to act on its behalf in the course of the dispute and whose authorisation the Party has notified to the panel and to the other participating

Parties, but excludes in all circumstances an individual or an employee, officer or agent of any entity that could reasonably be expected to benefit outside of proceedings under Chapter 28 (Dispute Settlement) 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 express delivery service;

candidate means an individual who is under consideration for appointment as a panellist pursuant to Article 28.9 (Composition of Panels);

Code of Conduct means the code of conduct established in accordance with Article 28.10.1(d) (Qualifications of Panellists) contained in Annex I to these Rules;

confidential information means information designated as such by a participating Party in accordance with Rule 24 and Appendix 2;

date of delivery means:

- (a) for a document submitted by a participating Party to the responsible office, 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; and
- (b) for a document from the panel or the responsible office, the date on which the responsible office transmits an electronic document to the relevant Parties or non-governmental entities, or the delivery date indicated in the records of the express delivery service that delivers a document, whichever date is earlier;

designated office means the office that a Party designates under Article 27.6.1 (Administration of Dispute Settlement Proceedings) to provide administrative assistance to panels;

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

expert means an individual or body providing information or technical advice under Article 28.15 (Role of Experts);

host Party means the Party hosting the random selection to be used to select a chair or other panellist under Rule 7;

information means information, however recorded or stored, including information contained

in a paper document, electronic file or oral information;

Initial Disclosure Statement means the statement required of a proposed panellist pursuant to paragraph 4 of the Code of Conduct;

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

public holiday means for any year, with regard to a participating Party, Saturday, Sunday and any other day officially designated by that Party as a public holiday, and notified to the responsible office pursuant to Rule 15;

record means all documents submitted, delivered or issued in the course of a proceeding, and a transcript of a hearing;

responsible office means the designated office of the responding Party; and

written submission means a participating Party's written submissions, written versions of its oral statements or written responses to a request or questions from the panel or a disputing Party.

4. Any reference in these Rules to an Article, Annex or Chapter is a reference to the appropriate Article, Annex or Chapter of the Agreement. The definitions provided in the Agreement shall apply equally to these Rules.

Delivery of Consultation and Panel Requests to Responsible Office

5. No later than 10 days after the date of delivery to the responding Party of its request for the establishment of a panel pursuant to Article 28.7.1 (Establishment of a Panel), the complaining Party shall deliver to the responsible office a copy of that request and of its consultation request made pursuant to Article 28.5.1 (Consultations).

Contact Information

6. The disputing Parties and any other participating Parties shall, at the earliest possible opportunity, notify the responsible office of:

- (a) an e-mail address that shall be used for documents submitted in electronic form; and
- (b) a service address that shall constitute the service address for delivery of documents containing confidential information, as well as for other documents submitted by participating Parties in accordance with Rule 12(b),

and shall advise the responsible office immediately of any changes to those addresses.

Procedures to Select a Chair or Other Panellist by Random Selection

7. Unless the disputing Parties agree otherwise, for the purposes of selecting a chair or other panellist by random selection pursuant to Article 28.9.2 (Composition of Panels), the following procedures shall apply:

- (a) The host Party shall be the complaining Party. If there are multiple complaining Parties, the complaining Parties shall designate one of them to serve as the host Party.
- (b) The host Party shall give the responding Party at least five days advance notice¹ of the date of the selection and the place at which the selection will take place, and shall invite a representative of the responding Party to be present. Unless the disputing Parties agree otherwise, the selection shall take place in the capital of the host Party.
- (c) In the case of the use of random selection to select the chair pursuant to Article 28.9.2(d)(iv) or Article 28.9.2(d)(v), the host Party shall prepare a container with sealable envelopes, with each envelope containing the name of a member of the roster of panel chairs established pursuant to Article 28.11 (Roster of Panel Chairs and Party Specific Lists) who is not a national of a disputing Party or a third Party, or the name of a candidate nominated by the disputing Parties pursuant to Article 28.9.2(d)(vi), as relevant. There shall be one envelope corresponding to each name on the roster or each name nominated, which shall be verified by the responding Party and then sealed prior to the random selection.
- (d) In the case of the use of random selection to select a panellist pursuant to Article 28.9.2(c)(iii), the host Party shall prepare a container with sealable envelopes, with each envelope containing the name of a candidate nominated by the complaining Party or Parties. There shall be one envelope corresponding to each candidate nominated, which shall be verified by the responding Party and then sealed prior to the random selection.
- (e) In the case of the use of random selection to select the chair pursuant to Article 28.9.2(d)(iv) or Article 28.9.2(d)(v), a representative of the responding Party shall remove from the container one envelope, randomly and without being able to discern the identity of the candidate to whom the envelope corresponds until the envelope is unsealed and opened.
- (f) In the case of the use of random selection to select a panellist pursuant to Article 28.9.2(c)(iii), a representative of the complaining Party or Parties shall remove from the container one envelope, randomly and without being able to discern the identity of the candidate to whom the envelope corresponds until the envelope is unsealed and opened.

¹ In the case of selection of a panel chair pursuant to Article 28.9.2(d)(iv) (Composition of Panels), Article 28.9.2(d)(v)(C), Article 28.9.2(d)(vi) or Article 28.9.2(d)(vii)(C), the advance notice shall be given no later than 54 days after the date of delivery of the request for the establishment of the panel.

- (g) The candidate to whom the envelope corresponds shall be the chair or other panellist selected, as the case may be.

8. If, following notification under Rule 7(b), no representative of the responding Party is present at the appointed place and time for the random selection, or if such representative is present but refuses to remove an envelope under Rule 7(e), the host Party may conduct the random selection by itself.

Terms of Reference

9. The disputing Parties shall promptly deliver any agreed terms of reference to the responsible office which, in turn, shall deliver them by the most expeditious means practicable to the designated office of each participating Party and to the panel once it has been composed in accordance with Article 28.9 (Composition of Panels).

10. If the disputing Parties have not agreed on terms of reference within a period of 20 days from the date of the delivery of the request for the establishment of the panel, any complaining Party may so notify the responsible office. On receipt of such notification, the responsible office shall deliver by the most expeditious means practicable the terms of reference set out in Article 28.8 (Terms of Reference) to the designated office of each participating Party, and to the panel once it has been composed in accordance with Article 28.9 (Composition of Panels).

Written Submissions and Other Documents

11. No document is considered filed with the panel unless it is delivered to the responsible office in accordance with Rule 12.

12. A participating Party shall submit all documents to the panel, including any notice, through the responsible office.

- (a) A participating Party submitting a document to the panel shall deliver by electronic transmission the original version in electronic form² to the responsible office and, on the same day, also deliver by electronic transmission a copy in electronic form to any other disputing Party and, where relevant, third Parties.
- (b) If it is not possible to deliver a document (or any part thereof, including an exhibit or exhibits) in electronic form in accordance with subparagraph (a), the participating Party submitting the document shall advise the responsible office, any other disputing Party and, where relevant, third Parties, of its inability to do so. That Party shall also deliver by the most expeditious means practicable, five

² A document in electronic form shall be in a searchable format unless impracticable. If a Party files a document in an electronic form that is not searchable, that Party shall also provide as a courtesy a copy of the document in a searchable format.

paper copies of the document (or relevant part thereof, including any exhibit or exhibits) to the responsible office and one copy to any other disputing Party and, where relevant, third Parties.

When the responsible office receives a document submitted by a participating Party, the responsible office shall distribute by electronic transmission a copy of the document in electronic form to the panel on the same day. If it is not possible to deliver by electronic transmission a document as an electronic document, the responsible office shall deliver the document to the panel by the most expeditious means practicable.

13. A complaining Party shall submit its initial written submission to the panel no later than 10 days after composition of the panel has been notified in accordance with Rule 41.

14. If an original version of an exhibit is not in English, a participating Party shall submit the exhibit in its original language with an English translation.

15. No later than 14 days after the date of delivery to the Parties of the request for establishment of a panel, each participating Party shall notify the responsible office of the normal business hours of that Party's designated office and of any public holidays on which that designated office is closed.

16. No later than 10 days after the composition of the panel has been notified in accordance with Rule 41, and after consulting the disputing Parties, the panel shall issue a timetable for the proceeding that normally shall provide for:

- (a) submission of the initial written submission of the responding Party no later than 28 days after the date set for submission of the initial written submission of the complaining Party or Parties;
- (b) submission of the written submission of any third Party no later than 10 days after the date set for submission of the initial written submission of the responding Party;
- (c) submission of any written rebuttal submission of any complaining Party no later than 21 days after the date set for submission of the initial written submission of the responding Party;
- (d) submission of any written rebuttal submission of the responding Party no later than 21 days after the date set for submission of the written rebuttal submission of the complaining Party or Parties;
- (e) a hearing no later than 14 days after the date set for submission of the written rebuttal submission of the responding Party;
- (f) delivery to the participating Parties of written questions, if any, from the panel within three days of the last day of the hearing;

- (g) with the agreement of the panel, submission of a disputing Party's supplementary written submission responding to any matter that arose during the hearing, along with responses to written questions, if any, from the panel, within 10 days of the last day of the hearing; and
- (h) submission of a disputing Party's comments on any supplementary written submission or any responses to written questions by another disputing Party within 17 days of the last day of the hearing.

In establishing the dates for submissions or for the hearing, the panel shall comply with Rule 21.

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

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

19. A participating Party may correct minor errors of a clerical nature in any document related to the panel proceeding by delivering to the responsible office, in accordance with the procedure set out in Rule 12, a new document clearly indicating the changes. A participating Party must correct such errors within seven days of the date of delivery of the document, or as otherwise provided by the panel. The correction of minor errors of a clerical nature shall not affect the panel's schedule. Any difference of views as to whether or not the correction is of a clerical nature shall be resolved by the panel after consulting the disputing Parties and any relevant third Party.

20. Any document delivered outside the responsible office's normal business hours as notified in accordance with Rule 15 shall be deemed to have been delivered during the next business day.

21. If the date for submission of a document by a participating Party falls on a public holiday of that Party, or on a date on which the Party's designated office is closed by *force majeure*, the date for submission of the document shall be the next business day of that Party. When a time frame for submission of a document is extended in accordance with this Rule, all subsequent time frames provided for in these Rules shall be extended by the amount of time that the time frame was extended.

Public Release of Documents

22. Subject to the Rules on confidential information:

- (a) a Party making a request pursuant to Article 28.5.1 (Consultations) or Article 28.7.1 (Establishment of a Panel) shall release a copy of the request to the public

no later than seven days after it circulates that request; and

- (b) each participating Party shall make its best efforts to release to the public any written submission, written version of an oral statement and written response to a request or question from the panel, as soon as possible after such documents are submitted to the panel and, if not already released, shall do so by the time the final report is issued.

23. No disputing Party shall publicly disclose the contents of an initial report presented to the disputing Parties pursuant to Article 28.17 (Initial Report) or the contents of any comments made on an initial report.

24. To the extent it considers necessary to protect confidential information, a participating Party may designate for confidential treatment, consistent with the procedures set out in Appendix 2, factual information it includes in a written submission that is not available in the public domain.³ Each participating Party shall exercise the utmost restraint in designating information as confidential.

25. If a participating Party wishes to designate information that relates to matters of national security as confidential, but it is not clear that the designation relates to factual information, the Party may seek direction from the panel as to whether such a designation may be made.

26. If a participating Party designates information contained in a document as confidential, it shall also prepare and deliver in accordance with Rule 12 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 summarised, no later than 10 days after the date of submission of the document that contained the confidential information.

27. If a participating Party fails to deliver the non-confidential version referred to in Rule 26 within a period of 10 days after the date of submission of the document that contained the confidential information, another participating Party may prepare and submit to the panel a non-confidential version of that document. Prior to submitting the non-confidential version to the panel, that Party shall provide the Party that originally submitted the document with a reasonable opportunity to review the document in order to ensure accuracy of the redaction.

28. When a participating Party redacts confidential information pursuant to Rule 26 or Rule 27, the non-confidential version of the document shall indicate clearly each place where the information has been redacted.

29. A participating Party shall not designate any portion of its written legal arguments as confidential other than to the extent it would reveal factual information described in Rule 24.

³ 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

30. Rules 30 through 33 and Appendix 2 shall apply to information that a participating Party submits during a panel proceeding and designates as confidential. However, except as provided in Appendix 2, paragraph 1, these procedures shall not apply to a participating Party with respect to confidential information first submitted by itself, including in derivative form.

31. 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 Rules shall preclude a participating Party from disclosing its own information to the public.

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

33. In order to ensure that there is compliance with Rules 30 through 32 and Appendix 2, the following obligations shall apply:

- (a) each participating Party shall ensure that each of its authorised representatives designated as an approved person pursuant to Appendix 1 complies with Rules 30 through 32 and Appendix 2;
- (b) the responsible office shall ensure that each of its authorised employees designated as an approved person pursuant to Appendix 1 complies with Rules 30 through 32 and Appendix 2; and
- (c) the panel and the responsible office shall ensure that any other person designated as an approved person pursuant to Appendix 1 complies with Rules 30 through 32 and Appendix 2.

34. After consulting the participating Parties, the panel may establish additional procedures that it considers necessary to protect confidential information.

Operation of Panels

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

36. Except as otherwise provided in these Rules, the panel may carry out its work through whatever means that are appropriate, which may include electronic mail or videoconferencing.

37. The deliberations of the panel shall be confidential. Only the panellists may take part in the deliberations of the panel, but the panel may permit assistants, personnel from the responsible office, interpreters or translators to be present during those deliberations.

38. The panel shall consider exclusively the issues raised in the panel proceeding, and shall

not delegate its responsibility to decide the matter to any other individual.

Composition of Panels

39. In order to ensure that panels are formed within the timeframes set out in Article 28.9.2 (Composition of Panels), the responsible office shall do the following:

- (a) once it receives a request for establishment of a panel, it shall:
 - (i) immediately contact the individuals on a disputing Party's Party Specific List and the individuals on the Roster of Panel Chairs to determine their availability to serve on the matter if necessary;
 - (ii) provide them with a copy of the Code of Conduct and request that they complete the Initial Disclosure Statement and return it to the responsible office within seven days; and
 - (iii) inform the disputing Parties of the responses received under subparagraph (a)(i) and subparagraph (a)(ii); and
- (b) with respect to panellists appointed under Article 28.9.2(a) or Article 28.9.2(c) and a chair appointed under Article 28.9.2(d)(i) or Article 28.9.2(d)(iii), immediately upon appointment provide them with a copy of the Code of Conduct and request that they complete the Initial Disclosure Statement and return it to the responsible office within seven days, and confirm their ability to serve on the matter if that has not already been established.

40. Where a disputing Party appoints an individual pursuant to Article 28.9.2(a) (Composition of Panels) not on a Party Specific List or where the disputing Parties appoint an individual as chair pursuant to Article 28.9.2(d)(i) not on the Roster of Panel Chairs, the disputing Party or Parties shall provide the responsible office with the individual's contact information as soon as possible.

41. Once all three selected panellists have confirmed that they are able to serve on the panel, the responsible office shall promptly notify the participating Parties of the composition of the panel.⁴

42. If a selected panellist is removed pursuant to Rule 44, the disputing Parties shall select a replacement as expeditiously as possible in accordance with the selection procedure that was followed to select that panellist.

43. If any disputing Party considers that a panellist has violated the Code of Conduct, it shall notify the other disputing Party or Parties and seek to reach agreement as to whether or not there has been a violation no later than 10 days after the notification.

⁴ The time period provided under Article 28.17.3 (Initial Report) shall run from the date of notification by the responsible office.

44. If the disputing Parties agree that a panellist has violated the Code of Conduct, they may remove the panellist, waive the violation or request the panellist 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 panellist may continue to serve on the panel.

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

Hearings

46. The chair shall fix the date and time of the hearing after consulting the disputing Parties, the other panellists and the responsible office. The responsible office shall notify the participating Parties in writing of the date, time and location of the hearing. Pursuant to Rule 16(e), the panel shall seek to hold the hearing no later than 14 days after the date of delivery of the written rebuttal submission of the responding Party.

47. Unless the disputing Parties agree otherwise, the hearing shall be held in the capital of the responding Party.

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

49. All panellists shall be present at each hearing. Notwithstanding Rule 48, if a replacement panellist 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.

50. Unless the disputing Parties agree otherwise, all hearings of the panel shall be open for the public to observe,⁵ except that the panel shall close the hearing for the duration of any discussion of confidential information. Attendance in the hearing room may be limited to panellists, members of the delegations of the participating Parties, as well as staff from the responsible office.

51. The responsible office shall, in consultation with the panel and the disputing Parties, adopt appropriate logistical arrangements and procedures to ensure that hearings are not disrupted by the attendance of the public. Members of the public, including accredited journalists and non-governmental entities, wishing to attend hearings may be asked to register in advance of the hearing, and depending on the venue, seats may be limited. If seats are limited, they shall be allocated on a first-come, first-served basis upon receipt of the completed registration form. No audio or visual recording of the hearing by members of the public shall be permitted.

⁵ The expression “observe” does not require physical presence at the hearing. To facilitate public observation of a hearing, that hearing may be transmitted electronically to the public.

52. 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 the notice at least 10 days before the first day of the hearing.

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

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

55. The panel shall conduct the hearing in the following manner, ensuring that it affords time to the responding Party comparable 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 responding Party; and
- (c) Presentation of any third Parties.

Rebuttal Argument –

- (a) Reply of the complaining Party or Parties; and
- (b) Counter-reply of the responding Party.

Closing Statement –

- (a) Closing statement of the complaining Party or Parties; and
- (b) Closing statement of the responding Party.

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

57. 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 and the panel.

Supplementary Written Submissions and Questions of the Panel

58. The panel may at any time during the panel proceeding address questions in writing to one or more of the participating Parties. The panel shall deliver the written questions in

electronic form to the participating Parties through the responsible office, which shall deliver the electronic version immediately to the participating Parties.

59. The panel shall provide each disputing Party the opportunity to provide written comments on responses to the panel's questions that another participating Party submits.

60. With the agreement of the panel, a disputing Party may submit a supplementary written submission responding to any matter that arose during the hearing. Each disputing Party also shall be given the opportunity to provide written comments on any supplementary written submission that another participating Party submits.

61. Each participating Party shall submit its reply, comment or submission under Rule 59 or Rule 60 no later than the date specified in the timetable issued by the panel under Rule 16.

Submission of Written Views from Non-Governmental Entities

62. A panel may grant a request by a non-governmental entity in the territory of a disputing Party to submit written views under Article 28.13(e) (Rules of Procedure for Panels), provided that the non-governmental entity complies with Rule 63 and Rule 64.

63. A non-governmental entity must deliver its request to submit written views to the responsible office no later than 14 days after the date of delivery of the initial written submission of the responding Party. The request shall:

- (a) contain a description of the non-governmental entity, including, if applicable, the nature of its activities, membership, legal status, sources of funding and location in the territory of a disputing Party;
- (b) identify the specific issues of fact or law directly relevant to any factual or legal issue under consideration by the panel that the non-governmental entity intends to address in its written views;
- (c) explain how the non-governmental entity's written views will contribute to resolving the dispute and why its views would be unlikely to repeat factual or legal 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 non-governmental entity has any relationship, direct or indirect, with a Party, as well as whether the entity has received, or will receive, any assistance, financial or otherwise, from a Party, a government that is not a Party, or another person or non-governmental entity,⁶ in the preparation of the non-governmental entity's request for leave or its written views; and

⁶ The term "another person" does not include counsel for the non-governmental entity or members of that entity.

- (e) be no more than four pages in length.

64. The responsible office shall promptly provide each timely request under Rule 63 to the panel and each participating Party, and shall promptly make each such request available to the public. The panel shall consider each timely request and, within seven days of receipt of the request, shall decide whether the request complies with Rule 63 and Appendix 4. If the panel decides that the request does comply, it may grant the non-governmental entity leave to submit written views. If the panel grants leave, the panel shall set a date for the submission of views that is no later than 21 days before the first day of the hearing, and shall specify the maximum page length of the written views, which normally shall not exceed 10 pages in length, including any appendices. The responsible office shall promptly notify the non-governmental entity of the panel's decision and make the decision available to the participating Parties and the public.

65. A non-governmental entity's written views must comply with Rule 63 and Appendix 4 and must:

- (a) not exceed the number of pages specified by the panel in its grant of leave pursuant to Rule 64;
- (b) address only the issues of fact or law that the non-governmental entity described in its request; and
- (c) be submitted to the responsible office no later than the date specified by the panel pursuant to Rule 64.

66. The responsible office shall promptly provide any written views that the panel receives in accordance with Rule 65 to the participating Parties and shall promptly make such written views available to the public.

67. The panel shall provide each disputing Party an adequate opportunity to comment on and respond to any written views that the panel has granted a non-governmental entity leave to submit and has received.

68. The panel is not required to address in its report any written views submitted under Rule 65, and shall not consider written views that do not conform to Rule 65 and Appendix 4.

69. To facilitate the submission of requests from non-governmental entities to provide written views in a dispute, each disputing Party shall, no later than 14 days after the date of composition of the panel, provide public notice of:

- (a) the establishment of the panel;
- (b) the opportunity for non-governmental entities in the territory of a disputing Party to submit requests to provide written views in the dispute; and
- (c) the procedures and requirements for making such submissions, consistent with these Rules.

Burden of Proof

70. A complaining Party asserting that a measure of the responding Party is inconsistent with its obligations under the Agreement, that the responding Party 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 28.3.1(c) (Scope), shall have the burden of establishing such inconsistency, failure to carry out obligations, or nullification or impairment, as the case may be. In cases where the responding Party declines to participate in the panel proceeding, the panel shall only find that the complaining Party has satisfied its burden if the complaining Party establishes a *prima facie* case of such inconsistency, failure to carry out obligations, or nullification or impairment.

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

Ex Parte Contact

72. No panellist shall meet or contact one disputing Party in the absence of the other disputing Party or Parties. No panellist shall meet or contact a third Party in the absence of the other participating Parties.

73. Subject to Rule 35, no panellist shall discuss any aspect of the subject matter of the panel proceeding with a disputing Party or Parties in the absence of the other panellists and the other disputing Party or Parties. No panellist shall discuss any aspect of the subject matter of the proceeding with a third Party in the absence of the other panellists and the other participating Parties.

74. In the absence of representatives of the disputing Parties, no panellist shall meet, or have discussions concerning matters under consideration by the panel, with a person or body providing information or technical advice under Article 28.15 (Role of Experts).

Information and Technical Advice

75. If a panel wishes to seek information or technical advice under Article 28.15 (Role of Experts), it shall notify the disputing Parties of its request at the earliest possible time and no later than 15 days after the last day of the hearing.

76. If a disputing Party considers that a panel should seek information or technical advice under Article 28.15 (Role of Experts) that Party shall notify the panel and the other disputing Party or Parties of its request at the earliest possible time and no later than 15 days after the last day of the hearing.

77. No later than 15 days after the date of a request under Rule 75 or Rule 76, the panel shall consult the disputing Parties to determine whether the information or technical advice should be sought, and from which person or body it should be sought.

78. If agreement under Rule 77 cannot be reached, the panel proceeding shall resume upon the expiration of the relevant deadline under Rule 77.

79. No individual shall be selected under Rule 77 who has, or whose employers, business partners, business associates, or family members have, a financial or other interest that is likely to affect the individual's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias under the Code of Conduct. No body shall be selected under Rule 77 that has, or whose owners or controlling principals have, or whose employees working on the request for information or technical advice have, a financial or other interest⁷ 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.

80. No later than five days after the selection of a person or body under Rule 77, the panel or the initiating disputing Party shall circulate a draft request and provide the other disputing Parties seven days to comment on that request. No later than 15 days after the selection of the person or body under Rule 77, the disputing Parties and the panel shall agree on the terms and conditions of the request for information or technical advice.

81. The panel shall deliver to the responsible office a copy of the request for information or technical advice. The responsible office shall provide for the delivery of electronic copies of the request by the most expeditious means practicable to the participating Parties and any person or body selected under Rule 77, and shall make the request available to the public.

82. The panel shall request that the person or body selected under Rule 77 deliver the information or technical advice to the responsible office on the date agreed by the Parties, which normally shall be no more than 30 days after receipt of the panel's request.

83. The responsible office shall deliver the information or technical advice to the participating Parties and shall make it available to the public, subject to the Rules on confidential information. The panel shall establish a date for the disputing Parties to submit comments on the information or technical advice to the panel. That date normally shall be no later than 14 days after the date of delivery of the information or technical advice. In establishing a date, the panel shall take into account Rule 21.

84. If a panel requests information or technical advice, any time period applicable to the panel's proceeding shall be suspended for a period beginning on the date of the request by a panel or disputing Party under Rule 75 or Rule 76 and ending on the date specified in Rule 78 or the date of delivery of the information or technical advice under Rule 83.

Computation of Time

85. Time periods shall be computed in calendar days, unless otherwise provided.

⁷ For greater certainty, this shall not preclude selection of a body to provide information or technical advice on issues which fall under its scope of responsibilities.

86. 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, Non-Implementation and Compliance Review

87. The panel shall reconvene when the responding Party requests it to do so pursuant to Article 28.20 (Non-Implementation – Compensation and Suspension of Benefits) or refers a matter to it pursuant to Article 28.21 (Compliance Review). If a panellist is unavailable, the complaining Party, the responding Party or the disputing Parties, as the case may be, shall select a new panellist in accordance with Article 28.9.9 (Composition of Panels). The responsible office shall promptly notify the disputing Parties that the panel has been reconvened or that a new panellist has been selected.

88. The procedures set forth in these Rules shall apply to a panel proceeding pursuant to Article 28.20 (Non-Implementation – Compensation and Suspension of Benefits) and Article 28.21 (Compliance Review), except that:

- (a) the responding Party shall submit its initial written submission no later than seven days after the date of notification under Rule 87;
- (b) the timetable issued by the panel shall establish a date for the initial written submission of the complaining Party or Parties no later than 15 days after the date set for submission of the initial written submission of the responding Party;
- (c) the panel shall establish dates for any further written submissions, including written rebuttal submissions, so as to provide each disputing Party with the opportunity to make an equal number of written submissions, subject to the relevant time limits for these proceedings set forth in the Agreement; and
- (d) unless any disputing Party requests a hearing, the panel may decide not to convene a hearing.

Responsible Office

89. The responsible office shall:

- (a) provide administrative assistance to the panel and any expert selected by the panel to provide information or technical advice pursuant to Article 28.15 (Role of Experts) and Rule 77;
- (b) arrange for the payment of remuneration to, and provide administrative assistance to, panellists, assistants, experts, interpreters, translators, court reporters or other individuals that it retains for the purposes of a panel proceeding;

- (c) make available to the panellists, on confirmation of their appointment, copies of the Agreement and other documents relevant to the panel proceeding, such as these Rules and the Code of Conduct;
- (d) organise and coordinate the logistics required for hearings;
- (e) retain permanently a copy of the complete record of the panel proceedings;
- (f) release to the public the documents provided for under Rule 22(b), if not already released, by the time the final report of the panel is issued; and
- (g) act in a strictly impartial manner.

Maintenance of Party Specific List

90. Each Party's designated office shall notify the other Parties' designated offices of the composition of its list established under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists) and any changes thereto.

Remuneration and Payment of Expenses

91. The disputing Parties shall bear equally the remuneration and expenses of panellists, assistants, and experts selected under Article 28.15 (Role of Experts) and Rule 77, and all administrative expenses of the panel.

92. Unless the disputing Parties agree otherwise, remuneration for panellists shall be paid at the rate for non-governmental panellists used by the WTO on the date a Party makes a written request for the establishment of a panel under Article 28.7 (Establishment of a Panel).

93. Unless the disputing Parties agree otherwise, travel expenses shall be paid at the Daily Subsistence Allowance rate for the location of the hearing established by the United Nations International Civil Service Commission on the date a Party makes a written request for the establishment of a panel under Article 28.7 (Establishment of a Panel).

94. Each panellist may hire one assistant to provide research, translation or interpretation support, unless a panellist requires an additional assistant and the disputing Parties agree that, due to exceptional circumstances, the panellist should be permitted to hire an additional assistant. Each assistant to a panellist shall be paid at a rate of one-fifth the rate for a panellist.

95. If the disputing Parties agree that the panel may seek information or technical advice pursuant to Article 28.15 (Role of Experts), and agree that an expert is to receive remuneration and expenses for providing the information or advice, the amount and details of the remuneration and expenses shall be determined by the disputing Parties.

96. The expenses authorised under a panel proceeding shall be as follows:
- (a) **travel expenses:** include the essential travel expenses of the panellists and assistants, their accommodations and meals, as well as related taxes and insurance. Travel arrangements shall be made and travel expenses reimbursed, in accordance with the administrative guidelines applied by the responsible office; and
 - (b) **administrative expenses:** include, among others, telephone calls, courier services, fax, stationery, rent of locations used for hearings and deliberations, interpreter services, court reporters or any other person or service contracted by the responsible office to support the proceeding.
97. Each panellist and assistant shall keep and render a final account of his or her time and expenses to the responsible office, and the panel shall keep and render a final account to the responsible office of its administrative expenses. Each panellist and assistant shall submit this account, including relevant supporting documentation, such as invoices, in accordance with the administrative guidelines of the responsible office. A panellist or assistant may submit requests for payment of remuneration or reimbursement for expenses during the proceeding.
98. All requests for payment shall be subject to review by the responsible office. The responsible office shall make payments for the remuneration of panellists and assistants and for expenses in accordance with the administrative guidelines applied by the responsible office, using resources provided equally by the disputing Parties, and in coordination with the disputing Parties. No responsible office shall be obligated to pay any remuneration or expense in connection with a panel proceeding prior to receiving the contributions of the disputing Parties.
99. The responsible office shall submit to the disputing Parties a final report on payments made in connection with a dispute. On request of a disputing Party, the responsible office shall submit to the disputing Parties a report of payments made to date at any time during the panel proceedings.
100. In case of resignation or removal of a panellist or assistant, or if the disputing Parties reach a mutually satisfactory solution or the complaining Party withdraws its request for establishment of a panel, the responsible office will make payment of the remuneration and expenses owed, using resources provided equally by the disputing Parties, on submission of the panellist's or assistant's final account of time or expenses, following the procedures in Rule 97.

APPENDIX 1

APPROVED PERSONS

1. Each participating Party shall submit to the panel and the other participating Parties a list of its authorised 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. Each participating Party shall keep the number of individuals on its list as limited as possible.
2. In no circumstances shall a participating Party nominate as an approved person any individual, or any employee, officer or agent of any entity, that could reasonably be expected to benefit outside of panel proceedings under Chapter 28 (Dispute Settlement) from the receipt of confidential information.
3. The responsible office shall submit to the panel and the participating Parties a list of the authorised employees of the responsible office who need access to confidential information in the panel proceeding and whom it wishes to have the panel designate as approved persons. A participating Party or the responsible office may submit modifications to its list at any time.
4. A participating Party may object to the designation by the panel of an individual as an approved person no later than seven days after receipt of the list or a modification to the list, or no later than seven days of becoming aware of information that would establish a violation of the Code of Conduct by the individual in question. No later than 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 an individual as an approved person after receiving an objection to such designation, confidential information may not be disclosed to the approved person until the participating Party that submitted the information has had a reasonable opportunity to:
 - (a) withdraw the information, in which case the panel and the designated offices of the participating Parties shall return any document containing the information to the participating Party that submitted the information, and the other participating Parties shall, in accordance with their respective domestic laws, either:
 - (i) destroy any document containing the information; or
 - (ii) return any such document to the participating Party that submitted the information; or
 - (b) withdraw the designation of the information as confidential.

6. Subject to any decision by the panel regarding an objection to designate an individual as an approved person, the panel shall designate the individuals 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.

APPENDIX 2

CONFIDENTIAL INFORMATION

1. A participating Party shall identify confidential information by:
 - (a) clearly marking information recorded in paper and electronic form with the notation “CONFIDENTIAL INFORMATION” on the cover page of the document and on each page where confidential information appears, and by enclosing the confidential information in double square brackets;
 - (b) clearly marking information recorded in an electronic file which is used to store an electronic document, 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 document 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 document and on each page where confidential information appears, and by enclosing the confidential information in the electronic transmission in double square brackets; and
 - (c) prior to its disclosure, declaring oral information to be “CONFIDENTIAL INFORMATION”.

2. If 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 form with the notation “CONFIDENTIAL INFORMATION” on the cover page of the document and on each page where confidential information appears, and by enclosing the confidential information in double square brackets, and with the name of the participating Party that first submitted the information;
 - (b) clearly marking information recorded in an electronic file 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 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; and
 - (c) prior to its disclosure, declaring oral 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 document containing the confidential 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 individual other than another approved person.
5. An approved person who views or hears confidential information shall only use that information for the purposes of the panel proceeding.
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 confidential information provided by another participating Party, and promptly notify the responsible office when the confidential information has been destroyed;
 - (b) return any confidential information to the participating Party that first submitted the confidential information, unless that participating Party agrees otherwise, and notify the responsible office that the confidential information has been returned; or
 - (c) maintain the confidentiality of any such information.
8. The panel may, with the consent of the disputing Parties and after consulting any third Party, where relevant, 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.

APPENDIX 3

DECLARATION OF NON-DISCLOSURE

1. I acknowledge having received a copy of the Rules of Procedure, which include Rules governing the treatment of confidential information.
2. I acknowledge having read and understood the Rules of Procedure.
3. I agree to be bound by, and to adhere to, the Rules of Procedure and, accordingly, without limitation, to treat as confidential all confidential information that I may view or hear in accordance with the Rules of Procedure and to use that information solely for the purposes of the panel proceeding.

Declared on this ____ day of ____, 20____.

By:

Signature _____

Name _____

APPENDIX 4

REQUESTS AND WRITTEN VIEWS OF NON-GOVERNMENTAL ENTITIES

1. Any request or written views submitted by a non-governmental entity under Rule 63 and Rule 65 must be made in writing and, unless the panel and the disputing Parties agree otherwise, in English.
2. Any request or written views must be submitted in accordance with Rule 12 and further comply with the following guidelines:
 - (a) any page limit shall be based on single-spaced, typewritten pages, 12 point Times New Roman type, on paper 8.5 by 11 inches or A4, with margins of one inch or 2.5 centimetres; and
 - (b) the request or submission must:
 - (i) be signed and dated by a representative of the non-governmental entity; and
 - (ii) include the address and other contact information of the non-governmental entity.