

**THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES
FREE TRADE AGREEMENT**

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

Articles 20.7.1 (Dispute Settlement – Roster), 12.18.2 (Financial Services - Dispute Settlement), 16.7.1 (Labor – Labor Roster), and 17.11.1 (Environment – Environmental Roster) of the Dominican Republic – Central America – United States Free Trade Agreement (“Agreement”) require the Parties to establish and maintain rosters of individuals who are willing and able to serve as panelists in disputes arising under Chapter 20 (Dispute Settlement), Chapter 12 (Financial Services), Article 16.2.1(a) (Enforcement of Labor Laws), and Article 17.2.1(a) (Enforcement of Environmental Laws) of the Agreement, respectively.

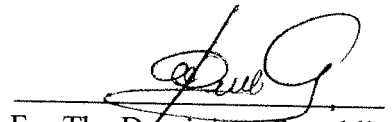
Articles 20.7.2, 12.18.3, 16.7.2, and 17.11.2 of the Agreement require roster members to comply with a code of conduct to be established by the Free Trade Commission.

The Commission hereby establishes the Code of Conduct referred to in those articles, as set forth in Annex 1.

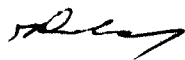
DONE, at San Salvador, El Salvador in English and Spanish, on this 23rd day of February, 2011.



For the Republic of Costa Rica
Anabel González
Minister of Foreign Trade



For The Dominican Republic
Marcelo Puello
Vice Minister on behalf of the
Minister for Industry and Trade

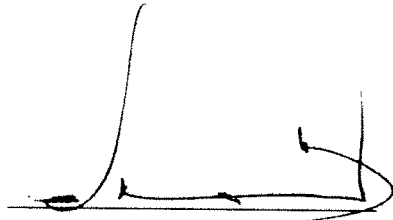


For the Republic of El Salvador
Héctor Miguel Antonio Dada Hirezi
Minister of Economy

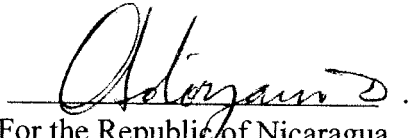


For the Republic of Guatemala
Raúl Trejo Esquivel
Vice Minister on behalf of the
Minister of Economy





For the Republic of Honduras
José Francisco Zelaya
Secretary of State, Offices of Industry and
Commerce



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



For the United States of America
Miriam E. Sapiro
Deputy United States Trade
Representative

ANNEX 1

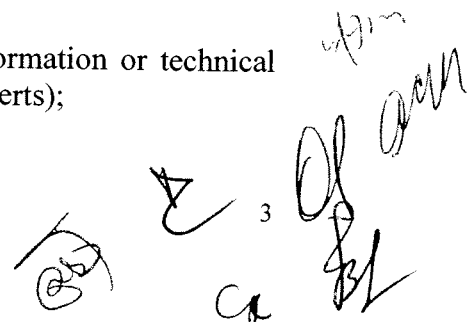
Code of Conduct for Dispute Settlement Proceedings under Chapter Twenty of the Dominican Republic – Central America – United States Free Trade Agreement

Preamble

Whereas the Parties place prime importance on the integrity and impartiality of proceedings conducted pursuant to Chapter Twenty (Dispute Settlement) of the Dominican Republic – Central America – United States Free Trade Agreement, this Code of Conduct is hereby established in furtherance of Articles 20.7.2(d) (Roster) and 20.8 (Qualifications of Panelists); Articles 12.18.3(d) and 12.18.4(a) (Dispute Settlement); Articles 16.7.2(d) and 16.7.3 (Labor Roster); and Articles 17.11.2(d) and 17.11.3 (Environmental Roster) to ensure that these principles are respected.

1. Definitions

- (a) For purposes of this Code of Conduct:
- (i) **Agreement** means the Dominican Republic – Central America – United States Free Trade Agreement;
 - (ii) **assistant** means a person who, under the terms of appointment of a member of the panel, conducts research or provides support for the member;
 - (iii) **candidate** means:
 - (A) an individual whose name appears on a roster established under Article 12.18 (Dispute Settlement), Article 16.7 (Labor Roster), Article 17.11 (Environmental Roster), or Article 20.7 (Roster); or
 - (B) an individual who is under consideration for appointment as a member of a panel pursuant to Article 12.18 (Dispute Settlement), Article 16.7 (Labor Roster), Article 17.11 (Environmental Roster), or Article 20.9 (Panel Selection);
 - (iv) **disputing party** means a complaining Party or a Party complained against;
 - (v) **expert** means a person or body providing information or technical advice as set forth in Article 20.12 (Role of Experts);



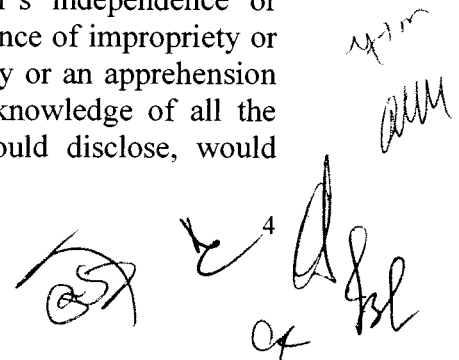
- (vi) **family member** means the spouse of the member or candidate; or a parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece, or nephew of the member or candidate or spouse of the member or candidate (including whole and half blood relatives and step relatives); or the spouse of such a person. **Family member** also includes any resident of a member's or candidate's household whom the member or candidate treats as a member of his or her family;
 - (vii) **member** means a member of a panel established under Article 20.6 (Request for an Arbitral Panel);
 - (viii) **office** means the office that a Party designates under Article 19.3 (Administration of Dispute Settlement Proceedings) for providing administrative assistance to panels established under Article 20.6 (Request for an Arbitral Panel);
 - (ix) **Party** means a Party to the Agreement;
 - (x) **proceeding**, unless otherwise specified, means a panel proceeding under Chapter Twenty (Dispute Settlement);
 - (xi) **responsible office** means the office of the Party complained against;
 - (xii) **Rules** mean the Rules of Procedure established by the Commission in accordance with Article 20.10 (Rules of Procedure);
 - (xiii) **staff**, in respect of a member, means persons under the direction and control of the member, other than assistants; and
 - (xiv) **third Party** means a Party, other than a disputing Party, that delivers a written notice in accordance with Article 20.11 (Third Party Participation).
- (b) Any reference made in this Code of Conduct to an Article, Annex, or Chapter is a reference to the appropriate Article, Annex, or Chapter of the Agreement.

2. Statement of Principles

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



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

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

3. Responsibilities to the Process

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

4. Disclosure Obligations

- (a) Throughout the proceeding, candidates and members have a continuing obligation to disclose interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process.
- (b) A candidate shall disclose any interest, relationship, or matter that is likely to affect the candidate's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters. Therefore, candidates shall disclose, at a minimum, the following interests, relationships, and matters:
 - (i) any financial or personal interest of the candidate in:
 - (A) the proceeding or in its outcome, and
 - (B) an administrative proceeding, a domestic judicial proceeding, or another panel proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
 - (ii) any financial interest of the candidate's employer, partner, business associate, or family member in:
 - (A) the proceeding or in its outcome, and
 - (B) an administrative proceeding, a domestic court proceeding, or another panel proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

- (iii) any past or existing financial, business, professional, family, or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate, or family member; and
 - (iv) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods or services.
- (c) Once appointed, a member shall continue to make all reasonable efforts to become aware of any interests, relationships, or matters referred to in paragraph 4 and shall disclose them. The obligation to disclose is a continuing duty which requires a member to disclose any such interests, relationships, and matters that may arise during any stage of the proceeding.
- (d) In the event of any uncertainty regarding whether an interest, relationship, or matter must be disclosed under subparagraph (b) or (c), a candidate or member should err in favor of disclosure. Disclosure of an interest, relationship, or matter is without prejudice as to whether the interest, relationship, or matter is covered by subparagraph (b) or (c), or whether it warrants recusal, amelioration, or disqualification.
- (e) A candidate shall disclose any interests, relationships, and matters described in subparagraph (b) by completing the Initial Disclosure Statement set out in the Appendix and provided by the responsible office and sending it to the responsible office as soon as possible. The candidate shall make its best efforts to submit said statement to the responsible office within ten days. A member shall disclose such interests, relationships, and matters by communicating them in writing to the responsible office for consideration by the disputing Parties.
- (f) The disclosure obligations set out in subparagraphs (a) through (e) should not be interpreted so that the burden of detailed disclosure makes it impractical for persons in the legal or business community to serve as members, thereby depriving the disputing Parties and third Parties of the services of those who might be best qualified to serve as members. Thus, candidates and members should not be called upon to disclose interests, relationships, or matters whose bearing on their role in the proceeding would be trivial.

5. The Performance of Duties by Candidates and Members

- (a) A candidate who accepts an appointment as a member shall be available to perform, and shall perform, a member's duties thoroughly and expeditiously throughout the course of the proceeding.
- (b) A member shall ensure that the responsible office can, at all reasonable times, contact the member in order to conduct panel business.

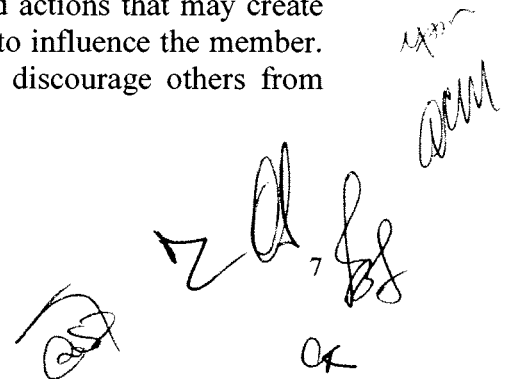


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- (c) A member shall carry out all duties fairly and diligently.
- (d) A member shall comply with the provisions of Chapter Twenty and the applicable rules.
- (e) A member shall not deny other members the opportunity to participate in all aspects of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

6. Independence and Impartiality of Members

- (a) A member shall be independent and impartial. A member shall act in a fair manner and shall not create an appearance of impropriety or an apprehension of bias.
- (b) A member shall not be influenced by self-interest, outside pressure, political considerations, public clamor, loyalty to a Party, or fear of criticism.
- (c) A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.
- (d) A member shall not use the member's position on the panel to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.



- (e) A member shall not allow past or existing financial, business, professional, family, or social relationships or responsibilities to influence the member's conduct or judgment.
- (f) A member shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.
- (g) If an interest, relationship, or matter of a candidate or member is inconsistent with subparagraphs (a) through (f), the candidate may accept appointment to a panel and a member may continue to serve on a panel if the disputing Parties waive the violation or if, after the candidate or member has taken steps to ameliorate the violation, the disputing Parties determine that the inconsistency has ceased.

7. Duties of Former Members

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

8. Maintenance of Confidentiality

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

9. Responsibilities of Assistants and Staff

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

The disciplines established in this Code of Conduct as applying to members or former members shall apply, *mutatis mutandis*, to the persons that are called upon in accordance with subparagraphs (a) and (b) of paragraph 4 of Article 20.5 (Commission – Good Offices, Conciliation, and Mediation).

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APPENDIX – INITIAL DISCLOSURE STATEMENT

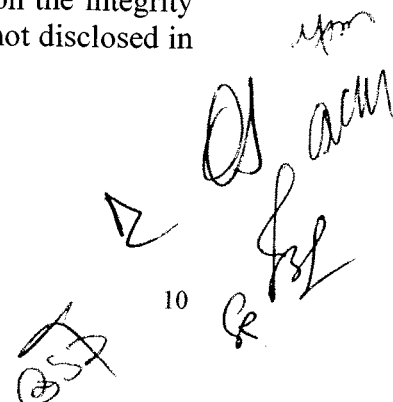
1. I acknowledge having received a copy of the Code of Conduct for Dispute Settlement Proceedings under Chapter Twenty of the Dominican Republic – Central America – United States Free Trade Agreement (the “Code of Conduct”).
2. I acknowledge having read and understood the Code of Conduct.
3. I understand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

Executed on this _____ day of _____, 20__.

By:

Name _____

Signature _____



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