

ANNEX 19B

CODE OF CONDUCT FOR DISPUTE SETTLEMENT

Rule 1 Definitions and Scope

1. For the purposes of this Annex:
 - (a) “**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 19.6 (Good Offices, Conciliation, or Mediation);
 - (b) “**assistant**” means a person who is retained by a panellist pursuant to Rule 7 (Operation of the Panel) in Annex 19A (Rules of Procedure for Dispute Settlement) to conduct research or provide support to the panellist;
 - (c) “**candidate**” means an individual who is under consideration for selection as a panellist under Article 19.8 (Composition of Panels);
 - (d) “**covered person**” means a person serving as a panellist, a former panellist, an ADR provider, an expert, a panellist’s assistant, or staff involved in a proceeding;
 - (e) “**expert**” means an individual or body providing information or technical advice in accordance with subparagraph (1)(f) of Article 19.11 (Rules of Procedure and Code of Conduct);
 - (f) “**family member**” means the spouse, parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece, or nephew of a panellist or candidate, including whole and half blood relatives and step relatives; or the spouse of such an individual. A family member also includes any resident of a panellist’s or candidate’s household whom the panellist or candidate treats as a member of their family;
 - (g) “**panellist**” means a member of a panel established under Article 19.8 (Composition of Panels);
 - (h) “**proceeding**”, unless otherwise specified, means the proceeding of a panel under Chapter 19 (Dispute Settlement); and
 - (i) “**staff**”, in respect of a panellist, means persons under the direction and control of the panellist, other than assistants.

2. This Code of Conduct shall apply to any person serving as a panellist in a proceeding. This Code of Conduct shall also apply, as appropriate, to other covered persons.

**Rule 2
Provision of Code of Conduct**

1. The Parties shall provide this Code of Conduct and the Initial Disclosure Statement to a candidate prior to confirmation of their appointment to serve as a panellist under Article 19.8 (Composition of Panels).
2. The Panel shall provide this Code of Conduct and the Initial Disclosure Statement to an expert when they are requested to provide information or technical advice under subparagraph (1)(f) of Article 19.11 (Rules of Procedure and Code of Conduct).
3. The Parties shall provide this Code of Conduct and the Initial Disclosure Statement to an ADR provider when they are requested to provide their services under Article 19.6 (Good Offices, Conciliation, or Mediation).
4. A panellist shall provide this Code of Conduct and the Initial Disclosure Statement to their assistants and staff.

**Rule 3
Responsibilities to the Process**

In order to preserve the integrity and impartiality of the dispute settlement procedures, every candidate and panellist shall:

- (a) get acquainted with this Code of Conduct;
- (b) avoid impropriety and the appearance of impropriety or bias;
- (c) be independent and impartial;
- (d) avoid direct and indirect conflicts of interest;
- (e) maintain the confidentiality of proceedings and deliberations; and
- (f) observe high standards of conduct.

**Rule 4
Disclosure Obligations**

1. Prior to confirmation of their appointment as a panellist under this Agreement, a candidate 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 identify any such interests, relationships, and matters.

2. Without limiting paragraph 1, candidates shall disclose, at a minimum, the following interests, relationships, and matters:
 - (a) any financial interest of the candidate in:
 - (i) the proceeding or in its outcome; and
 - (ii) an administrative proceeding, a domestic judicial or quasi-judicial proceeding, or another 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, a domestic judicial or quasi-judicial proceeding, or another 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) any public advocacy or legal or other representation (including publications or public statements of personal opinion) concerning an issue in dispute in the proceeding or concerning a dispute involving the same matters that are the subject of the dispute in the proceeding.
3. Prior to confirmation of their appointment, 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 no later than 7 days after they have been contacted to serve as a panellist.
4. Once appointed, a panellist shall continue to make all reasonable efforts to identify any interests, relationships, and matters referred to in Rule 3 (Responsibilities to the Process) and shall disclose them promptly, in writing, to the Parties. The obligation to disclose is a continuing duty, which requires a panellist to disclose any such

interests, relationships, and matters that may arise during any stage of the proceeding.

5. In the event of uncertainty regarding whether an interest, relationship, or matter must be disclosed, a candidate or panellist should err in favour of disclosure. Disclosure of an interest, relationship, or matter is without prejudice as to whether the interest, relationship, or matter is covered by paragraph 1, 2, or 4, or whether it warrants recusal, disqualification, or other remedial measures.

Rule 5 ***Ex Parte* Communications**

1. Any contact between a Party and a candidate shall be limited to issues relating to that candidate's availability and appointment contract.
2. A panellist shall not engage in *ex parte* contacts concerning the proceeding.

Rule 6 **Performance of Duties by Panellists**

1. A panellist shall comply with the provisions of Chapter 19 (Dispute Settlement) and Annex 19A (Rules of Procedure for Dispute Settlement). In performing their duties, each panellist shall recognise that prompt settlement of disputes is essential to the effective functioning of the Agreement.
2. Upon selection, a panellist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.
3. A panellist shall not deny other panellists the opportunity to participate in all aspects of the proceeding.
4. A panellist shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person, except as provided in paragraph 1 of Rule 7 (Operation of the Panel) in Annex 19A (Rules of Procedure for Dispute Settlement).
5. A panellist shall take all appropriate steps to ensure that the panellist's assistant and staff are aware of, and comply with, relevant provisions of this Annex.
6. A panellist shall not communicate matters concerning actual or potential violations of this Annex, including by another panellist, unless

the communication is to both Parties or is necessary to ascertain whether that panellist has violated or may violate this Annex.

7. A panellist or former panellist shall avoid actions that may create the appearance that the panellist was biased in carrying out the panellist's duties or would benefit from the decision or report of the panel.
8. A panellist shall ensure that they can be contacted, at all reasonable times, for the purpose of conducting the work of the panel.

Rule 7 Independence and Impartiality of Panellists

1. A panellist shall be independent and impartial. A panellist shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.
2. A panellist shall not be influenced by self-interest, outside pressure, political considerations, and loyalty to a Party or fear of criticism.
3. A panellist 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 panellist's duties.
4. A panellist shall not use their position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence the panellist. A panellist shall make every effort to prevent or discourage others from representing themselves as being in such a position.
5. A panellist shall not allow past or existing financial, business, professional, family or social relationships, affiliations, or responsibilities to influence the panellist's conduct or judgment.
6. A panellist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the panellist's impartiality or that might reasonably create an appearance of impropriety or bias.
7. A panellist shall not take instructions from any organisation or government or be affiliated to a government, including governmental organisation, of either Party.

Rule 8
Duties in Certain Situations

1. A panellist or former panellist shall avoid actions that may create the appearance that the panellist was biased in carrying out the panellist's duties or would benefit from the decision or report of the panel.
2. In any proceeding under Chapter 19 (Dispute Settlement), a panellist shall refrain, for the duration of the proceeding, from acting as counsel or party-appointed expert witness in any new or pending dispute, under the Agreement or another international agreement, that directly addresses the same measure in dispute in, or arises out of the facts giving rise to, the proceeding under Chapter 19 (Dispute Settlement).

Rule 9
Maintenance of Confidentiality

1. A covered person 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 others. A covered person shall not make any public statement regarding the merits of a pending panel proceeding.
2. A covered person shall not disclose a panel report, or parts thereof, issued under Chapter 19 (Dispute Settlement) prior to its publication or a panel report, or parts thereof, not disclosed to the public.
3. A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view, except as required by law.

APPENDIX 19B-1
INITIAL DISCLOSURE STATEMENT

1. I have received a copy of the Code of Conduct for dispute settlement under Chapter 19 (Dispute Settlement) of the Free Trade Agreement between India and New Zealand (“the Agreement”).
2. I acknowledge having read and understood the Code of Conduct and hereby undertake to fully comply with my obligations under 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, a domestic judicial or quasi-judicial proceeding, or another 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, a domestic judicial or quasi-judicial proceeding, or another international dispute settlement proceeding that involves issues that may be decided in the proceeding are as follows:
 - (e) my past or current financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, are as follows:
 - (f) the past or current 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) above are as follows:

Signed on this _____ day of _____, 20__.

By:

Signature _____

Name _____