

Model Rules of Procedure

Application

1. These Model Rules of Procedure, including the appendices thereto(hereinafter referred to as the "*Model Rules*"), are established pursuant to Article 22.10 (Rules of Procedure) of the Free Trade Agreement between the Republic of Korea and the United States of America and shall apply to dispute settlement proceedings under Chapter Twenty-Two unless the Parties agree otherwise.

Definitions

2. In these rules:

Agreement means the Free Trade Agreement between the Republic of Korea and the United States of America

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

approved person means a person who is:

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

- (d) an assistant to a panelist designated in accordance with Appendix 1;

authorized representative means:

- (a) an official of a Party; or
- (b) a legal counsel or other advisor or consultant of a Party who advises or assists that Party in the course of the dispute and whose authorization the Party has notified to the panel and 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 Twenty-Two 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; or
- (b) for a paper 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 Joint Committee in accordance with Article 22.9.4(d) (Establishment of Panel);

complaining Party means a Party that requests the establishment of a panel under Article 22.9 (Establishment of Panel);

confidential information means information designated as such by a Party in accordance with rule 16

date of delivery means:

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

day means calendar day

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

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

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

information means any kind of information, regardless of its format, including information in a paper document, electronic file, or spoken information;

Joint Committee means the Committee established under Article 22.2 (Joint Committee);

officer means the office that a Party designates under Article 22.5 (Administration of Dispute Settlement Proceedings) for providing administrative assistance to panels established under Article 22.9 (Establishment of Panel)

panel means a panel established under Article 22.9 (Establishment of Panel);

panelist means a member of the panel;

Party means a Party to the Agreement;

Party complained against means the Party that receives a written notification indicating that the complaining Party has referred the matter to a dispute settlement panel in accordance with Article 22.9 (Establishment of Panel);

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 the other Party;

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

responsible officer means an office in the Party complained against and responsible for the functions identified in rule 88.

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

Terms of Reference

4. The complaining Party shall promptly deliver the terms of reference if they are agreed to by the Parties to the responsible office which, in turn, shall

provide for their delivery by the most expeditious means practicable to the office of the other Party and to the panel once it has been constituted.

5. If the Parties fail to agree on the terms of reference within 20 days from the date of the delivery of the request for the establishment of the panel, the complaining Party may so notify the responsible office. On the receipt of such notification, the responsible office shall deliver by the most expeditious means practicable the terms of reference set out in Article 22.10.3 (Rules of Procedure) to the Parties and to the panel once it has been constituted.

Written Submissions and Other Documents

6. No document is considered filed with the panel unless the submitter delivers it to the responsible office.

7. A Party submitting a document to the panel through the responsible office shall deliver the official version in either electronic or paper form to the responsible office and, on the same day, also deliver an electronic or paper copy, as appropriate, to the other Party and, when making delivery to the responsible office, indicate that the Party has delivered a copy to the other Party. The responsible office shall also deliver an electronic copy to the office of the other Party. 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. For greater certainty, when the responsible office receives the documents submitted by the Parties to the panel, the responsible office shall distribute an electronic copy of such documents to the panelists on the same day. If any part of the document cannot be delivered electronically, the responsible office shall deliver a paper copy of that part of the document to the panelists by the most expeditious means practicable.

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

9. Within 14 days of the delivery of the request for the establishment of a panel to the Party complained against, each Party shall deliver to the responsible office a list of public holidays on which the Party's office is closed and the normal business hours of that Party's offices. No later than seven days after the date of the constitution of the panel, the panel shall issue a timetable for the panel proceedings that provides for:

- (a) submission of the initial written submission of the Party complained against no later than 35 days after the date of the constitution of the panel;
- (b) submission of 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 after the date for submission of the rebuttal submission of the Party complained against;
- (e) delivery to the Parties of any written questions from the panel within three days after the final date of the hearing;
- (f) submission of a Party's supplementary written submission responding to any matter that arose during the hearing and to the

written questions from the panel, within 17days after the final date of the hearing; and

- (g) submission of a Party's comments on the supplementary written submissions of the other Party and any responses to written questions from the panel within 14 days of the submission of those responses.

10. 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.

11. Minor errors of a clerical nature in any request, notice, written submission, or another document related to the panel proceeding may be corrected by submitting a new document clearly indicating the changes. A Party must correct such errors within seven days of the date of delivery, or at such other time as the panel so designates. The correction of minor errors of a clerical nature shall not affect the timetable for the panel proceedings set forth by the panel under rule 9.

12. Any delivery of a document to an office of a Party under these Model Rules shall be made during the office's normal business hours. Any document delivered after the office's normal business hours shall be deemed to have been delivered during the next business day.

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

Public Release of Written Submissions and Other Documents

14. Subject to rules 15 and 16, each document submitted to, or issued by, a panel, including a Party's written submissions, written versions of its oral statements, written responses to a request, or questions from the panel or the other Party, requests for consultations made pursuant to Article 19.7.1 (Labor Consultations), Article 20.9.1 (Environmental Consultations and Panel Procedure), and Article 22.7 (Consultations), and all notifications made pursuant to Chapter Twenty-Two shall be made public. The term "document" in this provision is not intended to include a document that is purely administrative in nature.

The responsible office shall make such documents and notifications available to the public immediately after the date of their delivery to the responsible office. In accordance with Article 22.11.4 (Panel Report), each Party shall also make the final report of the panel available to the public no later than 15 days after the date of its presentation to the Parties.

15. No Party may disclose publicly the contents of an initial report presented to the Parties pursuant to Article 22.11.1 (Panel Report) or the contents of any comments made on an initial report.

16. To the extent it considers strictly necessary to protect confidential information or information described in Article 23.2 (Essential Security), Nothing in these rules shall be construed to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests. a Party may designate specific factual information included in the submission as confidential information in accordance with the procedures set out in Appendix 2. To the extent possible, confidential information should be contained in an exhibit or annex to the submission.

Information that may be designated as confidential information shall be 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 information.

17. Where a Party designates information contained in a document as confidential information, it shall prepare and deliver, in accordance with rule 7, 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.

18. If a Party fails to prepare and submit a non-confidential version of its document containing confidential information within seven days after the date of submission of the document, the other Party may make the document available to the public after redacting the confidential information and submit it to the panel in accordance with rule 7.

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

20. A Party shall not designate any portions of its written legal arguments as confidential information other than to the extent they would reveal specific factual information described in rule 16.

Procedures for Identification and Treatment of Confidential Information

21. Rules 21 through 24 and Appendix 2 apply to information that a Party submits during the panel proceedings and designates as confidential information; however, except as provided in Appendix 2, paragraph 1, these procedures do not apply to a Party with respect to confidential information that a Party first submitted, including in derivative form.

22. Each Party shall treat as confidential the information submitted by the other Party to the panel that the other Party has designated as confidential information in accordance with rule 16 and Appendix 2. Nothing in these Model Rules shall preclude a Party from disclosing statements of its own position to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential information.

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

24. Each Party shall ensure that each of its authorized representatives, designated as approved persons pursuant to Appendix 1, complies with these procedures. The panel shall ensure that each authorized employee or any assistant to the panelists designated as approved persons pursuant to Appendix 1 complies with these procedures

Operation of Panels

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

26. Except as otherwise provided in these Model Rules, the panel may conduct its business by any means, including by telephone, facsimile transmission, videoconference, and computer links.

27. Only panelists may take part in the deliberations of the panel, but the panel may permit assistants, interpreters, or translators to be present during such deliberations. Any person present for such deliberations shall not disclose any information discussed during the deliberation to the Parties.

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

29. On the selection of all three proposed panelists, the responsible office shall inform each proposed panelist of that proposed panelist's selection. The responsible office shall inform the Parties promptly after each proposed panelist accepts the proposal to serve on the panel as a panelist, of such acceptance. If the responsible office receives information indicating that a reply may be delayed beyond five days after the date of its communication with the proposed panelist, it shall so inform the Parties. If the responsible office cannot confirm a proposed panelist's willingness and availability to accept to serve on the panel as a panelist within twenty days after the date of its initial communication with the proposed panelist, the responsible office shall so inform the Parties and such proposed panelist shall be deemed to be unavailable. When communicating with a proposed panelist for the first time, the responsible office shall provide a copy of the Initial Disclosure Statement form and Code of Conduct, and shall request each proposed panelist to complete the Initial Disclosure Statement and make best efforts to return it to the responsible office within seven days after the date of its delivery, if the proposed panelist accepts the proposal to serve on the panel.

30. On the date when the responsible office has received a complete Initial Disclosure Statement form from all three proposed panelists accepting to serve on the panel, the responsible office shall notify the constitution of the panel to the Parties. The time period of 180 days provided under Article 22.11.1 (Initial Report) shall run from the date of notification by the responsible office. The panel shall be deemed to have been constituted at the date when the responsible office notifies its constitution to the Parties in accordance with this rule.

31. If a proposed panelist does not accept an appointment, or 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 as set forth under Article 22.9 (Establishment of Panel) of the Agreement and rule 29 of these Model Rules.

32. If the Parties agree that a panelist has failed to comply with Article 22.9.4(d) (Establishment of Panel), they may remove the panelist, waive the failure, or request the panelist to take steps within a specified time period to ameliorate the failure. If the Parties agree to waive the failure or determine that, after amelioration, the failure has ceased, the panelist may continue to serve the panel. The Parties shall seek to address the potential failure to comply with Article 22.9.4(d) (Establishment of Panel), within seven days after the date the Parties have learned of the potential failure to comply with Article 22.9.4(d).

33. Any time period applicable to the panel proceeding shall be suspended for a period beginning on the date when the panelist dies, withdraws, is removed, is authorized to seek to ameliorate a failure, or otherwise becomes unavailable, and ending on the date when the replacement is selected, or the failure is waived or has ceased after amelioration.

34. The panel may suspend its work at any time at the request of the complaining Party for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the Parties make a joint request to do so. In the event of such a suspension, all relevant time-frames set out in these Model Rules shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 consecutive months, the authority for the establishment of the panel under Article 22.9 (Establishment of Panel) shall lapse, unless the Parties agree otherwise.

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

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

Hearings

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

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

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

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

41. All hearings of the panel shall be open for the public to observe. The expression "observe" does not require physical presence at the hearing. To facilitate public observation of panel hearings, the Panel may make such hearings public in the manner that it decides in conjunction with the Parties, including by electronic means. However, consent of the parties is required for a broadcast of a hearing other than a closed-circuit broadcast. except that the panel 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 the hearing shall provide prior written notice of such intent to the panel in accordance with rule 7. To the extent possible, the Party shall provide such written notice at least seven days before the date of the hearing.

43. Only approved persons may attend a portion of the hearing that is closed.

44. No later than two days before the date of the hearing, each Party shall deliver to the other Party and the responsible office a document with the names of the Party's delegation members attending the hearing in accordance with rule 7.

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

Argument

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

Rebuttal Argument

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

46. The panel may direct questions to either 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 its preparation, deliver an electroniccopy of the transcript to the Parties and the panel.

Notifications

48. In notifying the Parties as required under the Agreement and these Model Rules, the panel may notify the Parties in person or by certified mail, courier, fax, electronic mail, or any other means of communications through which receipt may be reasonably confirmed.

49. The panel shall address its notifications to the offices of the Parties as appropriate in accordance with rule 48. The panel shall convey these notifications through the responsible office.

Supplementary Written Submissions

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

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

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

53. Each Party shall submit its response to the written questions by the panel, written comments, or any other submission under rules 50, 51, or 52 in accordance with rule 7 no later than the date specified in the timetable set forth by the panel under rule 9.

Submission of Written Views from Non-Governmental Entities

54. The panel may grant a request by any non-governmental entity (NGE) in either Party's territory to submit written views under Article 22.10.1(e) (Rules of Procedure) if the entity complies with rules 55 and 56.

55. The NGE must deliver its request to submit written views to the responsible office within seven days after the date the initial written submission of the Party complained against is made public, or if that submission contains

confidential information, within seven days after the non-confidential version is made public. The request shall:

- (a) contain a description of the NGE submitting the request, including, if applicable, the nature of its activities, its membership, legal status, sources of financing, and the address in the territory of a Party;
- (b) identify the specific issues of fact and law directly relevant to any legal or factual issue under consideration by the panel that the NGE will address in its written views;
- (c) explain how the NGE'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 NGE has any relationship, direct or indirect, with either Party as well as whether it has received or is expected to receive any assistance, financial or otherwise, from any Party, other governments, persons, or organizations other than its members or its counsel in the preparation of its request or written views; and
- (e) be no more than four pages long.

56. Any request under rule 55 or submission under rule 59 must be made in writing. Any page limit shall be based on single-spaced, typewritten pages, 12 point Times New Roman or Human-myungjo type, on a paper of 8 ½ by 11 inches or A4 size, with margins of one inch or 2.5 centimeters. The request or submission must be signed and dated by the representative of the NGE, must include its contact information, and must be submitted in accordance with rule 7.

57. The responsible office shall promptly provide any request made by an NGE to each Party, and make the request available to the public. The panel

shall, after consulting the Parties, decide within seven days after the date of its receipt of the request whether to grant the NGE leave to submit written views in whole or in part. The responsible office shall promptly (a) notify the NGE and the Parties of its decision, and (b) make the decision available to the public.

58. In deciding whether to grant leave under rule 57, the panel shall take into account the factors listed in rule 55 and compliance with rule 56.

59. If the panel grants the request, the NGE shall submit its written views to the responsible office by the date the panel designates, which shall not be later than 21 days before the date of the hearing.

60. An NGE's written views must comply with rule 56 and must:

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

61. The responsible office shall promptly provide the Parties any written views from NGEs in accordance with rule 59 and shall make those written views available to the public.

62. The panel shall provide each Party an adequate opportunity to comment on and respond to any written views by any NGE that the panel decides to receive.

63. The panel shall not consider written views that do not conform to rules 59 and 60. The panel is not required to address in its report any matter raised in the written views by NGEs that it decides to receive.

64. To facilitate the submission of requests to provide written views by NGEs in a dispute, each Party shall, no later than 14 days after the date of the constitution of the panel, provide public notice of:

- (a) the establishment of the panel;

(b) the opportunity for NGEs in each Party's territory to submit requests to provide written views in the dispute; and

(c) the procedures and requirements for making such submissions, consistent with these Model Rules.

65. The panel may provide additional opportunities for NGEs to participate in the panel proceedings if the Parties agree.

Ex Parte Contacts

66. The panel shall not meet or contact one Party in the absence of the other Party.

67. 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.

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

Information and Technical Advice

69. The panel may decide to seek information or technical advice under Article 22.10.4 (Rules of Procedure) no later than 14 days after the date of the hearing, whether on its own initiative or at the request of either Party.

70. Within 28 days after its decision to seek information or technical advice, and after consulting the Parties, the panel shall select one or more persons or bodies that shall provide the information or technical advice.

71. The panel shall not select a person under rule 70 who has, or whose employers, partners, business associates, or family members have, a financial or other interest that is likely to affect the person's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of

bias under the Code of Conduct. The panel shall not select a body under rule 70 that has, or whose owners or controlling principals have, or whose employees working on the panel's request for information or technical advice have, a financial or other interest that is likely to affect the independence or impartiality of the body or that might reasonably create an appearance of impropriety or an apprehension of bias under the Code of Conduct.

72. Each Party may submit written comments in accordance with rule 70 on the proposed request for information or technical advice within five days after the date of the selection of a person or body under rule 70. The panel shall take the Parties' comments into account in finalizing the request.

73. The panel shall deliver a copy of its request to the responsible office which, in turn, shall provide for the delivery of electronic copies of the request by the most expeditious means practicable to the Parties and any person or body selected under rule 70. The responsible office shall make the request available to the public.

74. The panel shall ask the person or body requested to provide the information or technical advice to deliver its response to the responsible office within 30 days after the date of its receipt of the request.

75. The responsible office shall deliver to the Parties the information or technical advice received from the person or body requested to provide such advice and make it available to the public in accordance with rule 14. The panel shall establish a date for the Parties to submit written comments on the information or technical advice to the panel within 14 days after the date of its delivery to the Parties in accordance with rule 7.

76. Whenever a request is made for the provision of information or technical advice, any time period applicable to the panel proceeding shall be suspended for a period beginning on the date of delivery of the request and ending on the earlier of the date of delivery of the information or technical advice to the panel or 45 days after the date of delivery of the request.

Computation of Time

77. Terms for the panel proceeding shall be computed on the basis of calendar days, consistent with the date in the territory of the Party complained against.

78. Where the Agreement, these Model 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.

Languages

79. Within 14 days from the date of the constitution of the panel, the Parties shall endeavour to agree on a common working language for the panel proceeding. If the Parties cannot agree on a common working language, the Parties shall file all their submissions and make all of their oral arguments in either English or Korean. If the Parties agree on the language of either Party as a common working language, the Panel may, upon request from a Party, extend the period of time for submissions of that Party under rule 9(a), 9(b), 9(c), 9(f), 9(g), 55, or 59 as appropriate, for up to 3 additional days. Upon agreement of both Parties, the Panel may provide an extension of longer than 3 days.

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

81. Where, in accordance with the advice provided by each participating Party under rule 80, the Parties intend to make their oral arguments in a panel proceeding in more than one language, or if a panelist requests interpretation at a hearing, the responsible office shall arrange for interpretation at the hearing. Where a panelist requests translation of a written submission into English or Korean, 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.

82. Where the responsible office is required to arrange for the translation of a document, any period of time the calculation of which is dependent on submission of that document shall be adjusted to allow a reasonable time for preparation of the translation. If the preparation of a translation takes longer than the estimate provided to the panel under rule 81, the panel shall make a corresponding adjustment in the timetable issued under rule 9.

83. The costs incurred to prepare a translation of a document 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 a panel proceeding shall be borne equally by the Parties.

84. Each Party may provide comments on the accuracy of any interpretation or any translation that is prepared in accordance with these Model Rules. In the case of inconsistency between an original document and a translation prepared in accordance with these Model Rules, the original document prevails.

Suspension of Benefits and Compliance Panels

85. The panel shall reconvene when a Party requests a panel under Article 22.13 (Non-Implementation) or 22.14 (Compliance Review). If any panelist is unavailable at the time of such request, a replacement panelist shall be selected as expeditiously as possible in accordance with the selection procedure originally followed to select the panelist being replaced.

86. These Model Rules shall apply, *mutatis mutandis*, to the panel reconvened under Article 22.13 (Non-Implementation) or 22.14 (Compliance Review) except that:

- (a) the Party that requests the reconvening of the panel shall submit its initial written submission within seven days after the later of

the date on which the panel is reconvened or the date that all the persons to serve on the reconvened panel have been confirmed

- (b) the timetable issued by the panel shall establish a date for the initial written submission of the Party complained against within 15 days after the date of delivery of the initial written submission of the Party that requested a panel under rule 85
- (c) the panel 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 panel proceedings set out in the Agreement and these Model Rules and
- (d) unless either Party requests a hearing, the panel may decide not to hold a hearing.

Disputes on Financial Services and Motor Vehicles

87. These Model Rules shall apply, *mutatis mutandis*, to a panel established under Article 13.18 (Dispute Settlement) and Annex 22-A (Alternative Procedures Concerning Motor Vehicles) and its proceedings.

Responsible Office

88. The Party complained against shall establish a responsible office to carry out the following functions:

- (a) provide administrative assistance to the panel;
- (b) serve as the contact point for the panel;
- (c) arrange for the payment of compensation to the panelists and other individuals that the panel retains in a panel proceeding;

- (d) make available to the panelists, copies of the Agreement and other documents relevant to the proceedings including these Model Rules and the Code of Conduct;
- (e) organize and coordinate the logistics required for the hearings;
- (f) retain permanently a copy of the complete record of the panel proceeding; and
- (g) perform all other tasks as established under the Agreement, these Model Rules or by the Joint Committee.

Maintenance of Contingent List

89. The Parties shall inform each other of the composition of the contingent list established under Article 22.9.3 (Rules of Procedure). The Parties shall promptly inform the other Party of any changes made to the contingent list.

Remuneration and Payment of Expenses

90. The remuneration of panelists and other individuals that the panel retains in a panel proceeding for their respective provision of services under Article 22.10.4 (Rules of Procedure) and these Model Rules, including their travel and lodging expenses, and the general expenses of the panel, including the expenses for translation and interpretation where agreed under rules 81 through 83, shall be borne equally by the Parties.

91. Each panelist, assistant, and expert shall keep a record and render a final account of the person's time and expenses to the responsible office and the panel shall keep a record and render a final account of the general expenses.

Amendments

92. The Parties may agree, in writing, to amend these Model Rules. An amendment shall enter into force on such date as the Parties may agree.

Entry into Force and Termination

93. These Model Rules shall enter into force on such date as the Parties may agree.

94. These Model Rules terminate with the termination of the Agreement or as otherwise agreed by the Parties.

APPENDIX 1 – APPROVED PERSONS

1. Each Party shall submit to the panel and the other Party a list of its authorized representatives who need access to confidential information submitted by the other Party and whom it wishes to have the panel designate as approved persons. Each Party shall keep the number of persons on its list as limited as possible. A Party may submit amendments to its list at any time.

2. In no circumstances shall a Party or the responsible office nominate as an approved person any person, or any employee, officer or agent of any entity, who could reasonably be expected to benefit outside of panel proceedings under Chapter Twenty-Two from the receipt of confidential information.

3. The responsible office shall submit to the panel and the Parties a list of the authorized employees of the responsible office or assistants of panelists who need access to confidential information in the dispute and whom it wishes to have the panel designate as approved persons. The responsible office shall keep the number of persons on its list as limited as possible. The responsible office may submit amendments to its list at any time.

4. A Party may object to the designation by the panel of a person as an approved person within seven days after the date of delivery of the list or amendments to the list, or within seven days of becoming aware of information that would establish a violation of the Code of Conduct. Within seven days after the date of delivery 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 owners or sources of confidential information.

5. If the panel designates a person after any Party makes 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 panel shall return any record containing the information to the Party submitting it and the other Party 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 information.

6. Subject to any decision on an objection to designate a person as an approved person, the panel shall designate the persons on the lists submitted under paragraph 1 and 3 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 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 on the cover page

- (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 on the cover page and
- (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 other person except approved persons.

5. Approved persons who view or hear confidential information shall use that information only for the purposes of the panel proceedings.

6. The panel shall not disclose confidential information in its report, but may state conclusions drawn from that information.

7. After the conclusion of the panel proceeding, each Party shall, in accordance with its domestic law:

- (a) destroy any record provided by the other Party containing the information;
- (b) return any such record to the Party that submitted 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 or any other timeframe established in accordance with its domestic law.

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

9. The panel may, at the request of or with the consent of the Parties, modify or waive any part of the procedures set out in this Appendix for treatment of confidential information. In that case, each approved person must sign and submit to the panel a modified Declaration of Non-Disclosure, as appropriate.

APPENDIX 3 – Declaration of Non

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

Executed on this ____ day of ____, 20____.

By: _____

Name

Signature _____

