

## ANNEX 2

### MODEL RULES OF PROCEDURE FOR CHAPTER 18 (DISPUTE SETTLEMENT) OF THE FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF GUATEMALA AND THE REPUBLIC OF CHINA (TAIWAN)

#### DEFINITIONS

1. For purposes of these Rules:

**Agreement** shall be understood as the Free Trade Agreement between the Republic of Guatemala and the Republic of China (Taiwan), signed on September 22, 2005;

**Arbitral panel** shall be understood as an arbitral panel established in accordance with Article 18.10 (Composition of the Arbitral Panel);

**Assistant** shall be understood as the investigator or person that provides support to a member of the arbitral panel in accordance with the conditions of his/her appointment;

**Commission** shall be understood as the Administrative Commission of the Agreement established in accordance with Article 17.01 (Administrative Commission of the Agreement);

**Complaining Party** shall be understood as the Party who presents the complaint;

**Consultant** shall be understood as a person hired by a Party to consult or support in accordance with the procedure before the arbitral panel;

**Defendant Party** shall be understood as the Party to whom the complaint is presented against;

**Non-working day** shall be understood in respect to a Party as, all Saturdays and Sundays and any other days designated by the Party as a non-working days, for the purposes of these rules. Upon entry into force of these Rules, a Party shall notify the other Party the list of non-working days. A Party shall notify the other Party of the changes made to the list, by the same means and with enough advance notice;

**Party** shall be understood as the Republic of Guatemala or the Republic of China (Taiwan);

**Representative of a Party** shall be understood as a person or persons officially designated by a Party to act on its behalf;

**Secretariat** shall be understood as the Secretariat established in accordance with Article 17.03 (Secretariat);

**Terms of reference** shall be understood as the mandate, that once issued shall comply with the arbitral panel in accordance with Article 18.11 (Model Rules of Procedure);

2. Any reference made in these rules to an Article or Chapter shall be understood as a reference to the appropriate Article or Chapter of the Agreement.

### **SCOPE OF APPLICATION**

3. These Rules, established in accordance with paragraph 1 of Article 18.11 (Model Rules of Procedure), shall be applied to the procedures of dispute settlement of the Agreement, unless agreed otherwise by the disputing Parties.

### **TERMS OF REFERENCE**

4. The Parties shall agree on, without delay, the terms of reference. The Parties shall arrange the delivery of the terms of reference to the Commission, as soon as possible, once the last arbitrator is appointed to the arbitral panel.

5. If the Parties cannot agree on the terms of reference after twenty (20) days of receipt of the request for the establishment of the arbitral panel, the complaining Party may notify this situation to the Commission. After receiving such notification, the Commission shall deliver, as soon as possible, the terms of reference in accordance with paragraph 3, Article 18.11 (Model Rules of Procedure) to the Parties and to the arbitral panel, once the last arbitrator is appointed.

### **WRITTEN SUBMISSIONS AND OTHER DOCUMENTS**

6. A Party shall deliver any written submission, request, notice, or other document related to the procedure directly to the arbitral panel, and the arbitral panel shall forward it to the other Party, as soon as possible.

7. To the extent possible, a Party that delivers any written submission, request, notice or other document, shall deliver a copy of the document in electronic form to the arbitral panel.

8. The Parties shall deliver the original and five (5) copies of the documents to the arbitral panel.

9. Within ten (10) days following the date the arbitral panel has been composed, the complaining Party shall submit its initial written submissions to the arbitral panel. Within twenty (20) days following the receipt of the initial written submissions, the defendant Party shall submit its written counter submissions to the arbitral panel.

10. A Party may deliver a request, notice or other document related to the arbitral proceeding that is not covered by Rules 8 and 9 to the arbitral panel and

the other Party on the same day, through fax or any other means of electronic transmission.

11. A Party may amend minor errors of a clerical nature in any written submissions, request, notice or other document related to the arbitral proceeding by delivering a new document clearly indicating such amendments, unless the arbitral panel considers it inappropriate to allow such amendments because of the delay of the Party involved.

12. If the last day for delivery to the Secretariat falls on the non-business day or on any other day on which the offices of the Secretariat are closed by order of the government or by *force majeure*, the document may be delivered to the Secretariat on the next business day.

### **OPERATIONS OF THE ARBITRAL PANEL**

13. The arbitral panel shall establish its working schedule, which shall allow enough time for the Parties to prepare their communications.

14. The arbitral panel meetings shall be presided by a chair, who shall have the authority to make administrative and procedural decisions, as delegated by the other members of the arbitral panel.

15. Except as otherwise provided in these Rules, the arbitral panel may conduct its operations by telephone, facsimile transmission, computer links or any other means.

16. Only the arbitrators may participate in the deliberations of the arbitral panel, unless the presence of assistants, interpreters, or translators is allowed during such deliberations.

17. Where a matter of procedure that is not covered in these rules is raised, the Chair of the arbitral panel may adopt, for the effects of this arbitration only, an appropriate procedure, unless it is inconsistent with the provisions of the Agreement and these Rules. When such procedure is adopted, the Chair of the arbitral group shall notify the Parties, as well as other members of the arbitral panel immediately.

18. If an arbitrator dies, resigns, or is discharged from the arbitral panel, a replacement shall be designated, as soon as possible, following the same selection procedure used for the appointment of the previous arbitrator, unless the Parties decide otherwise.

19. Any arbitrator that decides to resign from the position, must notify his/her decision in writing to the Chair of the arbitral panel, or to the Secretariat, who shall immediately inform the Commission and the Parties. When a replacement is appointed, the arbitral panel shall decide, at its discretion, whether all or just part of the previous hearings should be repeated.

20. Any time period applicable to the arbitral proceedings shall be suspended for a period that begins on the date when the arbitrator dies, resigns or is discharged from the arbitral panel and ends on the date on which the replacement is designated.

21. An arbitral panel may, in consultation with the Parties, modify any time limit established for the arbitral proceeding and make such other procedural or administrative adjustments as may be required in that proceeding.

## **HEARINGS**

22. The Chair shall establish the date, time and place for the hearing, consulting the Parties and the other members of the arbitral panel. The arbitral panel shall notify the Parties of the date, time and place of the hearing in writing.

23. Except as otherwise agreed by the Parties, the hearing shall be held in the capital of the defendant Party.

24. Subject to the consent of the Parties, the arbitral panel may hold additional hearings.

25. All arbitrators shall be present at the hearings, otherwise the decisions adopted in the hearings may be voided.

26. Besides the arbitrators, the following persons may be allowed to attend a hearing:

- a) representatives of the Parties;
- b) consultants of the Parties, provided that they do not preside the arbitral panel and provided further that neither they nor their employers, partners, associates or family members have a financial or personal interest in the hearing;
- c) interpreters, translators or stenographers; and
- d) assistants to the arbitrators.

27. No later than five (5) days before the date of a hearing, each Party shall deliver to the Secretariat and the arbitral panel a list of the names of those persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will attend the hearing.

28. The hearing shall be conducted by the arbitral panel in the following manner, ensuring that the complaining Party and the defendant Party are afforded equal time:

### **Oral Arguments**

- a) Argument of the complaining Party

- b) Argument of the defendant Party

#### Reply and Counter-Reply

- a) Reply of the complaining Party
- b) Counter-reply of the defendant Party

29. The arbitral panel may direct questions to the Parties at any moment during the hearing.

30. The arbitral panel shall arrange for a transcript of each hearing to be prepared and shall as soon as possible after it is prepared, deliver a copy of the transcript to the Parties.

#### **SUPPLEMENTARY WRITTEN SUBMISSIONS**

31. The arbitral panel may at any time during a proceeding address questions and request to produce documents in writing to a Party through the Secretariat. The Secretariat shall, in turn, deliver the questions as soon as possible to the Parties.

32. The Party to whom the arbitral panel addresses written questions shall deliver a copy of its written reply to the arbitral panel within five (5) days after receipt of those questions by the arbitral panel. The arbitral panel shall, in turn, deliver that reply as soon as possible to the other Party. The other Party shall be given the opportunity to provide written comments on the reply within five (5) following days.

33. The Party to whom the arbitral panel requests to produce documents shall deliver the requested documents to the arbitral panel within the time period prescribed by the arbitral panel. The arbitral panel shall, in turn, deliver them as soon as possible to the other Party. The other Party shall be given the opportunity to provide written comments on the documents delivered within the time period prescribed by the arbitral panel.

34. Within the ten (10) days following the date of the hearing, a Party may provide supplementary written submissions responding to any matter that arose during the hearing to the arbitral panel. The arbitral panel shall forward a copy of the document to the other Party.

#### **BURDEN OF PROOF**

35. The Party asserting that a measure of other Party is inconsistent with the obligations of the Agreement, shall have the burden of establishing such inconsistency.

36. The Party asserting that a measure is subject to an exception under the Agreement shall have the burden to prove that the exception is applicable.

#### **AVAILABILITY AND CONFIDENTIALITY OF THE INFORMATION**

37. The operations and deliberations of the arbitral panel shall be confidential. The reports of the arbitral panel shall be written without the presence of the Parties and based on the information provided and the carried out declarations.

38. The Parties shall maintain the confidentiality of the hearings before an arbitral panel, deliberations, preliminary report, all written documents submitted, and all communications with the arbitral panel.

39. While it may be allowable to reveal information to other persons related to the procedure, as it may be deemed necessary for the preparation of the case, the Parties shall always ensure that these persons maintain the confidentiality of the procedure.

40. The arbitral panel shall take appropriate measures to ensure the experts, stenographers and any person hired, keep the confidentiality of the procedure.

41. The officials of the Secretariat shall keep the confidentiality of the hearings, the deliberations, the preliminary decision of the arbitral panel, and, all the written submissions, as well as the communications with the arbitral panel.

#### **EX PARTE CONTACTS**

42. The arbitral panel shall abstain from meeting or contacting a Party in the absence of the other Party.

43. No arbitrator shall discuss any aspect of the subject matter of the arbitral proceeding with a Party or Parties in the absence of the other arbitrators.

#### **INFORMATION AND TECHNICAL ASSISTANCE**

44. No arbitral panel, *ex officio* or at the request of a Party, may seek information or request technical assistance from such persons or institutions he or she may deem appropriate fifteen (15) days after the date of the hearing.

45. The arbitral panel may not select a person, or his/her employer, partner, associate or member of his/her family that has a financial or personal interest in the matter, as a technical consultant.

46. When the technical consultant is requested to produce a written report, all time period for arbitral proceedings shall be suspended from the date of submission of the request, until the date the report is being submitted to the arbitral panel.

47. Before the date when the persons or institutions referred to in the Rule 45 are selected, the Parties may submit their written observations on the matter to the arbitral panel.

#### **CALCULATION OF THE TIME PERIODS**

48. When, anything under the Agreement or these Rules is to be done, or the arbitral panel requires anything to be done, within a number of days after or before a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.

49. When, as a consequence indicated by Rule 12, a Party receives a document on a different date than the other Party, the time period of reception of such document, shall be calculated from the date of the reception of the last of such documents.

### **ARBITRAL PANELS FOR SUSPENSION OF BENEFITS**

50. These Rules shall apply to the arbitral panels established in accordance with Article 18.16(5), with the following exceptions:

- a) The Party that requests the composition of the arbitral panel shall deliver its initial written submissions to the Commission and to the other Party within ten (10) days after the date on which the last arbitrator is designated;
- b) The Party that must reply shall deliver its written submissions to the arbitral panel within fifteen (15) days following the receipt of the initial written submission;
- c) Subject to the time periods established in the Agreement and these Rules, the arbitral panel shall establish a time period for the delivery of any supplementary written submissions, including written replies, so that each Party has the opportunity to present the same number of written documents; and
- d) Unless established otherwise by the Parties, the arbitral panel may decide not to hold hearings.

### **PROCEEDING IN CASE OF DISOBEDIENCE**

51. Should the defendant Party fail to submit his/her written reply within the time period established by these Rules or by the arbitral panel without showing a reasonable cause for such fault, the arbitral panel shall declare it in disobedience and proceed with the arbitration proceeding taking into account the submitted information and the declarations made up to that moment.

52. Should the defendant Party, duly notified according to the provisions of this Agreement and these Rules, fail to appear before a hearing without a reasonable cause, the arbitral panel shall proceed with the arbitration proceeding taking into account the submitted information and the declarations made up to that moment.

53. Should the defendant Party, duly invited to submit its evidence or take any measure in the arbitration proceeding, fail to do so without a reasonable cause within the time period established by these Rules or by the arbitral panel,

the arbitral panel may decide at its discretion in accordance with the information submitted and the declarations made.

54. If the defendant Party declared in disobedience, proves to total satisfaction of the arbitral panel the reasons for which it could not carry out such action, like the ones stated in the previous paragraphs, the arbitral panel shall suspend the declaration of disobedience and shall grant a peremptory time period which it deems appropriate for the fulfillment of the corresponding activities.

## **LIST OF ARBITRATORS**

55. The Parties shall inform the Commission of the composition of the list established in accordance with paragraph 1 Article 18.08 (List) of the Agreement. The Parties shall notify the Commission of any modification to the lists without delay.

## **RECUSATION OF THE ARBITRATORS**

56. Any Party may verbally recuse in a meeting, without stating the reason, any person not appearing on the list and who is nominated as an arbitrator by a Party.

57. A Party may recuse an arbitrator, when circumstances occur that may bring up reasonable doubt about the impartiality or independence of the arbitrator.

58. The recusation of an arbitrator that appears on the corresponding List, shall be made in writing, stating the actual cause of the recusation and the means of proof. This document shall be presented by a Party to the other Party within five (5) days following the notification of the appointment or within five (5) days after the circumstances that resulted in the recusation became known to any of the Parties.

59. Upon the receipt of the recusation, the Parties may agree on the acceptance of the recusation or, if an agreement already exists, the arbitrator must resign. The recused arbitrator may also resign to his or her position even if such agreement does not exist. In no case, the resignation shall imply the acceptance of the validity of the reasons for the recusation.

60. Only due to new reasons or ignorance of the existing ones, a Party may initiate a proceeding of recusation against one of the appointed arbitrators, provided that these reasons are justified within the terms already established.

61. If after the completion of the proceeding previously mentioned the appointment is revoked or the person resigns, the procedure established in Article 18.10 (Composition of Arbitral Panel) for the initial appointment, shall be incorporated to the new appointment or substitution, but the time periods established in the procedure shall be cut in half.

**CODE OF CONDUCT FOR CHAPTER 18 (DISPUTE SETTLEMENT)  
OF THE FREE TRADE AGREEMENT BETWEEN THE  
REPUBLIC OF GUATEMALA AND THE REPUBLIC OF CHINA (TAIWAN)**

**Article 1. Definitions**

1. For the effects of this Code:

**Agreement** shall be understood as the Free Trade Agreement signed between the Republic of Guatemala and the Republic of China (Taiwan);

**Assistant** shall be understood as an investigator or person that provides support to a member of the arbitral panel in accordance with the conditions of his/her appointment;

**Candidate** shall be understood as:

- a) a person whose name appears on the list established in accordance with Article 18.08 (List); or
- b) a person that is being taken into account for the appointment as a member of the arbitral panel in accordance with Article 18.10 (Composition of Arbitral Panel);

**Member** shall be understood as a member of the arbitral panel established in accordance with Article 18.10 (Composition of Arbitral Panel);

**Party** shall be understood as the Republic of Guatemala or the Republic of China (Taiwan);

**Proceeding** shall be understood as, unless agreed otherwise, a proceeding developed before the arbitral panel in accordance with the Agreement.

2. Any reference in this Code to an Article or Chapter, shall be understood as the Article or Chapter in accordance with the Agreement.

**Article 2. Responsibilities regarding the Proceedings of the Chapter on Dispute Settlement**

Each candidate, member or former member shall be honest, shall avoid any direct or indirect conflict of interests, shall respect the confidentiality of the proceedings of the arbitral panel, and shall keep a high level of conduct so that through the compliance with the standards of conduct the integrity and impartiality may be preserved in the proceedings of the Chapter on Dispute Settlement.

### **Article 3. Declaration**

1. Each candidate shall disclose any interest, relationship or matter that might affect his or her independence or impartiality in the proceeding. To this effect, the candidates shall strive with their best effort in finding out any of such interests, relationships and matters.

2. Notwithstanding the previous condition, every candidate shall disclose the following:

- a) any financial or personal interest:
  - i) in the proceeding or its outcome; and
  - ii) in a judicial, administrative or arbitral proceeding in which matters have been addressed, that are also being addressed in the proceeding to which the candidate is being considered for.
- b) any financial interest of the candidate's employer, partner, associate or member of his or her family:
  - i) in the proceeding or its outcome; and
  - ii) in a judicial, administrative or arbitral proceeding in which matters have been addressed, that are also being addressed in the proceeding to which the candidate is being considered for;
- c) any relationship, current or past, of a financial, commercial, professional or social nature with any of the Parties or their lawyers, or any relationship of that nature with the candidate's employer, associate or member of his or her family;
- d) any intervention at a professional level in matters regarding the proceeding or involving the same goods;
- e) other active interests ( for example, the active participation on groups of public interest or other organizations that might have a relevant program for the issue that is being addressed);
- f) explicit statements of personal opinions regarding relevant matters for the issued that is being addressed (for example, publications of public statements).

3. With the purpose of complying with what is stated on paragraphs 1 and 2, the candidates shall fill out and return the Initial Declaration to the Commission, which shall be provided by it, with a copy for each of the Parties.

4. Upon designation, the members shall make an effort to gain knowledge of any circumstance foreseen on paragraphs 1 and 2, and shall reveal such

circumstance. The obligation to reveal shall extend itself throughout the duration of the proceeding.

5. The members shall comply with what is established on paragraph 4 through written communication to the Commission, for the Parties' consideration.

#### **Article 4. Performance of the Candidate's and Member's Duties**

1. Each candidate, that accepts to be appointed as a member, shall commit to comply, expeditiously and to the finalization of the proceeding, with all the duties inherent to his or her assignment.

2. The member shall be available to the Commission at all times, for the effects of commercial disputes that might arise according to the Chapter on Dispute Settlement.

3. Each member shall comply with its duties in a fair and diligent way and comply with what is established in the Agreement and the applicable Rules.

4. The members shall only examine the debated matters that have arisen during the proceeding. Unless provided otherwise in accordance with the applicable rules, no member shall delegate on another person the right to decide.

5. The members shall adopt all the necessary measures to ensure that their assistants comply with Articles 2, 3, and 7 of this Code.

6. No member shall establish *ex parte* contacts during the proceeding.

7. No candidate or member shall disclose an alleged or potential violation of this Code, unless it is done before the Commission.

8. Every member shall avoid establishing any relationship or acquiring any interest, of a financial nature, that might be susceptible of influencing his or her impartiality or that might reasonably create the appearance of dishonesty or of partiality.

#### **Article 5. Members' Independence and Impartiality**

1. Every member shall be independent and impartial.

2. Every member shall avoid to be influenced by his or her own interests, external pressures, political considerations, public pressures, loyalty to a Party, or fear of criticism.

3. No member shall be able to contract any kind of direct or indirect obligation, or accept any kind of benefit that might interfere with the fulfillment of his or her duties.

4. No member shall use his or her position at the arbitral panel, for his own benefit or for the benefit of a third person. Every member shall avoid giving the impression that others might influence him or her.

5. No member shall allow his or her judgment or conduct to be influenced by relationships, responsibilities, be they current or past, of a financial, commercial, professional, familiar, or social nature.

6. The members shall avoid establishing any relationship or acquiring any interest of a financial or personal nature that might influence his or her impartiality.

#### **Article 6. Duties of Former Members**

Every former member shall avoid giving the impression of having been partial in the performance of his or her duties as a member, or he or she might benefit from a decision of the arbitral panel.

#### **Article 7. Confidentiality**

1. The members or former members shall abstain from disclosing or using the information regarding the proceeding or the information acquired during the proceeding, that is not of public domain, unless it is used for the purposes of the proceeding.

2. The members shall abstain from disclosing the decision issued by the arbitral panel in accordance with the Agreement, before its publication.

3. The members or former members shall never reveal the deliberations of an arbitral panel, or any opinion of a member, unless requested by law or a judicial authority.

4. During the proceeding, no member shall engage in *ex parte* contact regarding any issues addressed in the proceeding, he or she shall not make any statement about such proceeding, or any matters addressed in a dispute settlement procedure in which they are involved.

#### **Article 8. Responsibility of the Assistants**

The Articles 2, 3, and 7 of this Code shall also apply to the assistants.