

RULES OF PROCEDURE FOR ARTICLE 10.13 (SPECIAL COMMITTEES)

Application

1. These Rules are established in accordance with Annex 10-B.4 (Special Committee Procedures) of the Agreement and apply to all special committee proceedings conducted pursuant to Article 10.13 (Safeguarding the Panel Review System) of the Agreement. These Rules will be published in Canada in the *Canada Gazette*, in Mexico in the *Diario Oficial de la Federación*, and in the United States in the *Federal Register*.

Short Title

2. These Rules may be cited as the Special Committee Rules.

Statement of General Intent

3. These Rules apply to special committee proceedings conducted pursuant to Article 10.13 (Safeguarding the Panel Review System) of the Agreement, unless the involved Parties otherwise agree. If a procedural question arises that is not covered by these Rules, a special committee may adopt an appropriate procedure that is not inconsistent with the Agreement.

4. In the event of any inconsistency between these Rules and the Agreement, the Agreement shall prevail.

Definitions and Interpretation

5. For the purposes of these Rules:

Agreement means the Agreement signed between Canada, Mexico, and the United States on November 30, 2018, as amended;

Code of Conduct means the code of conduct established by the Parties pursuant to Article 10.17 (Code of Conduct) of the Agreement;

Complaining Party means a Party who requests, pursuant to Article 10.13.2 (Safeguarding the Panel Review System) of the Agreement, that a special committee be established;

involved Secretariat means the responsible Secretariat or the Section of the Secretariat located in the country of the other involved Party;

legal holiday, for a Party's Section of the Secretariat, means every Saturday, Sunday, and any other day designated by that Party as a holiday for the purposes of these Rules and notified by that

Party to its Section of the Secretariat and by that Section to the other Sections of the Secretariat and the other Parties;

official publication means in the case of the Government of:

- (a) Canada, the *Canada Gazette*;
- (b) Mexico, the *Diario Oficial de la Federación*; and
- (c) the United States, the *Federal Register*;

Party means the Government of Canada, the Government of Mexico or the Government of the United States;

Responding Party means the Party against whom an allegation is made under Article 10.13.1 (Safeguarding the Panel Review System) of the Agreement;

responsible Secretariat means the Section of the Secretariat of the Responding Party;

responsible Secretary means the Secretary of the responsible Secretariat;

Secretariat means the Secretariat established pursuant to Article 30.6 (The Secretariat) of the Agreement;

Secretary means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat, or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of that Secretary; and

special committee means a special committee established pursuant to Article 10.13 (Safeguarding the Panel Review System) of the Agreement.

6. The definitions set forth in Article 10.8 (Definitions) of the Agreement apply to these Rules.

7. When these Rules require that notice be given, it must be given in writing.

Code of Conduct

8. Candidates being considered for appointment to a special committee, special committee members and their assistants, and staff, must comply with the Code of Conduct established under Article 10.17 (Code of Conduct) of the Agreement.

9. The responsible Secretariat shall provide a copy of the Code of Conduct to each candidate being considered for appointment to serve as a special committee member, and to each individual selected to serve as a special committee member as well as to their assistants and staff.

10. If a Party believes that a special committee member, assistant, or staff to a special committee member is in violation of the Code of Conduct, the Party shall immediately notify the responsible Secretary in writing of the alleged violation. The responsible Secretary shall promptly notify the other involved Secretary and the involved Parties of the allegations.

Internal Functioning of Special Committees

11. (1) Subject to subrule (2), unless the involved Parties otherwise agree, special committee meetings shall take place at the offices of the responsible Secretariat or at such alternative location as the special committee members may agree.

(2) A special committee may conduct meetings or exchange information by any means, including by electronic mail, telephone, or video conference.

12. The members of a special committee must select from among themselves a chair, who must preside over all meetings and hearings of the special committee.

13. The chair of the special committee must fix the date and time of its meetings in consultation with other special committee members and the responsible Secretary.

14. All reports, findings, determinations, and decisions of a special committee shall be made or issued by a majority vote of all members of the special committee.

15. A special committee proceeding commences on the day on which a request for a special committee is filed with the responsible Secretariat and terminates on the day on which a notice of completion of the special committee proceeding is issued pursuant to Rule 43.

16. (1) A special committee may adopt internal procedures of its own, not inconsistent with these Rules, for routine administrative matters.

(2) A special committee may delegate to its chair the authority to make decisions regarding internal procedures or routine administrative matters.

17. The terms of reference of a special committee shall be limited to:

- (a) making a finding as to whether any allegations set out in Article 10.13.1 (Safeguarding the Panel Review System) of the Agreement made by the Complaining Party regarding the application of the Responding Party's domestic law are substantiated;

- (b) determining whether a suspension of benefits by the Complaining Party pursuant to Article 10.13.8(b) (Safeguarding the Panel Review System) of the Agreement is manifestly excessive; and
- (c) determining whether the Responding Party has corrected a problem with respect to which the special committee has made an affirmative finding.

Special Committee Remuneration and Expenses

18. (1) The involved Parties shall bear equally the remuneration and expenses of special committee members selected pursuant to Article 10.13.5 (Safeguarding the Panel Review System), and of their assistants, and all administrative expenses of the committee.

(2) Unless the involved Parties agree otherwise, remuneration for special committee members shall be paid at the rate for non-governmental panelists used by the WTO on the date a request for Special Committee is made pursuant to Article 10.13 (Safeguarding the Panel Review System).

(3) Unless the involved Parties agree otherwise, travel expenses shall be paid at the Daily Subsistence Allowance rate for the location of the hearing established by the United Nations International Civil Service Commission on the date a request for Special Committee is made pursuant to Article 10.13 (Safeguarding the Panel Review System).

(4) Each special committee member may hire one assistant to provide research, translation, or interpretation support, unless a special committee member requires an additional assistant and the involved Parties agree that, due to exceptional circumstances, the special committee member should be permitted to hire an additional assistant. Each assistant to a special committee member shall be paid at a rate of one-fifth the rate for a special committee member.

(5) The expenses authorized for a special committee established pursuant to Article 10.13 (Safeguarding the Panel Review System), shall be as follows:

- (a) travel expenses: include the transportation costs of the special committee members and assistants, their accommodations and meals, as well as related taxes and insurance. Travel arrangements shall be made and travel expenses reimbursed, in accordance with the administrative guidelines applied by the responsible Secretariat; and
- (b) administrative expenses: include, among others, telephone calls, courier services, fax, stationery, rent of locations used for hearings and deliberations, interpreter services, court reporters, or any other person or service contracted by the responsible Secretariat to support the proceeding.

(6) Each special committee member and assistant shall keep and render a final account of his or her time and expenses to the responsible Secretariat, and the special committee shall keep and render a final account to the responsible Secretariat of its administrative expenses. Each special committee member and assistant shall submit this account, including relevant supporting documentation, such as invoices, in accordance with the administrative guidelines of the responsible Secretariat. A special committee member or assistant may submit requests for payment of remuneration or reimbursement for expenses during the proceeding on a recommended quarterly basis throughout an ongoing dispute. Special committee members and assistants should submit any final requests for payment of remuneration or reimbursement within 60 days of the filing of a notice of completion of the special committee proceeding.

(7) All requests for payment shall be subject to review by the responsible Secretariat. The responsible Secretariat shall make payments for the remuneration of special committee members and assistants, and for expenses in accordance with the administrative guidelines applied by the responsible Secretariat, using resources provided equally by the involved Parties, and in coordination with the involved Parties. No responsible Secretariat shall be obligated to pay any remuneration or expense in connection with a special committee prior to receiving the contributions of the involved Parties.

(8) The responsible Secretariat shall submit to the involved Parties a final report on payments made in connection with a dispute. On request of an involved Party, the responsible Secretariat shall submit to the involved Parties a report of payments made to date at any time during the special committee proceedings.

(9) In case of resignation or removal of a special committee member or assistant, the responsible Secretariat will make payment of the remuneration and expenses owed up until the date of resignation or removal of this special committee member or assistant, using resources provided equally by the involved Parties. A special committee member's or assistant's final account of time or expenses must follow the procedures in paragraph 6 and should be submitted within 60 days of the date of their resignation or removal.

Filing, Service, and Communications

19. A document to be filed by an involved Party must be filed either physically, with two copies, or electronically, with the responsible Secretariat, and must also:

- (a) be served on the other involved Party by express courier, overnight mail, or by any other means agreed upon by the involved Parties; and
- (b) when filed, be accompanied by a proof of service certifying that the document has been served on the other involved Party, indicating the manner, date, and time of service.

Written Submissions

20. All written submissions and responses filed with a responsible Secretariat shall be accompanied by two copies thereof.

21. (1) A request for the establishment of a special committee under Article 10.13.2 (Safeguarding the Panel Review System) of the Agreement shall be made by filing the request with the responsible Secretariat.

(2) On the filing of a request under subrule (1), the responsible Secretary and the other involved Secretary shall cause a notice of the filing of the request to be published in the official publications of the countries in which their Sections of the Secretariat are located.

22. The written initial submission of a Complaining Party shall be filed with the responsible Secretariat no later than 10 days after the date on which the last member of the special committee is appointed.

23. A written response by the Responding Party shall be filed with the responsible Secretariat no later than 20 days after the filing of the initial submission of the Complaining Party.

24. A special committee may allow each involved Party the opportunity to make an equal number of further written submissions, no later than such time as may be fixed by the special committee, having regard to the time limits fixed by Annex 10-B.4 (Special Committee Procedures) of the Agreement.

25. The responsible Secretary must forward to the other involved Secretary a copy of all documents filed with the responsible Secretariat and of all reports, findings, determinations, and decisions issued by the special committee.

Hearings

26. (1) At least one hearing shall be held before the special committee presents its initial report.

(2) The date and time of hearings shall be fixed by the special committee in consultation with the involved Parties and the responsible Secretary.

(3) A verbatim transcript shall be taken of all hearings.

27. Unless the involved Parties otherwise agree, special committee hearings shall take place at the offices of the responsible Secretariat.

28. (1) All special committee members must be present during hearings.

(2) No later than five days before the date of a hearing, each involved Party shall deliver to the responsible Secretariat and to the other involved Party a list of the names of the persons who will present oral arguments at the hearing on behalf of that Party and of other representatives or advisers of the Party who will be attending the hearing.

29. Oral proceedings shall be conducted in the following order, ensuring that each involved Party is given equal time:

- (a) the argument of the Complaining Party;
- (b) the argument of the Responding Party;
- (c) a reply of the Complaining Party; and
- (d) a counter-reply of the Responding Party.

30. At the request of an involved Party or at the initiative of the special committee, with the agreement of both involved Parties, and subject to such terms and conditions as both involved Parties may agree upon, the special committee may call upon any person to provide information concerning the matter in dispute.

Language of Proceedings

31. Written and oral proceedings may be in either English, French, or Spanish, or in any combination thereof.

32. Unless the involved Parties otherwise agree, the reports, findings, determinations, and decisions of a special committee shall be issued in an official language of the Responding Party and, if necessary, shall be promptly translated into an official language of the other involved Party.

Special Committee Deliberations

33. (1) The deliberations of a special committee shall take place in private and remain confidential.

(2) Only special committee members may take part in the deliberations of a special committee.

(3) Staff of the involved Secretariats, assistants to the special committee members, and any necessary support staff may be present during deliberations of a special committee by permission of the special committee.

Reports

34. (1) In accordance with paragraph (b) of Annex 10-B.4 (Special Committee Procedures) of the Agreement, a special committee must prepare and present to the involved Parties an initial report, wherever practicable, no later than 60 days after the appointment of the last member of the special committee.

(2) The involved Parties may comment in writing or, at the request of the special committee, orally, on an initial report of a special committee no later than 14 days after the initial report is presented.

35. An initial report of a special committee shall be kept confidential.

36. (1) A special committee must issue a final report, together with any separate opinions rendered by individual special committee members, no later than 30 days after the presentation of its initial report.

(2) Any separate opinions rendered by individual special committee members must be anonymous.

(3) On the issuance of a final report under subrule (1), the responsible Secretary must immediately forward copies of the report to the involved Parties.

(4) Unless the involved Parties otherwise agree:

(a) no later than 10 days after the final report is forwarded to the involved Parties, the involved Secretaries must cause a notice that a final report has been issued by a special committee to be published in the official publications of the involved Parties, indicating that copies of the report and of any separate opinions by individual special committee members and written views of either involved Party are available to the public at the offices of the responsible Secretariat; and

(b) the responsible Secretariat must make available to the public copies of the final report of a special committee, together with any separate opinions by individual special committee members, and any written views that either involved Party may wish to be published.

Reconvening of Special Committee

37. If a special committee has made an affirmative finding with respect to grounds specified in Article 10.13.1 (Safeguarding the Panel Review System) of the Agreement, a Responding Party may request that the special committee be reconvened by filing a request with the responsible Secretariat, if the Responding Party is requesting that the special committee determine whether:

- (a) the Responding Party has corrected a problem with respect to which the special committee has made an affirmative finding, at any time after the affirmative finding was made; or
- (b) a suspension of benefits by the Complaining Party under Article 10.13.8 (Safeguarding the Panel Review System) of the Agreement is manifestly excessive, at any time after the suspension was made.

38. (1) If a request referred to in subrule 37(a) is filed before the fortieth day of the 60-day consultation period referred to in Article 10.13.8 (Safeguarding the Panel Review System) of the Agreement, the special committee must endeavor to present a report containing its determination to the involved Parties before the sixtieth day of that period, and may for that purpose make such orders as to filing of written submissions and responses and the holding of a hearing as the special committee considers necessary under the circumstances.

(2) Rules 39 to 41 apply with respect to requests referred to in subrule 37(a) that are filed on or after the fortieth day of the 60-day consultation period referred to in Article 10.13.8 (Safeguarding the Panel Review System) of the Agreement and to requests referred to in subrule 37(b).

39. (1) At the time of filing a request pursuant to Rule 37, the Responding Party shall file a written submission in support of the request.

(2) A Complaining Party shall file a written response to a submission referred to in subrule (1) no later than 20 days after that submission is filed.

40. (1) At the time of filing a request pursuant to Rule 37 or a written response pursuant to subrule 39(2), an involved Party may request an opportunity to present oral argument in support of its request or response.

(2) If an involved Party requests an opportunity to present oral argument pursuant to subrule (1), the special committee may hold a hearing, at which both involved Parties shall be granted an equal opportunity to present oral argument.

41. The special committee must, no later than 45 days of the filing of a request pursuant to Rule 37, present to the involved Parties a written report containing its determination pursuant to Article 10.13.10 (Safeguarding the Panel Review System) of the Agreement.

42. Subrules 36(2) to (4) apply, with such modifications as are necessary, to reports referred to in subrule 38(1) and Rule 41.

Completion of Special Committee Proceedings

43. (1) On completion of a special committee proceeding, as determined by the special committee in consultation with the involved Parties, the special committee must request the responsible Secretary to issue a notice of completion of the proceeding.

(2) A notice referred to in subrule (1) is effective the day after it is issued.

(3) The responsible Secretary must cause a notice issued under subrule (1) to be published in the official publications of the involved Parties.

44. The members of a special committee are discharged from their duties on the day on which a notice of completion of the special committee proceeding is effective.

Confidentiality

45. All written submissions to, and communications with, a special committee and all documents filed with the involved Secretariats shall be kept confidential.

46. (1) All hearings of a special committee, and all transcripts thereof, shall be kept confidential.

(2) It is the responsibility of each involved Party to ensure that the persons attending oral proceedings of a special committee on its behalf maintain the confidentiality of the proceedings.

***Ex Parte* Contacts**

47. (1) No special committee or member of a special committee shall meet or contact one involved Party in the absence of the other involved Party.

(2) No special committee member shall discuss a matter before the special committee with the involved Parties in the absence of other special committee members.

Extension and Computation of Time

48. A time period fixed by these Rules may be extended with the consent of both involved Parties or by a decision of a special committee.

49. (1) In computing any time period fixed in or under these Rules, the day from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) If the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat or on any other day on which the offices of that Section are closed by order of the government or because of unforeseen circumstances outside that Party's

control, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

(3) In computing any time period of five days or less fixed in these Rules or by a decision of a special committee, any legal holiday or any other day on which the offices of that Section are closed by order of the government or because of unforeseen circumstances outside that Party's control, that falls within the time period shall be excluded from the computation.

Responsibilities of the Responsible Secretary

50. The responsible Secretary shall provide administrative support for each special committee proceeding and shall make the arrangements necessary for the hearings and meetings of the special committee, including the provision of court reporters and, if required, interpreters to provide simultaneous translation.

51. The responsible Secretary must maintain a file for each special committee proceeding, comprised of the original or a copy of all documents filed, whether or not filed in accordance with these Rules, in the special committee proceeding.

Death or Incapacity

52. If a special committee member is disqualified, dies, or otherwise becomes unable to fulfil special committee duties:

- (a) special committee proceedings and computations of time shall be suspended, pending the appointment of a substitute special committee member; and
- (b) if the disability, disqualification or death occurs after oral argument has begun, the chair may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute special committee member.

Translation and Interpretation

53. (1) Subject to Rule 54, each involved Party shall, within a reasonable period of time:
- (a) after the appointment of the last special committee member, advise the responsible Secretary in writing of the language in which its written submissions will be made and in which it wishes to receive the written submissions of the other involved Party; and
 - (b) before the date of a hearing, advise the responsible Secretary in writing of the language in which it will present oral arguments at the hearing and in which it wishes to hear oral arguments.

(2) On receipt of an advisement submitted pursuant to subrule (1), the responsible Secretary must promptly notify the other involved Secretary, the other involved Party and the special committee.

54. (1) In lieu of the procedure set out in Rule 53, a Party may advise its Secretary of the language in which:

- (a) its written submissions will be made in all special committee proceedings and in which it wishes to receive written submissions of any other Party involved in a special committee proceeding; and
- (b) it will present oral arguments, and in which it wishes to hear oral arguments, at all special committee hearings.

(2) On receipt of an advisement submitted pursuant to subrule (1), a Secretary must promptly notify the other Secretaries and Parties accordingly.

55. If the responsible Secretary is advised that written submissions or oral arguments in a special committee proceeding will be in more than one language or on the basis of a request of a special committee member, the responsible Secretary must arrange for the translation of the written submission(s) or for the provision of interpreters to provide simultaneous translation at the hearing, as the case may be.

56. Any time period applicable to a special committee proceeding shall be suspended for the period necessary to complete the translation of any written submission.

57. (1) The costs incurred in the preparation of a translation of a written submission shall be borne by the Party filing the submission.

(2) Costs for interpretation of oral arguments and for the translation of the special committee's reports shall be shared equally by the involved Parties.