

**JOINT COMMISSION OF THE FREE TRADE AGREEMENT BETWEEN CANADA
AND THE REPUBLIC OF COLOMBIA**

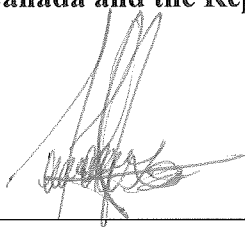
DECISION NO. 2

of 28 February 2014

The Joint Commission of the Free Trade Agreement between Canada and the Republic of Colombia, in accordance with Article 2109.1 and Article 2107.1(e) of the Agreement, hereby approves the attached:

**Model Rules of Procedure for Chapter 21 of the Free Trade Agreement between
Canada and the Republic of Colombia**

**Code of Conduct pursuant to Article 2107 of the Free Trade Agreement between
Canada and the Republic of Colombia**



Luis Felipe Quintero Suárez
For the Government of
the Republic of Colombia



Luc Santerre
For the Government of
Canada

**MODEL RULES OF PROCEDURE FOR CHAPTER 21 OF THE FREE TRADE
AGREEMENT BETWEEN CANADA AND THE REPUBLIC OF COLOMBIA**

1. The following rules of procedure are established in accordance with Article 2109 of the Agreement and apply to dispute settlement proceedings under Chapter 21 of the Agreement unless the Parties otherwise agree.

Definitions

2. For purposes of these Rules, the following definitions apply in addition to those of Chapter 1 of the Agreement:

- (a) **adviser** means a person retained by a Party to advise or assist the Party in connection with the proceedings;
- (b) **agreement** means the *Canada-Colombia Free Trade Agreement*, signed May 14, 2010;
- (c) **assistant** means a person who is appointed to conduct research or provide assistance to a panelist;
- (d) **complaining Party** means a Party that requests the establishment of a panel under Article 2106;
- (e) **court reporter** means a designated note-taker;
- (f) **expert** means a person or body providing information or technical advice as set forth in Article 2109.7;
- (g) **legal holiday** means every Saturday and Sunday and any other day designated by a Party as an official holiday;
- (h) **panel** means a panel established under Article 2106;
- (i) **panelist** means a member of a panel established under Article 2106;
- (j) **party complained against** means a Party that received the request for the establishment of a panel under Article 2106;
- (k) **proceedings** means a panel proceeding; and

- (l) **representative** means an employee of a government department or agency or of any other government entity of a Party.

3. Any reference made in these rules of procedure to an Article is a reference to an Article in the Agreement.

Timetable for Proceedings

4. The panel, in consultation with the Parties and taking into account the indicative timetable included in the Annex, shall adopt a timetable for the proceedings within 10 days of the selection of the last panelist.

5. The timetable adopted by the Panel shall include dates for the delivery of initial and rebuttal written submissions and any other written submissions that the Panel, in consultation with the Parties, determines are appropriate.

6. In determining the timetable for the proceedings, the panel shall provide sufficient time for the Parties to the dispute to prepare their submissions.

Written Submissions and Other Documents

7. In accordance with paragraph 2 of Article 2106 (Establishment of a Panel) of the Agreement, the complaining Party shall explain how the specific measures or other matters at issue constitute a violation of the provisions of the Agreement.

8. Each Party shall deliver the original and no less than four copies of any written submission to the panel and one copy to the Embassy of the other Party. Delivery of submissions and any other document related to the panel proceeding may be made by facsimile or other means of electronic transmission if the Parties so agree. When a Party delivers physical copies of written submissions or any other document related to the panel proceeding, that Party shall deliver at the same time an electronic version of such submissions or other document.

9. A Party may at any time correct minor errors of a clerical nature in any written submission or other document related to the panel proceeding by delivering a new document clearly indicating the changes.

10. If the last day for delivery of a document falls on a legal holiday observed by a Party or on any other day on which the government offices of that Party are closed by

order of the government or by force majeure, the document may be delivered on the next business day.

Burden of Proof

11. A Party that asserts that a measure of the other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement, or that a benefit the Party could reasonably have expected to accrue is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement shall have the burden of proving its assertions.

12. A Party that asserts that a measure is subject to an exception under this Agreement has the burden of proving that the exception applies.

Questions in Writing

13. The panel may at any time during the proceedings address questions in writing to one or both Parties. The Parties shall receive a copy of any questions put forward by the Panel.

14. Each Party shall also provide a copy of its written response to the panel's questions to the other Party. The Parties shall have the opportunity to provide written comments on the reply of the other Party within five days of the date of delivery.

Written Submission by a Non-Governmental Person

15. A panel, on application, may grant leave to a non-governmental person of a Party to file a written submission. In making its decision to grant leave, the panel shall consider, among other things:

- (a) whether the subject matter of the proceeding is of public interest;
- (b) whether the non-governmental person has a substantial interest in the proceeding; a substantial interest requires more than a general interest in the development of trade law jurisprudence, the interpretation of the Agreement or the subject matter of the dispute;
- (c) whether the submission would assist the panel in determining a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the Parties; and

(d) submissions by the Parties on the application for leave.

16. If the panel has granted leave to a non-governmental person to file a written submission, the panel shall ensure that:

- (a) the written submission does not introduce new issues to the dispute;
- (b) the written submission is within the terms of reference of the dispute as defined by the Parties;
- (c) the written submission addresses only the issues of fact and law that the person described in its application for leave to file a written submission;
- (d) the written submission does not disrupt the proceeding and preserves the equality of the Parties; and
- (e) the Parties have the opportunity to respond to the written submission.

Operation of Panels

17. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair of the panel authority to make administrative decisions regarding the proceedings, as provided for in Article 2109.9.

18. The panel may conduct its business by any appropriate means, including technological means such as telephone, facsimile transmission, and video or computer links.

19. Only panelists may take part in the deliberations of the panel. The panel may, in consultation with the Parties, employ such number of assistants, interpreters or translators, or court reporters as may be required for the proceeding and permit them to be present during such deliberations.

20. If a procedural question arises that is not addressed by these rules, a panel may adopt an appropriate procedure that is consistent with the Agreement.

21. A panel may, in consultation with the Parties, modify any time-period applicable in the panel proceeding and make other procedural or administrative adjustments as may be required in the proceeding.

Role of Experts

22. Upon request of a Party, or on its own initiative, the panel may seek information or technical advice from any person or body that it deems appropriate, and such additional terms and conditions as the Parties may decide.

23. Before the panel seeks information or technical advice, it shall:

- (a) notify the Parties of its intention to seek information or technical advice and provide them with an adequate period of time to submit comments; and,
- (b) provide the Parties with a copy of any information or technical advice received and provide them with an adequate period of time to submit comments.

When the panel takes into consideration the information or technical advice received for the preparation of its report, it shall also take into consideration any comments submitted by the disputing Parties with respect to such information or technical advice.

Hearings

24. The chair of the panel shall fix the date and time of the initial hearing and notify the Parties in writing of those dates and times, no less than fifteen days (15) before the hearing.

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

26. Unless the Parties otherwise agree, the hearings will be held in the capital of the Party complained against.

27. All panelists shall be present during the entirety of any hearing.

28. No later than five days before the date of a hearing, each Party shall deliver to the other Party and the panel a list of the names of those persons who will be present at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

29. The panel shall conduct each hearing in a manner that ensures that the complaining Party and the Party complained against are afforded equal time for arguments, replies and counter-replies.

30. Hearings shall be open to the public, except as necessary to protect information designated by either Party for confidential treatment. The Panel may, in consultation with the Parties, adopt appropriate logistical arrangements and procedures to ensure that hearings are not disrupted by the attendance of the public.

31. The panel may arrange the preparation of hearing transcripts and shall, as soon as possible after any such transcripts are prepared, deliver a copy to each Party.

Language

32. The disputing parties have the right to present and receive written submissions, and to present and hear oral arguments in any of the Parties' official languages. Each disputing party shall expeditiously arrange for and bear the costs of the translation of its written submissions into the language chosen by the other disputing Party. The Party complained against shall arrange for the interpretation of oral submissions into the official language chosen by a disputing Party.

Ex Parte Contacts

33. A Party may not communicate with the panel without notifying the other Party. The panel shall not communicate with a Party in the absence of, or without notifying, the other Party.

34. A panelist may not discuss any aspect of the substantive subject matter of the proceeding with the Parties in the absence of the other panelists.

Availability of Information

35. The Parties shall maintain the confidentiality of the panel's initial report, and all written submissions to, and communications with, the panel, in accordance with the following procedures:

- (a) A Party may make public at any time its own written submissions, written versions of its oral statements and written responses to requests or questions from the panel;

- (b) Each Party shall ensure that information designated by either Party for confidential treatment is protected;
- (c) Each Party shall take such reasonable steps necessary to ensure that its experts, interpreters, translators, court reporters and other individuals involved in the panel proceedings maintain the confidentiality of the panel proceedings.

Remuneration and Payment of Expenses

36. Unless the Parties otherwise agree, the expenses of the panel, the remuneration of the panelists and their assistants, their travel and lodging expenses, and all general expenses shall be borne in equal shares between the Parties.

37. Each panelist shall keep a record and render a final account of his or her time and expenses, and those of any assistant, and the panel shall keep a record and render a final account of all general expenses.

Annex
Indicative Timetable for Proceedings

1. The Complaining party shall submit a complete initial written submission to the Party complained against with no later than 10 days after the adoption of the terms of reference.
2. The Party complained against shall, in turn, deliver a written counter-submission no later than 20 days following the date of receipt of the initial written submission of the complaining Party.
3. The initial hearing referred to in rule 24 must be held 10 days after the Panel and the Parties receive the counter-submission of the Party complained against.
4. The Parties shall have 15 days to submit the written rebuttals and answer any questions posed by the Panel during the hearing.
5. The panel shall, within 15 days after the comments to the written questions from the last hearing are submitted, issue an initial report, including the findings and conclusions to the Parties.
6. The Parties shall have 10 days to request the panel to review parts of the initial report.
7. The panel shall, within 20 days of receiving any request to review the initial, issue its final report and send it to the Parties.
8. The deadlines to the time periods established in this Annex are counted from the day following the date of the receipt of such submission or documents.

**CODE OF CONDUCT PURSUANT TO ARTICLE 2107 OF THE FREE TRADE
AGREEMENT BETWEEN CANADA AND THE REPUBLIC OF COLOMBIA**

Preamble

This Code of Conduct is established to ensure that candidates, panelists, and persons assisting or advising panelists respect the principles of integrity, independence and impartiality, and confidentiality in proceedings under Chapter 21 of the Agreement.

Definitions

1. For purposes of this Code of Conduct:
 - (a) **Agreement** means the Canada-Colombia Free Trade Agreement;
 - (b) **assistant** means a person who, is appointed to conduct research or provide assistance to a panelist;
 - (c) **candidate** means an individual who is under consideration for appointment as a panelist under Article 2108 (Panel Selection) of the Agreement;
 - (d) **expert** means a person or body providing information or technical advice as set forth in Article 2109.7 (Rules of Procedure) of the Agreement;
 - (e) **panel** means a panel established under Article 2106 (Panel Establishment) of the Agreement;
 - (f) **panelist** means a member of a panel established under Article 2106 of the Agreement;
 - (g) **proceedings** means a panel proceeding under Chapter 21 (Dispute Settlement) of the Agreement; and
 - (h) **staff**, in respect of a panelist, means persons under the direction and control of the panelist, other than assistants.

General Rules

2. Every panelist shall:
 - (a) avoid impropriety and the appearance of impropriety;
 - (b) be independent and impartial;
 - (c) avoid direct and indirect conflicts of interests
 - (d) observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved, and
 - (e) take reasonable measures to ensure that assistants, staff and experts comply with this Code of Conduct.

3. A candidate shall not accept appointment as a panelist unless the candidate is fully satisfied of his or her ability to comply with the requirements of this Code of Conduct.

4. A panelist may select an expert or appoint an assistant or staff member only if the panelist is fully satisfied of the ability of the expert, assistant or staff member to comply with the requirements of this Code of Conduct.

Disclosure Obligations

5. Prior to confirmation of his or her selection as a panelist under Article 2108 of the Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her 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. To disclose an interest, matter or relationship, a candidate shall complete the Disclosure Form attached to this Code of Conduct and provide it to the Parties.

6. Without limiting the generality of the obligation in paragraph 5, a candidate shall disclose the following interests, relationships, and matters:

(a) for the candidate or the candidate's employer, partner, business associate, or family member:

(i) a direct or indirect financial, business, property, professional, or personal interest:

A. in the proceeding or in its outcome, and

B. in an administrative proceeding, a domestic court proceeding, or another panel or committee proceeding that involves an issue that may be decided in the proceeding for which the candidate is under consideration, and

(ii) a past or existing financial, business or professional relationship with a Party to the proceedings or its counsel; and

(b) for the candidate, public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same type of good, service, investment, or government procurement.

7. Candidates and panelists are not required to disclose interests, relationships or matters whose relevance to the issues in the proceeding is trivial. Disclosure obligations shall be interpreted and applied in light of the need to respect the personal privacy of candidates.

8. Once selected, a panelist shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 and shall disclose them in writing to the Parties for consideration by the Parties.

9. The disclosure of any interest, relationship or matter does not necessarily imply that the Parties must remove a candidate or panelist.

Performance of Duties by Panelists

10. Upon selection, a panelist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding.

11. A panelist shall carry out his or her duties fairly and diligently.

12. A panelist shall consider only those issues raised in the proceeding and necessary to render a decision and shall not delegate the duty to decide to any other person except in accordance with Article 2109.9 of the Agreement.

13. A panelist shall take all appropriate steps to ensure that the panelist's assistants and staff are aware of, and comply with this Code of Conduct.

14. A panelist shall not engage in ex parte contacts concerning the proceeding.

15. A panelist shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to both Parties or is necessary to ascertain whether that panelist has violated or may violate this Code of Conduct.

16. A panelist shall ensure that he or she can be contacted at all reasonable times to conduct business relating to the proceedings.

Independence and Impartiality of Panelists

17. A panelist shall be independent and impartial. A panelist shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

18. A panelist shall not be influenced by self-interest, outside pressure, political considerations, public clamor, loyalty to a Party, or fear of criticism.

19. A panelist shall not, directly or indirectly, incur any obligation or accept any benefit that would interfere, or appear to interfere, with the proper performance of the panelist's duties.

20. A panelist shall not use his or her position on the panel to advance any personal or private interests. A panelist shall avoid conduct that may create the reasonable impression that others are in a special position to influence the panelist.

21. A panelist shall not allow past or existing financial, business, professional, family or social relationships, or responsibilities to influence the panelist's conduct or judgment.

22. A panelist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the panelist's impartiality or that might reasonably create an appearance of impropriety or bias.

Duties of Former Panelists

23. A former panelist shall avoid conduct that may create the appearance that the panelist was biased in carrying out the panelist's duties or derived advantage from the decision of the panel.

Maintenance of Confidentiality

24. A panelist, expert, assistant, staff member or former panelist, expert, assistant or staff member shall not, at any time:

- a) disclose or use any confidential information concerning the proceeding or acquired during the proceeding except for purposes of the proceeding or as required by law;
- b) disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others;
- c) disclose a panel ruling or parts thereof prior to its publication;
- d) disclose the deliberations of a panel or any panelist's view.

Mediators and other participants

25. The provisions described in this code of conduct shall apply, *mutatis mutandis*, to mediators and conciliators, as referred to in Article 2105 of the Agreement.

Canada-Colombia Free Trade Agreement

Disclosure Form

In the Matter of [*Insert Proceeding Title*]

I have read the Code of Conduct for Dispute Settlement Procedures for the Canada-Colombia Free Trade Agreement (Code of Conduct) and affirm that I comply with the standards set out in that Code of Conduct.

To the best of my knowledge there is no reason why I should not accept appointment as a panelist in this proceeding.

The following matters could potentially be considered to affect my independence or impartiality, or might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding:

[Panelist to set out the details of any interests Covered by paragraph 5 of the Code of Conduct, and in particular all relevant information covered by paragraph 6 of the Code of Conduct]

I recognize that, once appointed, I have a continuing duty to make all reasonable efforts to become aware of any interest, relationship, or matter within the scope of Paragraph 5 of the Code of Conduct that may arise during any stage of the proceeding. I will disclose in writing any applicable interest, relationship, or matter to the Parties as soon as I become aware of it.

Signature _____

Name _____

Date _____