

CHAPTER 31

DISPUTE SETTLEMENT

Article 31.1 **Definitions**

For the purposes of this Chapter, including Annex 31A (Rules of Procedure) and Annex 31B (Code of Conduct):

“ADR provider” means a provider of alternative dispute resolution (ADR) services, namely a provider of good offices, a conciliator, or a mediator who provides their services pursuant to Article 31.20 (Good Offices, Conciliation, and Mediation);

“approved person” means an individual who is:

- (a) an authorised representative of a Party designated in accordance with Rule 18 of the Rules of Procedure;
- (b) an arbitrator;
- (c) an assistant; or
- (d) an expert;

“arbitrator” means a member of a panel appointed in accordance with Article 31.7 (Composition of a Panel);

“assistant” means a person who, under the terms of appointment and under the direction of an arbitrator or ADR provider, conducts research or provides assistance to that arbitrator or ADR provider;

“candidate” means an individual who is requested to serve as an arbitrator under Article 31.7 (Composition of a Panel);

“Code of Conduct” means the code of conduct referred to in Article 31.23 (Rules of Procedure and Code of Conduct) and set out in Annex 31B (Code of Conduct);

“complaining Party” means the Party that requests consultations under Article 31.5 (Consultations);

“confidential information” means information designated as such by a Party;

“designated office” means the office designated in accordance with Article 31.17 (Administration of the Dispute Settlement Procedure);

“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 technical information or advice in accordance with Rule 37 of the Rules of Procedure;

“family member” means the partner of an arbitrator or candidate; or a parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece, or nephew of the arbitrator or candidate or partner of the arbitrator or candidate including whole and half blood relatives and step relatives; or the partner of such an individual. A family member also includes any resident of an arbitrator’s or candidate’s household whom the arbitrator or candidate treats as a member of their family;

“information” means information, however recorded or stored, including information contained in a paper document, electronic file, or oral information;

“non-business day” means, with regard to a Party, Saturday, Sunday, and any other day officially designated by that Party as a public holiday and notified to the other Party’s designated office;

“panel” means a panel established under Article 31.6 (Establishment of a Panel);

“proceeding” means the proceeding of the panel, unless otherwise specified;

“responding Party” means the Party to which the request for consultations is made under Article 31.5 (Consultations);

“Rules of Procedure” means the rules of procedure referred to in Article 31.23 (Rules of Procedure and Code of Conduct) and set out in Annex 31A (Rules of Procedure); and

“staff” means, in respect of an arbitrator or ADR provider, natural persons under the direction and control of the arbitrator or ADR provider, other than assistants.

Article 31.2

Objective

The objective of this Chapter is to provide an effective, efficient, and transparent process for the settlement of disputes between the Parties concerning their rights and obligations under this Agreement.

Article 31.3

Cooperation

The Parties shall endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation, consultations, or

other means to arrive at a mutually satisfactory resolution of any matter that might affect its operation or application.

Article 31.4

Scope

1. Unless otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement wherever a Party considers that:
 - (a) an actual or proposed measure of the other Party is inconsistent with its obligations under this Agreement;
 - (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
 - (c) any benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 9 (Cross-Border Trade in Services), or Chapter 16 (Government Procurement) is being nullified or impaired as a result of the application of any actual or proposed measure, whether or not that measure is consistent with this Agreement.
2. This Chapter shall apply subject to those special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

Article 31.5

Consultations

1. Each Party shall accord adequate opportunity for consultations with respect to any matter referred to in Article 31.4 (Scope). Any differences shall, as far as possible, be settled by consultation between the Parties in good faith, with a view to reaching a mutually agreed solution.
2. A Party may request consultations pursuant to paragraph 1 by delivering a written request to the other Party, setting out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and the legal basis for the complaint.
3. The responding Party shall reply to the request in writing within seven days after the date of its receipt and shall enter into consultations within a period of no more than:

- (a) 15 days after the date of receipt of the request for urgent matters; or
 - (b) 30 days after the date of receipt of the request for all other matters.
- 4. Unless the Parties agree otherwise, consultations shall be deemed concluded within:
 - (a) 30 days of the date of receipt of the request for consultations regarding urgent matters; or
 - (b) 60 days of the date of receipt of the request for consultations regarding all other matters.
- 5. The Parties shall make every effort to reach a mutually agreed solution of any matter through consultations. To this end, each Party shall:
 - (a) provide sufficient factual information to enable a full examination of how the actual or proposed measure or other matter subject to consultations might affect the operation or application of this Agreement;
 - (b) treat any information exchanged in the course of consultations which is designated by a Party as confidential or proprietary in nature, on the same basis as the Party providing the information; and
 - (c) endeavour to ensure the participation of personnel of their competent governmental authorities or other regulatory bodies who have responsibility for or expertise in the matter subject to the consultations.
- 6. Consultations may be held in person or by any technological means available to the Parties. If the consultations are held in person, they shall be held in the capital of the responding Party, unless the Parties agree otherwise.
- 7. Consultations, and in particular, positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of a Party in any further proceedings.
- 8. A Party may request the other Party to make available for the consultations personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

Article 31.6
Establishment of a Panel

1. The complaining Party may request the establishment of a panel to consider a dispute arising under this Agreement if:
 - (a) the responding Party does not reply to a request for, or enter into, consultations within the time period specified under paragraph 3 of Article 31.5 (Consultations);
 - (b) the Parties agree not to enter into consultations; or
 - (c) the Parties fail to resolve the dispute through consultations within the time period specified in paragraph 4 of Article 31.5 (Consultations).
2. The request for establishment of a panel shall be made in writing to the responding Party. In the request, the complaining Party shall set out the reasons for the request sufficient to present the problem clearly, including by identifying:
 - (a) the specific measure at issue;
 - (b) the legal basis for the complaint, including the provisions of this Agreement alleged to have been breached;
 - (c) any other relevant provisions;
 - (d) whether there is a claim for nullification and impairment; and
 - (e) the factual basis for the complaint.
3. Notwithstanding paragraphs 1 and 2, a panel cannot be established to review a proposed measure.

Article 31.7
Composition of a Panel

1. The panel shall be composed of three arbitrators.
2. Each Party shall appoint an arbitrator within 15 days of the receipt of the request to establish a panel, and shall at the same time nominate up to three candidates to serve as the third arbitrator who shall be the chair of the panel.
3. The Parties shall appoint by common agreement the chair within 30 days of the receipt of the request to establish a panel, taking into account the candidates nominated pursuant to paragraph 2.

4. The chair shall not be a national of, nor have his or her usual place of residence in, nor be employed by, a Party.
5. If all three members of the panel have not been appointed in accordance with paragraphs 2 and 3 within 30 days of receipt of the request to establish a panel, a Party may request the Secretary-General of the Permanent Court of Arbitration to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under paragraph 2 shall also be provided to the Secretary-General of the Permanent Court of Arbitration, and may be used in making the required appointments.
6. The date of establishment of the panel shall be the date on which the last arbitrator is appointed.
7. Where the original panel is reconvened for the purposes of Article 31.13 (Compliance with the Final Report), Article 31.14 (Compliance Review), Article 31.15 (Temporary Remedies in Case of Non-Compliance), or Article 31.16 (Compliance Review After the Adoption of Temporary Remedies), the panel may comprise only the chair of the original panel if the Parties so agree.

Article 31.8 **Qualifications of Arbitrators**

All arbitrators shall:

- (a) have demonstrated expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be independent of, and not be affiliated with or take instructions from, a Party;
- (c) serve in their individual capacities and not take instructions from any organisation or government with regards to matters related to the dispute; and
- (d) comply with the Code of Conduct.

Article 31.9 **Functions of a Panel**

1. The function of a panel established pursuant to Article 31.6 (Establishment of a Panel) and Article 31.7 (Composition of a Panel) is to make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement, and to

make the findings and determinations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. A panel shall be established, perform its functions, and conduct its proceedings in a manner consistent with this Agreement and the Rules of Procedure.
3. A panel shall take its decisions by consensus. If a panel is unable to reach consensus it may take its decisions by majority vote. A panel shall not disclose which arbitrators are associated with majority or minority opinions.

Article 31.10 **Terms of Reference of a Panel**

1. Unless the Parties agree otherwise within 20 days of the date of establishment of a panel, the terms of reference of the panel shall be to:
 - (a) examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 31.6 (Establishment of a Panel);
 - (b) make findings and determinations, together with the reasons therefor; and
 - (c) issue a written report in accordance with Article 31.12 (Reports of a Panel).
2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period specified in paragraph 1.

Article 31.11 **Rules of Interpretation of a Panel**

1. The panel shall interpret this Agreement in accordance with the customary rules of treaty interpretation of public international law, including those codified in the *Vienna Convention on the Law of Treaties* done at Vienna on 23 May 1969. The panel shall also consider relevant interpretations in panel and Appellate Body reports adopted by the Dispute Settlement Body of the WTO.
2. The findings and determinations of the panel cannot add to or diminish the rights and obligations provided in this Agreement.

Article 31.12
Reports of a Panel

1. The reports of the panel shall be drafted without the presence of the Parties.
2. The panel shall base its reports on the relevant provisions of this Agreement, the submissions and arguments of the Parties, and on any information or advice it has obtained in accordance with Rule 37 of the Rules of Procedure.
3. The panel shall present to the Parties its initial report within 130 days of the date of establishment of the panel, or in cases of urgency, within 70 days of the date of establishment of the panel.
4. The initial report shall contain:
 - (a) findings of fact;
 - (b) the determination of the panel as to whether:
 - (i) the measure at issue is inconsistent with obligations under this Agreement;
 - (ii) a Party has otherwise failed to carry out its obligations under this Agreement; or
 - (iii) a Party's measure is causing nullification or impairment;
 - (c) any other determination requested in the terms of reference; and
 - (d) the reasons for the findings and determinations.
5. In exceptional cases, if the panel considers that it cannot present its initial report within the time period specified in paragraph 3, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. The panel shall not exceed an additional period of 30 days.
6. A Party may submit written comments on the initial report to the panel within 16 days of receiving the initial report.
7. After considering any written comments from the Parties, the panel may modify its report and make any further examination it considers appropriate.
8. The panel shall present its final report to the Parties, which shall include any dissenting opinion, within 30 days of the date of presentation of the interim report.

9. If in its final report the panel finds that a Party's measure is inconsistent with this Agreement, or is causing nullification or impairment without being inconsistent with this Agreement, it shall include in its findings and determinations a requirement to remove the inconsistency or, in the latter case, to make a mutually satisfactory adjustment in respect of the nullification or impairment.¹
10. The final report of the panel shall be final and binding on the Parties.

Article 31.13 **Compliance with the Final Report**

1. The responding Party shall take any measure necessary to comply promptly and in good faith with the final report pursuant to Article 31.12 (Reports of a Panel).
2. Where it is not practicable to comply immediately, the responding Party shall, within 30 days of the date of issuance of the final report, notify the complaining Party of the length of the reasonable period of time it requires to comply with the final report. The Parties shall endeavour to agree on the length of the reasonable period of time.
3. If the Parties are unable to agree on the reasonable period of time within 30 days of the date of issuance of the final report, the complaining Party may request the original panel² to determine the length of the reasonable period of time.
4. The panel shall notify its decision, together with the reasons therefor, to the Parties within 40 days of the date of the request.
5. The reasonable period of time, where determined by the panel, shall not exceed 15 months from the date of issuance of the final report to the Parties. However, that time may be shorter, depending upon the particular circumstances of the dispute. The length of the reasonable period of time may be extended by mutual agreement of the Parties.

Article 31.14 **Compliance Review**

1. The responding Party shall, no later than the date of expiry of the reasonable period of time determined pursuant to Article 31.13 (Compliance with the

¹ A Party shall not be obliged to withdraw the measure that the panel finds is causing the nullification or impairment.

² For greater certainty, references in this Chapter to the original panel shall include any replacement arbitrators that have been designated pursuant to Part XIV of the Rules of Procedure.

Final Report), notify the complaining Party of any measures taken to comply with the final report.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the final report, the complaining Party may request, no later than 20 days after the responding Party's notification under paragraph 1, the original panel to examine the matter.
3. The request referred to in paragraph 2 shall identify the issues with any measures taken to comply and the legal basis for the complaint, including, where relevant, the provisions of this Agreement alleged to have been breached and to be addressed by the panel, sufficient to present the problem clearly.
4. The panel shall provide its compliance report to the Parties no later than 90 days after the date of referral of the matter.
5. In exceptional cases, if the panel considers that it cannot provide its compliance report within the time period specified in paragraph 4, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. The panel shall not exceed an additional period of 30 days.

Article 31.15 **Temporary Remedies in Case of Non-Compliance**

1. If:
 - (a) the responding Party fails to notify any measure taken to comply with the final report no later than the date of expiry of the reasonable period of time determined pursuant to Article 31.13 (Compliance with the Final Report);
 - (b) the responding Party notifies the complaining Party in writing that it does not intend to comply with the final report, or that it is impracticable to do so within the reasonable period of time determined pursuant to Article 31.13 (Compliance with the Final Report); or
 - (c) the panel finds, pursuant to Article 31.14 (Compliance Review), that compliance with the final report has not been achieved or that the measure taken to comply is inconsistent with this Agreement,

the responding Party shall, if requested by the complaining Party, enter into consultations with the complaining Party with a view to agreeing on mutually acceptable compensation.

2. If, in any of the circumstances set out in subparagraphs 1(a) to 1(c), the complaining Party chooses not to request consultations or the Parties do not agree on compensation within 20 days of entering into consultations on compensation, the complaining Party may notify the responding Party in writing that it intends to suspend the application of concessions or other obligations under this Agreement.
3. A notification made pursuant to paragraph 2 shall specify the level of intended suspension of concessions or other obligations, which shall be equivalent to the level of nullification or impairment that is caused by the failure of the responding Party to comply with the final report.
4. In considering what concessions or other obligations to suspend under paragraph 2, the complaining Party shall apply the following principles and procedures:
 - (a) the general principle is that the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that in which the panel has found an inconsistency with this Agreement or to have caused nullification or impairment;
 - (b) if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, it may seek to suspend concessions or other obligations in other sectors. In the written notice referred to in paragraph 2, the complaining Party shall indicate the reasons on which its decision to suspend concessions or other obligations in a different sector is based; and
 - (c) it shall only suspend concessions or other obligations that are subject to dispute settlement in accordance with Article 31.4 (Scope).
5. The complaining Party shall have the right to implement the suspension of concessions or other obligations 20 days after the date on which it provides notice under paragraph 2, unless the responding Party has requested the original panel to examine the matter pursuant to paragraphs 6 and 7.
6. If the responding Party considers that the intended level of suspension of concessions or other obligations is not equivalent to the nullification or impairment or that the complaining Party has failed to follow the principles and procedures set out in paragraph 4, it may request in writing, no later than 10 days after the date of receipt of the notification referred to in paragraph 2, the original panel to examine the matter. The panel shall notify its decision to the Parties no later than 90 days after the date of the request. In exceptional cases, if the panel considers that it cannot notify its decision within 90 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its decision. The panel shall not exceed an additional period of 30 days. Concessions or other obligations shall not be

suspended until the panel has notified its decision. Any suspension of concessions or other obligations shall be consistent with the panel's decision.

7. The panel, acting pursuant to paragraph 6, shall not examine the nature of the concessions or other obligations to be suspended, but shall determine whether the level of that suspension is equivalent to the level of nullification or impairment. The panel may also determine if the proposed suspension of concessions or other obligations is allowed under this Agreement. However, if the matter referred pursuant to paragraph 6 includes a claim that the principles and procedures set forth in paragraph 4 have not been followed, the panel shall examine that claim.
8. Any compensation or suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the responding Party is found, pursuant to Article 31.16 (Compliance Review After the Adoption of Temporary Remedies), to have complied with the final report, or until the Parties have reached a mutually agreed solution. None of these measures is preferred to full compliance with the final report.

Article 31.16

Compliance Review After the Adoption of Temporary Remedies

1. On notification by the responding Party to the complaining Party of the measures taken to comply with the final report and the complaining Party confirming, within 30 days of the notification, that the measures taken achieve compliance:
 - (a) in a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with Article 31.15 (Temporary Remedies in Case of Non-Compliance), the complaining Party shall terminate the suspension of concessions or other obligations no later than 30 days after the date the complaining Party confirms it agrees that the final report has been complied with; or
 - (b) in a situation where mutually acceptable compensation has been agreed, the responding Party shall terminate the application of that compensation no later than 30 days after the date the complaining Party confirms it agrees that the final report has been complied with.
2. If the Parties do not reach an agreement on whether the measures notified in accordance with paragraph 1 achieve compliance with the final report or are consistent with this Agreement within 30 days of the date of notification by the responding Party of the measures taken to comply with the report, a Party may request in writing the original panel to examine the matter.

3. The panel shall notify its decision to the Parties within 90 days of the date of the request. In exceptional cases, if the panel considers that it cannot notify its decision within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its decision. The panel shall not exceed a further period of 30 days.
4. If the panel decides that the measures notified in accordance with paragraph 1 achieve compliance with the final report or are consistent with this Agreement, the suspension of concessions or other obligations, or the application of the compensation, shall be terminated no later than 30 days after the date of the decision. If the panel decides that the measures notified in accordance with paragraph 1 do not achieve compliance with the final report or are inconsistent with this Agreement, the suspension of concessions or other obligations, or the application of the compensation, may continue. Where relevant, the level of suspension of concessions or other obligations, or of the compensation, shall be adapted in light of the decision of the panel.

Article 31.17 **Administration of the Dispute Settlement Procedure**

1. Each Party shall:
 - (a) designate an office that shall be the Party's point of contact, and which shall be responsible for providing administrative assistance to panels established under Article 31.6 (Establishment of a Panel); and
 - (b) notify the other Party of the location of its designated office by the date of entry into force of this Agreement.
2. Notwithstanding paragraph 1, the Parties may agree to jointly entrust an external body with providing support for certain administrative tasks for the dispute settlement procedure under this Chapter.

Article 31.18 **Choice of Forum**

1. Subject to paragraph 3, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are party, including the WTO Agreement.
2. If a dispute regarding the same matter arises under this Agreement and under another international agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

3. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular matter referred to in paragraph 2, that Party shall not initiate dispute settlement proceedings in another forum with respect to that matter unless the forum selected first fails to make findings on the issues in dispute for jurisdictional or procedural reasons.
4. For the purposes of paragraph 3, the complaining Party shall be deemed to have selected the forum when it has requested the establishment of a panel under this Agreement, or the other international agreement or, where panel procedures are not provided for, when a Party commences a dispute under the dispute settlement procedures in the relevant international agreement.

Article 31.19

Cases of Urgency

1. Cases of urgency means those cases which concern goods that rapidly lose their quality or commercial value in a short period of time.
2. If the Parties disagree on whether a dispute concerns a case of urgency, on the request of a Party, the panel shall decide, within 15 days of the request, whether a dispute concerns a case of urgency.

Article 31.20

Good Offices, Conciliation, and Mediation

1. The Parties may at any time agree to voluntarily undertake good offices, conciliation, or mediation. These procedures may begin at any time³ and may be terminated at any time by a Party.
2. If the Parties agree, procedures for good offices, conciliation, or mediation may continue while the dispute proceeds for resolution before a panel.
3. Procedures that involve good offices, conciliation, or mediation and in particular positions taken by the Parties during these procedures shall be confidential and without prejudice to the rights of a Party in any further or other proceedings.

Article 31.21

Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 31.4 (Scope).

³ For greater certainty, this includes both before, during, and after a request for consultations is made pursuant to Article 31.5 (Consultations).

2. No later than the date of expiry of the agreed time period, the implementing Party shall inform the other Party in writing of any measures taken to implement the mutually agreed solution.

Article 31.22

Suspension and Termination of Proceedings

1. On the joint request of the Parties, the panel shall suspend the proceedings at any time for a period agreed by the Parties not exceeding 18 consecutive months from the date of that agreement. In the event of that suspension, the relevant time periods shall be extended by the time period for which the panel proceedings were suspended.
2. The panel shall resume the proceedings at any time on the joint request of the Parties or at the end of the agreed suspension period on the written request of a Party. The request shall be notified to the panel, as well as to the other Party, where applicable.
3. If the panel proceedings have been suspended for more than 18 consecutive months, the authority of the panel shall lapse and the panel proceedings shall be terminated, unless the Parties agree otherwise.
4. The Parties may agree at any time to terminate the panel proceedings. The Parties shall jointly notify that agreement to the panel.

Article 31.23

Rules of Procedure and Code of Conduct

The proceedings provided for in this Chapter shall be conducted in accordance with the Rules of Procedure and the Code of Conduct, unless the Parties agree otherwise.

Article 31.24

Time Periods

Any time period referred to in this Chapter, the Rules of Procedure, or the Code of Conduct may be modified for a dispute by agreement of the Parties. The panel may at any time propose to the Parties to modify any time period, stating the reasons for the proposal.

Article 31.25
Expenses

Each Party shall bear the cost of its own participation in the proceeding. Remuneration and payment of expenses will be in accordance with the Rules of Procedure.

ANNEX 31A

RULES OF PROCEDURE

I. General Provision

1. In the event of an inconsistency between these Rules of Procedure and any provisions in Chapter 31 (Dispute Settlement), the provisions of Chapter 31 (Dispute Settlement) shall prevail to the extent of the inconsistency.

II. Notifications

2. Any written submission, request, notice, or other document in a proceeding transmitted by:
 - (a) the panel shall be sent to both Parties at the same time;
 - (b) a Party to the panel shall be copied to the other Party at the same time; and
 - (c) a Party to the other Party shall be copied to the panel at the same time.
3. The notification to a Party of any document under Chapter 31 (Dispute Settlement), these Rules of Procedure or the Code of Conduct shall be addressed to that Party's designated office.
4. Any notification referred to under Rules 2 and 3 shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of its sending. Unless proven otherwise, an e-mail message shall be deemed to be received on the same date of its sending. The date of sending shall be determined according to the time zone in the capital city of the sending Party.
5. If the last day for delivery of a document falls on a non-business day of a Party, or on any other day on which the offices of the Government of a Party are officially or by force majeure closed, the document may be delivered on the next business day.
6. Minor errors of a clerical nature in any written submission, request, notice, or other document related to the proceeding may be corrected by delivering a new document clearly indicating the changes. Any such correction shall not affect the timetable for the proceeding. Any disagreement regarding whether or not the correction is of a clerical nature shall be resolved by the panel after consulting the Parties.

III. Organisational Meeting

7. Unless the Parties agree otherwise, they shall meet with the panel within seven days of the establishment of the panel in order to determine such matters that the Parties or the panel deem appropriate, including:
 - (a) the remuneration and expenses that shall be paid to the arbitrators and their assistants, in accordance with Part XV (Remuneration and Payment of Expenses) below; and
 - (b) the timetable for the proceeding, setting forth inter alia precise dates for the filing of submissions and the date of the oral hearing.
8. Unless the Parties agree otherwise, this meeting shall not be required to be in person and can be conducted by any means, including video-conference, tele-conference, or computer links.

IV. Timetable

9. Unless otherwise agreed by the Parties, the panel may, in consultation with the Parties, modify any time period established pursuant to these Rules of Procedure and make such other procedural or administrative adjustments as may be required in the proceeding.

V. Written Submissions

10. Subject to Rule 7(b), the complaining Party shall deliver its initial written submission to the panel no later than 20 days after the establishment of the panel. The responding Party shall deliver its written counter-submission no later than 28 days after the date of receipt of the initial written submission.
11. With the agreement of the panel, within 10 days of the conclusion of a hearing, each Party may deliver to the panel and the other Party a supplementary written submission responding to any matter that arose during the hearing.

VI. Operation of the Panel

12. The chair of the panel shall preside at all of its meetings. The panel may delegate to the chair authority to make administrative and procedural decisions.
13. Except as otherwise provided in these Rules of Procedure, the panel may conduct its activities by any means, including e-mail, telephone, video-conference, facsimile transmissions, or computer links.

14. The panel's deliberations shall be confidential. Only arbitrators may take part in the deliberations of the panel, but the panel may permit assistants or designated note-takers to be present during such deliberations.
15. The drafting of any report or decision shall remain the exclusive responsibility of the panel and must not be delegated.

VII. Hearings

16. In accordance with Rule 7, the chair shall fix the time of the hearing in consultation with the Parties and other members of the Panel. The chair shall notify the Parties in writing of the details of the hearing including the date, time, and location.¹ Unless a Party disagrees, the Panel may decide not to convene a hearing.
17. Unless the Parties agree otherwise, the hearing shall be hosted by the responding Party. The responding Party shall be responsible for the logistical administration of the hearing, in particular the organisation of the venue, unless otherwise agreed.
18. No later than five days before the date of a hearing, each Party shall deliver to the panel and the other Party a list of the names of their representatives, advisers, or other delegates who will be attending the hearing.
19. The panel shall conduct the hearing in the following manner, setting time limits to ensure that it affords comparable time to the complaining Party and responding Party:

Argument:

- (a) Opening oral statement and argument of the complaining Party; and
- (b) Opening oral statement and argument of the responding Party;

Rebuttal Argument:

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

Closing statement:

- (a) Closing oral statement of the complaining Party; and

¹ For greater certainty, hearings may be held in person or by virtual means.

- (b) Closing oral statement of the responding Party.
20. Each Party shall make available to the panel and to the other Party written versions of their oral statements within 10 days of the conclusion of the hearing.
 21. The panel may direct questions to a Party at any time during the hearing. The panel may request, on its own initiative or at the request of a Party, that a Party make available documents or other information relevant to the dispute that are within its control or it is able to obtain by reasonable means, and may draw adverse inferences from a failure to comply with such request.
 22. The panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing. A Party may comment on the transcript and the panel may consider those comments.
 23. The panel may convene additional hearings if the Parties so agree.
 24. All arbitrators shall be present at all hearings.² If a replacement arbitrator has been selected after a hearing has occurred but before the panel's report is published, the panel may hold a new hearing if a Party requests, or if the panel considers a new hearing to be appropriate.
 25. Unless the Parties agree otherwise, all hearings of the panel shall be open for the public to observe,³ except that the panel shall close the hearing for the duration of any discussion of confidential information. Attendance in the hearing room shall be limited to approved persons.

VIII. Questions of the Panel

26. The panel may at any time during the proceeding address questions in writing to a Party or both Parties. In the event that the panel addresses questions to one Party only, the panel shall provide a copy of the written questions to the other Party.
27. A Party to whom the panel addresses questions shall deliver a copy of any reply to the other Party and to the panel in accordance with the timetable established by the panel. The other Party shall be given the opportunity to provide comments on the reply.

² Except where, in accordance with paragraph 7 of Article 31.7 (Composition of a Panel), a panel comprises only of the chair of the original panel.

³ The expression "open for the public to observe" does not mean physical presence at the hearing. To facilitate public observation of a hearing, that hearing may be transmitted electronically to the public at the time of the hearing or at a later date.

IX. No *Ex Parte* Communications

28. The panel shall not meet or contact a Party in the absence of the other Party.
29. Neither Party shall meet or contact any arbitrator in relation to the dispute in the absence of the other Party.
30. No arbitrator shall discuss any aspect of the subject matter of the proceeding with a Party in the absence of the other Party or the other arbitrators.

X. Amicus Curiae Submissions

31. The panel shall have the authority to accept and consider amicus curiae submissions from interested persons and non-governmental entities, unless the Parties agree otherwise.
32. Any such submissions shall:
 - (a) be made within 14 days of the provision of public notice pursuant to Rule 36;
 - (b) be concise and in no case longer than 15 typed pages, including any annexes; and
 - (c) be directly relevant to the factual or legal issues under consideration by the panel.
33. The submission shall contain a description of the person, whether natural or legal, making the submission, including their nationality or place of establishment, the nature of their activities and the source of their financing, and specify the nature of their interest in the panel proceeding.
34. The panel shall promptly provide to the Parties for comment copies of any amicus curiae submissions it receives. Comments of a Party must be submitted to the panel within 10 days of receiving a copy of an amicus curiae submission from the panel.
35. The panel shall list in its report all the amicus curiae submissions that it has received but shall not be obliged to address the factual or legal arguments made in such submissions. The panel shall take into account any comments made by a Party pursuant to Rule 34.
36. To facilitate the submission of amicus curiae submissions, each Party shall, within five days of the date of the organisational meeting, provide public notice of:
 - (a) the establishment of the panel;

- (b) the opportunity for interested persons and non-governmental entities to submit amicus curiae submissions; and
- (c) the procedures and requirements for making such submissions, consistent with Rule 32.

XI. Technical Advice

- 37. On the request of a Party, or on its own initiative, the panel may seek information or technical advice from any expert that it deems appropriate. Any information or technical advice so obtained shall be submitted to the Parties for comment. Where the panel takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.
- 38. The panel shall consult the Parties to determine whether the information or technical advice should be sought, and from which expert it should be sought.
- 39. A Party may, after consulting with the other Party, designate a report obtained under Rule 37, or any part of it, as confidential information.
- 40. Any expert selected under Rule 37 shall be subject to the provisions of Section H (Responsibilities of Experts, Assistants, Staff, and ADR Providers) of the Code of Conduct.

XII. Treatment of Confidential Information

- 41. Rules 42 to 45 and Appendix 31A-a (Confidential Information) shall apply to confidential information that a Party submits during consultations, proceedings, or procedures that involve good offices, conciliation, or mediation.
- 42. Each Party and its approved persons shall treat as confidential the information submitted by the other Party that the submitting Party has designated as confidential information. Each Party shall maintain the confidentiality of the panel's hearings to the extent that the panel holds the hearing in closed session under Rule 25.
- 43. After consulting the Parties, the panel may modify or waive any part of the procedures set out in Appendix 31A-a (Confidential Information) or establish additional procedures that it considers necessary to protect confidential information.
- 44. Where a Party submits a confidential version of its written submissions to the panel, it shall also, on the request of the other Party, provide a non-

confidential summary of the information contained in its submissions that could be disclosed to the public within 15 days of the conclusion of the hearing.

45. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public.

XIII. Public Release of Documents

46. Subject to the protection of confidential information:
- (a) a Party making a request pursuant to Article 31.5 (Consultations) or Article 31.6 (Establishment of a Panel) shall release a copy of the request to the public within seven days of making that request;
 - (b) each Party shall make its best efforts to release to the public any written submissions, written versions of oral statements, and written responses to requests or questions 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 to the Parties; and
 - (c) each Party shall release a copy of the final report to the public within 15 days after it is issued to the Parties.
47. No Party shall publicly disclose the contents of an interim report presented to the Parties pursuant to Article 31.12 (Reports of a Panel) or the contents of any comments made on an interim report.

XIV. Replacement of Arbitrators

48. If an arbitrator withdraws or becomes unable to act, they shall notify the Parties and a replacement shall be appointed in accordance with Article 31.7 (Composition of a Panel). The replacement arbitrator shall have all the powers and duties of the original arbitrator.
49. The notification in Rule 48 shall be sent to the Parties' designated offices.
50. If a Party considers that an arbitrator should be replaced because they do not comply with the requirements of the Code of Conduct, that Party shall notify the other Party within seven days of the day it obtained sufficient evidence of the arbitrator's alleged failure to comply with the requirements of the Code of Conduct.
51. The Parties shall inform the arbitrator of the alleged failure and may request the arbitrator to take steps to rectify the failure. If the Parties agree, they may

remove the arbitrator and select a new arbitrator in accordance with Article 31.7 (Composition of a Panel).

52. If the Parties fail to agree on the need to replace an arbitrator other than the chair of the panel, a Party may refer this matter to the chair of the panel, whose decision shall be final. If the chair finds that the arbitrator does not comply with the requirements of the Code of Conduct, the new arbitrator shall be appointed in accordance with Article 31.7 (Composition of a Panel).
53. If the Parties fail to agree on the need to replace the chair of the panel, a Party may refer the matter to the Secretary-General of the Permanent Court of Arbitration, whose decision shall be final. If the Secretary-General of the Permanent Court of Arbitration finds that the chair does not comply with the requirements of the Code of Conduct, the new chair shall be appointed in accordance with Article 31.7 (Composition of a Panel).
54. The proceeding shall be suspended for the period of time taken to carry out the procedures in Rules 48 to 53.

XV. Remuneration and Payment of Expenses

55. The remuneration and expenses of the arbitrators and their assistants shall be borne by the Parties in equal share.
56. Unless the Parties agree otherwise, remuneration for arbitrators 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 31.6 (Establishment of a Panel).
57. Unless the Parties agree otherwise, the total remuneration for each arbitrator's assistant or assistants shall not exceed 50 per cent of the remuneration of that arbitrator.
58. Unless the Parties agree otherwise, 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 31.6 (Establishment of a Panel).
59. Each arbitrator shall keep a record and render a final account to the Parties of all time devoted to and expenses incurred in connection with the proceeding, as well as the time and expenses of their assistants. The panel shall keep a record and render a final account to the Parties of its administrative expenses.
60. If the panel seeks information or technical advice pursuant to Part XI (Technical Advice), the amount and details of the remuneration and expenses an expert is to receive shall be determined by the Parties and shall be borne

by the Parties in equal share. Experts shall keep a record and render a final account to the Parties of all time devoted to and expenses incurred in connection with the proceeding.

61. If the Parties agree to undertake procedures listed under Article 31.20 (Good Offices, Conciliation, and Mediation), the amount and details of the remuneration and expenses an ADR provider is to receive shall be determined by the Parties and shall be borne by the Parties in equal share. ADR providers shall keep a record and render a final account to the Parties of all time devoted to and expenses incurred in connection with the procedures.
62. In case of resignation or removal of an arbitrator, assistant, expert, or ADR provider, or if the Parties reach a mutually agreed solution, the Parties will make payment of the remuneration and expenses owed, using resources provided equally by the Parties, on submission of a final account, following the procedures in Rule 59, 60, or 61, as applicable.

XVI. Time Periods

63. Where, by reason of the operation of Rule 5, the Parties receive the same document on a different date, the calculation of any time period which is dependent on the date of receipt shall be from the date the last Party received the document.

APPENDIX 31A-a

CONFIDENTIAL INFORMATION

1. 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. Each approved person must sign and submit to the panel the Declaration of Non-Disclosure set out in Appendix 31A-b (Declaration of Non-Disclosure).
2. 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.
3. An approved person who views or hears confidential information shall only use that information for the purposes of the proceeding.
4. The panel shall not disclose confidential information in its report, but may state conclusions drawn from that information in a way that does not disclose the confidential information.

APPENDIX 31A-b

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 _____

ANNEX 31B

CODE OF CONDUCT

Section A

Provision of Code of Conduct

1. The Parties shall provide this Code of Conduct and the Initial Disclosure Statement set out in Appendix 31B-a (Initial Disclosure Statement) to a candidate when they are requested to serve as an arbitrator under Article 31.7 (Composition of a Panel), an expert when they are requested to provide information or technical advice under Rule 38 of the Rules of Procedure, and an ADR provider when they are requested to provide their services under Article 31.20 (Good Offices, Conciliation, and Mediation).

Section B

Governing Principles

2. In order to preserve the integrity and impartiality of the dispute settlement process, each candidate and arbitrator shall:
 - (a) avoid impropriety or the appearance of impropriety;
 - (b) be independent and impartial;
 - (c) avoid direct or indirect conflicts of interest; and
 - (d) observe high standards of conduct.

Section C

Disclosure Obligations

3. Prior to confirmation of their appointment as an arbitrator in a dispute under this Agreement, a candidate requested to serve as an arbitrator shall disclose any interest, relationship, or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships, and matters.
4. Without limiting paragraph 3, candidates shall disclose, at a minimum, the following interests, relationships, and matters:
 - (a) any financial interest of the candidate in:
 - (i) the proceeding or its outcome; and

- (ii) an administrative proceeding, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
 - (b) any financial interest of the candidate's employer, business partner, business associate, or family member in:
 - (i) the proceeding or in its outcome; and
 - (ii) an administrative proceeding, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
 - (c) any past or existing financial, business, professional, family, or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, business partner, business associate, or family member; and
 - (d) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same matters.
5. A candidate shall communicate matters concerning actual or potential violations of this Code of Conduct for consideration by the Parties by submitting the Initial Disclosure Statement to the Parties' designated offices no later than five days after they have been contacted to serve as an arbitrator.
 6. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships, or matters referred to in paragraph 4 and shall disclose them promptly, in writing, to the Parties for their consideration. The obligation to disclose is a continuing obligation, which requires an arbitrator to disclose any such interests, relationships, and matters that may arise during any stages of the proceeding.
 7. In the event of any uncertainty regarding whether an interest, relationship, or matter must be disclosed under paragraphs 3 to 6, a candidate or arbitrator should err in favour of disclosure.

Section D

Performance of Duties

8. Once appointed, an arbitrator shall be available to perform and shall perform their duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.

9. An arbitrator shall consider only those issues raised in the proceeding and necessary to make a decision and shall not delegate the duty to decide to any other person.
10. An arbitrator shall take all appropriate steps to ensure that their assistants and staff are aware of this Code of Conduct and comply with paragraph 24 of Section H (Responsibilities of Experts, Assistants, Staff, and ADR Providers).
11. An arbitrator shall not engage in *ex parte* contact concerning the proceeding.
12. A candidate or arbitrator shall not communicate matters concerning actual or potential violations of this Code of Conduct, unless the communication is to the Parties or is necessary to ascertain whether that candidate or arbitrator has violated or may violate the Code of Conduct.

Section E **Independence and Impartiality of Arbitrators**

13. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall avoid creating an appearance of impropriety or an apprehension of bias.
14. An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, or loyalty to a Party.
15. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of their duties.
16. An arbitrator shall not use their position on the panel to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence them. An arbitrator shall endeavour to prevent or discourage others from representing themselves as being in such a position.
17. An arbitrator shall not allow past or existing financial, business, professional, family, or social relationships or responsibilities to influence their conduct or judgment.
18. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.

Section F
Duties of Former Arbitrators

19. All former arbitrators shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision of the panel.

Section G
Maintenance of Confidentiality

20. An arbitrator or former arbitrator shall not at any time disclose or use any confidential or non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of another.
21. An arbitrator shall not disclose a panel report or parts thereof issued under Chapter 31 (Dispute Settlement) prior to release of the final report by the Parties. An arbitrator or former arbitrator shall not at any time disclose which arbitrators are associated with majority or minority opinions in a proceeding.
22. An arbitrator or former arbitrator shall not at any time disclose the deliberations of a panel, or any arbitrator's view.
23. An arbitrator shall not make a public statement regarding the merits of a pending proceeding.

Section H
Responsibilities of Experts, Assistants, Staff, and ADR Providers

24. Section B (Governing Principles), Section C (Disclosure Obligations), and Section G (Maintenance of Confidentiality) of this Code of Conduct shall also apply to experts, assistants, and staff, *mutatis mutandis*.
25. Section B (Governing Principles), Section C (Disclosure Obligations), paragraphs 9 to 12 of Section D (Performance of Duties), Section E (Independence and Impartiality of Arbitrators), Section F (Duties of Former Arbitrators), and Section G (Maintenance of Confidentiality) of this Code of Conduct shall also apply to ADR providers, *mutatis mutandis*.

APPENDIX 31B-a

INITIAL DISCLOSURE STATEMENT

1. I acknowledge having received a copy of the Code of Conduct for dispute settlement under Chapter 31 (Dispute Settlement) of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand.
2. I acknowledge having read and understood the Code of Conduct.
3. I understand that I have a continuing obligation, while participating in the proceeding, to disclose interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process. As a part of this continuing obligation, I am making the following initial disclosures:
 - (a) My financial interest in the proceeding for which I am under consideration or in its outcome is as follows:
 - (b) My financial interest in any administrative proceeding, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding is as follows:
 - (c) The financial interest that any employer, business partner, business associate, or family member of mine may have in the proceeding or in its outcome are as follows:
 - (d) The financial interest that any employer, business partner, business associate, or family member of mine may have in any administrative proceeding, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding are as follows:
 - (e) My past or existing financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, are as follows:
 - (f) The past or existing financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, involving any employer, business partner, business associate, or family member of mine are as follows:
 - (g) My public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same matters is as follows:

- (h) My other interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process and that are not disclosed in subparagraphs (a) to (g) are as follows:

Signed on this _____ day of _____, 20__.

By:

Signature_____

Name_____