

## ANNEX I

### CODE OF CONDUCT FOR STATE-STATE DISPUTE SETTLEMENT UNDER CHAPTER 28 (DISPUTE SETTLEMENT) OF THE COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP

#### Preamble

Whereas the Parties place prime importance on the integrity and impartiality of proceedings conducted pursuant to Chapter 28 (Dispute Settlement) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (Agreement), the Parties hereby establish this Code of Conduct in furtherance of Article 28.10 (Qualifications of Panellists) to ensure that these principles are respected.

#### 1. Definitions

For the purposes of this Code of Conduct:

**family member** means the spouse of a panellist or candidate; or a parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece or nephew of the panellist or candidate or spouse of the 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 his or her family;

**Rules** means the Rules of Procedure established pursuant to Article 28.13 (Rules of Procedure for Panels); and

**staff**, in respect of a panellist, means individuals under the direction and control of the panellist, other than assistants.

#### 2. Responsibilities to the Process

Each candidate, panellist and former panellist 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.

#### 3. Governing Principles

- (a) Each panellist shall be independent and impartial, and shall avoid direct or indirect conflicts of interest.
- (b) Each panellist and former panellist shall respect the confidentiality of panel proceedings.
- (c) Each candidate or panellist shall disclose the existence of any interest, relationship or matter that is likely to affect the candidate's or panellist'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 when a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that a candidate's or panellist's ability to carry out the duties with integrity, impartiality and competence is impaired.

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

#### **4. Disclosure Obligations**

- (a) Throughout the panel proceeding, candidates and panellists have a continuing obligation to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process.
- (b) The responsible office will provide a candidate (including a potential candidate) a copy of this Code of Conduct and the Initial Disclosure Statement set out in the Appendix to this Code of Conduct, pursuant to Rule 39(a)(ii).
- (c) A candidate shall make his or her best efforts to submit the Initial Disclosure Statement to the responsible office no later than seven days after receipt of that Statement. 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 an apprehension of bias in the panel proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters. Therefore, a candidate shall disclose, at a minimum, the following interests, relationships and matters:
  - (i) any financial or personal interest of the candidate in:
    - (A) the panel proceeding or its outcome; and
    - (B) an administrative proceeding, a domestic judicial proceeding or another international dispute settlement proceeding that involves issues that may be decided in the panel proceeding for which the candidate is under consideration;
  - (ii) any financial interest of the candidate's employer, business partner, business associate or family member in:
    - (A) the panel proceeding or its outcome; and
    - (B) an administrative proceeding, a domestic judicial proceeding or another international dispute settlement proceeding that involves

issues that may be decided in the panel proceeding for which the candidate is under consideration;

- (iii) any past or current financial, business, professional, family or social relationship with any interested parties in the panel proceeding, or their counsel, or any such relationship involving a candidate's employer, business partner, business associate or family member; and
  - (iv) public advocacy or legal or other representation concerning an issue in dispute in the panel proceeding or involving the same goods, services or investments.
- (d) Once appointed, a panellist shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in subparagraph (c) and shall disclose them. The obligation to disclose is a continuing duty that requires a panellist to disclose any such interests, relationships and matters that may arise during any stage of the panel proceeding.
- (e) In the event of any uncertainty regarding whether an interest, relationship or matter must be disclosed under subparagraph (c) or subparagraph (d), 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 subparagraph (c) or subparagraph (d), or whether it warrants recusal, amelioration or disqualification.
- (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 individuals in the legal or business community to serve as panellists, thereby depriving the Parties of the services of those who might be best qualified to serve as panellists. Thus, candidates and panellists should not be called upon to disclose interests, relationships or matters whose bearing on their role in the panel proceeding would be trivial.

## **5. Performance of Duties by Candidates and Panellists**

- (a) Bearing in mind that the prompt settlement of disputes is essential to the effective functioning of the Agreement, a candidate who accepts an appointment as a panellist shall be available to perform, and shall perform, a panellist's duties thoroughly and expeditiously throughout the course of the panel proceeding.
- (b) A panellist shall ensure that he or she is contactable, at all reasonable times, by the responsible office in order to conduct panel work.
- (c) A panellist shall carry out all duties fairly and diligently.

- (d) A panellist shall comply with the provisions of Chapter 28 (Dispute Settlement) and the applicable Rules.
- (e) A panellist shall not deny other panellists the opportunity to participate in all aspects of the panel proceeding.
- (f) A panellist shall consider only those issues raised in the panel proceeding and necessary to make a decision.
- (g) A panellist shall not delegate the duty to decide to any other individual.
- (h) A panellist shall take all reasonable steps to ensure that his or her assistants and staff comply with paragraphs 2 (Responsibilities to the Process), 4 (Disclosure Obligations), 5(d) and 5(i) (Performance of Duties by Candidates and Panellists) and 8 (Maintenance of Confidentiality) of this Code of Conduct.
- (i) A panellist shall not engage in any *ex parte* contact concerning the panel proceeding, pursuant to Rules 72 through 74.
- (j) A candidate or panellist shall only communicate matters concerning actual or potential violations of this Code of Conduct to the responsible office, or if necessary to ascertain whether that candidate or panellist has violated or may violate this Code of Conduct, to the responsible office or the disputing Parties.

## **6. Independence and Impartiality of Panellists**

- (a) A panellist shall be independent and impartial. A panellist shall act in a fair manner and shall not create an appearance of impropriety or an apprehension of bias.
- (b) A panellist shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.
- (c) 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 his or her duties.
- (d) A panellist shall not use his or her 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.
- (e) A panellist shall not allow past or ongoing financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgment.

- (f) A panellist shall avoid entering into any relationship or acquiring any financial interest, that is likely to affect his or her 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 panellist is inconsistent with subparagraphs (a) through (f), the candidate may accept appointment to a panel and a panellist may continue to serve on a panel if the disputing Parties waive the violation or if, after the candidate or panellist has taken steps to ameliorate the violation, the disputing Parties determine that the inconsistency has ceased.

## **7. Duties of Former Panellists**

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

## **8. Maintenance of Confidentiality**

- (a) A panellist or former panellist shall not at any time disclose or use any non-public information concerning the panel proceeding or acquired during the panel proceeding except for the purposes of the panel 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 panellist shall not disclose a panel report issued under Chapter 28 (Dispute Settlement) prior to release of the final report by the disputing Parties. A panellist or former panellist shall not at any time disclose which panellists are associated with majority or minority opinions in a panel proceeding under Chapter 28.
- (c) A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view.
- (d) A panellist shall not make a public statement regarding the merits of a pending panel proceeding.

## **9. Responsibilities of Experts, Assistants and Staff**

Paragraphs 2 (Responsibilities to the Process), 4 (Disclosure Obligations), 5(d) and 5(i) (Performance of Duties by Candidates and Panellists), 7 (Duties of Former Panellists) and 8 (Maintenance of Confidentiality) of this Code of Conduct shall also apply to experts, assistants and staff.

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COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC  
PARTNERSHIP**

**INITIAL DISCLOSURE STATEMENT**

1. I acknowledge having received a copy of the Code of Conduct for dispute settlement under Chapter 28 (Dispute Settlement) of the Trans-Pacific Partnership Agreement.
2. I acknowledge having read and understood the Code of Conduct.
3. I understand that I have a continuing obligation, while participating in the panel 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 panel 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 other international dispute settlement proceeding that involves issues that may be decided in the panel proceeding is as follows:
  - (c) The financial interest that any employer, business partner, business associate or family member of mine may have in the panel 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 other international dispute settlement proceeding that involves issues that may be decided in the panel proceeding are as follows:
  - (e) My past or current financial, business, professional, family and social relationships with any interested parties in the panel 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 panel 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 panel proceeding or involving the same goods, services or investments 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:

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By:

Signature \_\_\_\_\_

Name \_\_\_\_\_