

Rules of Procedures for Article 1905 Special Committees

The Parties,

Having regard to Chapter Nineteen of the North American Free Trade Agreement between Canada, the United Mexican States and the United States of America;

Acting pursuant to Article 1905.6 of the Agreement;

Adopt the following Rules of Procedure, which shall come into force on the same day as the Agreement enters into force and from that day shall govern all special committee proceedings conducted pursuant to Article 1905 of the Agreement.

Short Title

1. These rules may be cited as the *Article 1905 Special Committee Rules*.

Statement of General Intent

2. These rules shall apply to special committee proceedings conducted pursuant to Article 1905 of the Agreement, unless the involved Parties otherwise agree. Where 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. In the event of any inconsistency between the provisions of these rules and the Agreement, the Agreement shall prevail.

Interpretation

3. In these rules,

"Agreement" means the North American Free Trade Agreement; (*Accord*) (*Tratado*)

"Complaining Party" means a Party who requests, pursuant to Article 1905.2 of the Agreement, that a special committee be established; (*Partie plaignante*) (*Parte reclamante*)

"involved Secretariat" means the responsible Secretariat or the section of the Secretariat located in the country of the other involved Party; (*Secrétariat en cause*) (*Secretariado implicado*)

"legal holiday" means

(a) with respect to the Canadian Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day, Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by

the province in which the section is located and any day on which the offices of the Canadian Section of the Secretariat are officially closed in whole or in part,

(b) with respect to the Mexican Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Constitution Day (February 5), Benito Juárez's Birthday (March 21), Labor Day (May 1), Battle of Puebla (May 5), Independence Day (September 16), Congressional Opening Day (November 1), Revolution Day (November 20), Transmission of the Federal Executive Branch (every six years on December 1), Christmas Day (December 25), any day designated as a statutory holiday by the Federal Laws or, in the case of Ordinary Elections, by the Local Electoral Laws and any day on which the offices of the Mexican Section of the Secretariat are officially closed in whole or in part, and

(c) with respect to the United States Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), Presidents' Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any day designated as a holiday by the President or the Congress of the United States and any day on which the offices of the Government of the United States located in the District of Columbia or the offices of the United States Section of the Secretariat are officially closed in whole or in part; (*jour férié*) (*días inhábiles*)

"Mexico" means the United Mexican States; (*Mexique*) (*Mexico*)

"official publication" means

(a) in the case of the Government of Canada, the *Canada Gazette*,

(b) in the case of the Government of Mexico, the *Diario Oficial de la Federación*, and

(c) in the case of the Government of the United States, the *Federal Register*; (*journal officiel*) (*publicación oficial*)

"Party" means the Government of Canada, the Government of Mexico or the Government of the United States; (*Partie*) (*Parte*)

"Responding Party" means the Party against whom an allegation is made under Article 1905.1 of the Agreement; (*Partie visée par la plainte*) (*Parte demandada*)

"responsible Secretariat" means the section of the Secretariat of the Responding Party; (*Secrétariat responsable*) (*Secretariado responsable*)

"responsible Secretary" means the Secretary of the responsible Secretariat; (*secrétaire responsable*) (*Secretario responsable*)

"Secretariat" means the Secretariat established pursuant to Article 2002 of the Agreement; (*Secrétariat*) (*Secretariado*)

"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; (*secrétaire*) (*Secretario*)

"special committee" means a special committee established pursuant to Article 1905 of the Agreement; (*comité spécial*) (*comite especial*)

"United States" means the United States of America. (*États-Unis*) (*Estados Unidos*)

Operation of the Special Committee

4. (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 committee members may agree.

(2) A special committee may conduct meetings or exchange information by any means, including by means of a telephone conference call or facsimile or computer transmission.

5. The members of a special committee shall select from among themselves a chairperson, who shall preside over all meetings and hearings of the special committee.

6. The chairperson of the special committee shall fix the date and time of its meetings in consultation with other special committee members and the responsible Secretary.

7. 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.

8. 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 36.

9. (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 chairperson the authority to make decisions regarding internal procedures or routine administrative matters.

10. 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 1905.1 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 1905.8(b) 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.

Service of Documents

11. A document to be filed by an involved Party with the responsible Secretariat shall
- (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

12. All written submissions and responses filed with a responsible Secretariat shall be accompanied by four copies thereof.
13. (1) A request for the establishment of a special committee under Article 1905.2 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.
14. 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.
15. 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.
16. A special committee may allow each involved Party the opportunity to make an equal number of further written submissions, within such time as may be fixed by the special committee, having regard to the time limits fixed by Annex 1905.6 to Chapter Nineteen of the Agreement.
17. The responsible Secretary shall 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

18. (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.
19. Unless the involved Parties otherwise agree, special committee hearings shall take place at the offices of the responsible Secretariat.
20. (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.

21. 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.

22. 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

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

24. 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

25. (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

26. In accordance with paragraph (b) of Annex 1905.6 to Chapter Nineteen of the Agreement, a special committee shall prepare and present to the involved Parties an initial report, wherever practicable, within 60 days after the appointment of the last member of the special committee.

27. The involved Parties may comment in writing or, at the request of the special committee, orally, on an initial report of a special committee within 14 days after the initial report is presented.

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

29. (1) A special committee shall issue a final report, together with any separate opinions rendered by individual committee members, within 30 days after the presentation of its initial report.

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

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

(4) Unless the involved Parties otherwise agree,

(a) within 10 days after the final report is forwarded to the involved Parties, the involved Secretaries shall 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 members or written views of either involved Party are available to the public at the offices of the responsible Secretariat; and

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

Reconvening of Special Committee

30. Where a special committee has made an affirmative finding with respect to grounds specified in Article 1905.1 of the Agreement, a Responding Party may request that the special committee be reconvened by filing a request with the responsible Secretariat

(a) where the Responding Party is requesting that the special committee determine whether 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) where the Responding Party is requesting that the special committee determine whether a suspension of benefits by the Complaining Party under Article 1905.8 of the Agreement is manifestly excessive, at any time after the suspension was made.

31. (1) Where a request referred to in subrule 30(a) is filed before the fortieth day of the 60-day consultation period referred to in Article 1905.8 of the Agreement, the special committee shall endeavour 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 32 to 34 apply with respect to requests referred to in subrule 30(a) that are filed on or after the fortieth day of the 60-day consultation period referred to in Article 1905.8 and to requests referred to in subrule 30(b).

32. (1) At the time of filing a request pursuant to rule 30, 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) within 20 days after that submission is filed.

33. (1) At the time of filing a request pursuant to rule 30 or a written response pursuant to subrule 32(2), an involved Party may request an opportunity to present oral argument in support of its request or response.

(2) Where 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.

34. The special committee shall, within 45 days of the filing of a request pursuant to rule 30, present to the involved Parties a written report containing its determination pursuant to Article 1905.10 of the Agreement.

35. Subrules 29(2) to (4) apply, with such modifications as are necessary, to reports referred to in subrule 31(1) and rule 34.

Completion of Special Committee Proceedings

36. (1) On completion of a special committee proceeding, as determined by the special committee in consultation with the involved Parties, the special committee shall 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 shall cause a notice issued under subrule (1) to be published in the official publications of the involved Parties.

37. 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

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

39. (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

40. (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

41. 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.

42. (1) In computing any time period fixed in or under these rules, the day or date 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) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, 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 that falls within the time period shall be excluded from the computation.

Responsibilities of the Responsible Secretary

43. 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.

44. The responsible Secretary shall 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

45. Where 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 member; and

(b) where the disability, disqualification or death occurs after oral argument has begun, the chairperson may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute member.

Translation and Interpretation

46. (1) Subject to Rule 47, each involved Party shall,

(a) within a reasonable period of time after the appointment of the last special committee member, advise the responsible Secretary in writing of the language in which its written submissions of the other involved Party; and

(b) within a reasonable period of time 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 advice pursuant to subrule (1), the responsible Secretary shall promptly notify the other involved Secretary, the other involved Party and the special committee.

47. (1) In lieu of the procedure set out in rule 46, a Party may advise its Secretary of

(a) the language in which 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) the language in which it will present oral arguments, and in which it wishes to hear oral arguments, at all special committee hearings.

(2) On receipt of advice pursuant to subrule (1), a Secretary shall promptly notify the other Secretaries and Parties accordingly.

48. Where 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 shall arrange for the translation of the written submission or for the provision of interpreters to provide simultaneous translation at the hearing, as case may be.

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

50. (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.