

Rules of Procedure for Article 1904- Binational Panel Reviews

Preamble

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 1904.14 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 panel reviews conducted pursuant to Article 1904 of the Agreement.

Short title

1. These rules may be cited as the NAFTA Article 1904 Panel Rules.

Statement of General Intent

2. These rules are intended to give effect to the provisions of Chapter Nineteen of the Agreement with respect to panel reviews conducted pursuant to Article 1904 of the Agreement and are designed to result in decisions of panels within 315 days after the commencement of the panel review. The purpose of these rules is to secure the just, speedy and inexpensive review of final determinations in accordance with the objectives and provisions of Article 1904. Where a procedural question arises that is not covered by these rules, a panel may adopt the procedure to be followed in the particular case before it by analogy to these rules or may refer for guidance to rules of procedure of a court that would otherwise have had jurisdiction in the importing country. In the event of any inconsistency between the provisions of these rules and the Agreement, the Agreement shall prevail.

Definitions and Interpretation

3. In these rules, Agreement means the North American Free Trade Agreement; (Accord) (Tratado)

Code of Conduct means the code of conduct established by the Parties pursuant to Article 1909 of the Agreement; (Code de conduite) (Código de Conducta)

Complainant means a Party or interested person who files a Complaint pursuant to rule 39; (plaignant) (demandante)

Counsel means

- a) with respect to a panel review of a final determination made in Canada, a person entitled to appear as counsel before the Federal Court of Canada,
- b) with respect to a panel review of a final determination made in Mexico, a person entitled to appear as counsel before the Tribunal Fiscal de la Federación, and

- c) with respect to a panel review of a final determination made in the United States, a person entitled to appear as counsel before a federal court in the United States; (avocat) (representante)

Counsel of record means a counsel referred to in subrule 21(1); (avocat au dossier) (representante legal acreditado)

Deputy Minister means the Deputy Minister of National Revenue for Customs and Excise, or the successor thereto, and includes any person authorized to perform a power, duty or function of the Deputy Minister under the Special Import Measures Act, as amended; (sous-ministre) (Deputy Minister)

Final determination means, in the case of Canada, a definitive decision within the meaning of subsection 77.01(1) of the Special Import Measures Act, as amended; (décision définitive) (resolución definitiva)

First Request for Panel Review means

- a) where only one Request for Panel Review is filed for review of a final determination, that Request, and
- b) where more than one Request for Panel Review is filed for review of the same final determination, the Request that is filed first; (première demande de révision par un groupe spécial) (primera solicitud de revisión del panel)

Government information means

- a) with respect to a panel review of a final determination made in Canada, information
 - (i) the disclosure of which would be injurious to international relations or national defence or security,
 - (ii) that constitutes a confidence of the Queen's Privy Council for Canada, or
 - (iii) contained in government-to-government correspondence that is transmitted in confidence,
- b) with respect to a panel review of a final determination made in Mexico, information the disclosure of which is prohibited under the laws and regulations of Mexico, including
 - (i) data, statistics and documents referring to national security and strategic activities for scientific and technological development, and
 - (ii) information contained in government-to-government correspondence that is transmitted in confidence, and
- c) with respect to a panel review of a final determination made in the United States, information classified in accordance with Executive Order No. 12065 or its successor; (renseignements gouvernementaux) (información gubernamental)

Interested person means a person who, pursuant to the laws of the country in which a final determination was made, would be entitled to appear and be represented in a judicial review of the final determination; (personne intéressée) (persona interesada)

Investigating authority means the competent investigating authority that issued the final determination subject to review and includes, in respect of the issuance, amendment, modification or revocation of a Proprietary Information Access Order, any person authorized by the investigating authority; (autorité chargée de l'enquête) (autoridad investigadora)

Involved Secretariat means the section of the Secretariat located in the country of an involved Party; (Secrétariat en cause) (Secretariado implicado)

Llegal 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 United States, the Federal Register; (journal officiel) (publicación oficial)

Panel means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement for the purpose of reviewing a final determination; (groupe spécial) (panel)

Participant means any of the following persons who files a Complaint pursuant to rule 39 or a Notice of Appearance pursuant to rule 40:

- a) a Party,
- b) an investigating authority, and
- c) an interested person; (participant) (participante)

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

Person means

- a) an individual,
- b) a Party,
- c) an investigating authority,
- d) a government of a province, state or other political subdivision of the country of a Party,
- e) a department, agency or body of a Party or of a government referred to in paragraph (d), or
- f) a partnership, corporation or association; (personne) (persona)

Pleading means a Request for Panel Review, a Complaint, a Notice of Appearance, a Change of Service Address, a Notice of Motion, a Notice of Change of Counsel of Record, a brief or any other written submission filed by a participant; (acte de procédure) (promoción)

Privileged information means

- a) with respect to a panel review of a final determination made in Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, and with respect to which the privilege has not been waived,
- b) with respect to a panel review of a final determination made in Mexico,
 - (i) information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico, or
 - (ii) internal communications between officials of the Secretaría de Comercio y Fomento Industrial in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination, and
- c) with respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States with respect to which the privilege has not been waived; (renseignements protégés) (información privilegiada)

Proof of service means

- a) with respect to a panel review of a final determination made in Canada or Mexico,
 - (i) an affidavit of service stating by whom the document was served, the date on which it was served, where it was served and the manner of service, or
 - (ii) an acknowledgement of service by counsel for a participant stating by whom the document was served, the date on which it was served and the manner of service and, where the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel, and
- b) with respect to a panel review of a final determination made in the United States, a certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service; (preuve de signification) (comprobante de envío)

Proprietary information means

- a) with respect to a panel review of a final determination made in Canada, information referred to in subsection 84(3) of the Special Import Measures Act, as amended, or subsection 45(3) of the Canadian International Trade Tribunal Act, as amended, with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information,

- b) with respect to a panel review of a final determination made in Mexico, información confidencial, as defined under article 80 of the Ley de Comercio Exterior and its regulations, and
- c) with respect to a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the Tariff Act of 1930, as amended, and any regulations made under that Act; (renseignements de nature exclusive) (información confidencial)

Proprietary Information Access Application means

- a) with respect to a panel review of a final determination made in Canada, a disclosure undertaking in the prescribed form, which form
 - (i) in respect of a final determination by the Deputy Minister, is available from the Deputy Minister, and
 - (ii) in respect of a final determination by the Tribunal, is available from the Tribunal,
- b) with respect to a panel review of a final determination made in Mexico, a disclosure undertaking in the prescribed form, which form is available from the Secretaría de Comercio y Fomento Industrial, and
- c) with respect to a panel review of a final determination made in the United States, a Protective Order Application
 - (i) in respect of a final determination by the International Trade Administration of the United States Department of Commerce, in a form prescribed by, and available from, the International Trade Administration of the United States Department of Commerce, and
 - (ii) in respect of a final determination by the United States International Trade Commission, in a form prescribed by, and available from, the United States International Trade Commission; (demande relative à la communication de renseignements) (compromiso de confidencialidad)

Proprietary Information Access Order means

- a) in the case of Canada, a Disclosure Order issued by the Deputy Minister or the Tribunal pursuant to a Proprietary Information Access Application,
- b) in the case of Mexico, a Disclosure Order issued by the Secretaría de Comercio y Fomento Industrial pursuant to a Proprietary Information Access Application, and
- c) in the case of the United States, a Protective Order issued by the International Trade Administration of the United States Department of Commerce or the United States International Trade Commission pursuant to a Proprietary Information Access

Application; (ordonnance relative à la communication de renseignements)
(autorización de acceso a la información confidencial)

Responsible Secretariat means the section of the Secretariat located in the country in which the final determination under review was made; (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)

Service address means

- a) with respect to a Party, the address filed with the Secretariat as the service address of the Party, including any facsimile number submitted with that address,
- b) with respect to a participant other than a Party, the address of the counsel of record for the person, including any facsimile number submitted with that address or, where the person is not represented by counsel, the address set out by the participant in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the participant may be served, including any facsimile number submitted with that address, or
- c) where a Change of Service Address has been filed by a Party or participant, the address set out as the new service address in that form, including any facsimile number submitted with that address; (adresse aux fins de signification) (domicilio para oír y recibir notificaciones)

Service list means, with respect to a panel review,

- a) where the final determination was made in Canada, a list comprising the other involved Party and
 - (i) in the case of a final determination made by the Deputy Minister, persons named on the list maintained by the Deputy Minister who participated in the proceedings before the Deputy Minister and who were exporters or importers of goods of the country of the other involved Party or complainants referred to in section 34 of the Special Import Measures Act, as amended, and
 - (ii) in the case of a final determination made by the Tribunal, persons named on the list maintained by the Tribunal of parties in the proceedings before the Tribunal who were exporters or importers of goods of the country of the other

involved Party, complainants referred to in section 31 of the Special Import Measures Act, as amended, or other domestic parties whose interest in the findings of the Tribunal is with respect to goods of the country of the other involved Party, and

- b) where the final determination was made in Mexico or the United States, the list, maintained by the investigating authority of persons who have been served in the proceedings leading to the final determination; (liste de signification) (lista de correo)

Tribunal means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf; (Tribunal) (Tribunal)

United States means the United States of America. (États-Unis)

4. The definitions set forth in Article 1911 of the Agreement and Annex 1911 to Chapter Nineteen of the Agreement are hereby incorporated into these rules.

5. Where these rules require that notice be given, it shall be given in writing.

PART I GENERAL

Duration and Scope of Panel Review

6. A panel review commences on the day on which a first Request for Panel Review is filed with the Secretariat and terminates on the day on which a Notice of Completion of Panel Review is effective.

7. A panel review shall be limited to

- a) the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review; and
- b) procedural and substantive defenses raised in the panel review.

Responsibilities of the Secretary

8. The normal business hours of the Secretariat, during which the offices of the Secretariat shall be open to the public, shall be from 9:00 a.m. to 5:00 p.m. on each weekday other than

- a) in the case of the United States Section of the Secretariat, legal holidays of that Section;
- b) in the case of the Canadian Section of the Secretariat, legal holidays of that Section; and
- c) in the case of the Mexican Section of the Secretariat, legal holidays of that Section.

9. The responsible Secretary shall provide administrative support for each panel review and shall make the arrangements necessary for the oral proceedings and meetings of each panel, including, if required, interpreters to provide simultaneous translation.

10. (1) Each Secretary shall maintain a file for each panel review. Subject to subrules (3) and (4), the file shall be comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these rules, in the panel review.

(2) The file number assigned to a first Request for Panel Review shall be the Secretariat file number for all documents filed or issued in that panel review. All documents filed shall be stamped by the Secretariat to show the date and time of receipt.

(3) Where, after notification of the selection of a panel pursuant to rule 42, a document is filed that is not provided for in these rules or that is not in accordance with the rules, the responsible Secretary may refer the unauthorized filing to the chairperson of the Panel for instructions, provided such authority has been delegated by the Panel to its chairperson pursuant to rule 17.

(4) On a referral referred to in subrule (3), the chairperson may instruct the responsible Secretary to

- a) retain the document in the file, without prejudice to a motion to strike such document;
or
- b) return the document to the person who filed the document, without prejudice to a motion for leave to file the document.

11. The responsible Secretary shall forward to the other involved Secretary a copy of all documents filed in the office of the responsible Secretary in a panel review and of all orders and decisions issued by the panel.

12. Where under these rules a responsible Secretary is required to publish a notice or other document in the official publications of the involved Parties, the responsible Secretary and the other involved Secretary shall cause the notice or other document to be published in the official publication of the country in which that section of the Secretariat is located.

13. (1) Each Secretary and every member of the staff of the Secretariat shall, before taking up duties, file a Proprietary Information Access Application with each of the Deputy Minister, the Tribunal, the Secretaría de Comercio y Fomento Industrial, the International Trade Administration of the United States Department of Commerce and the United States International Trade Commission.

(2) Where a Secretary or a member of the staff of the Secretariat files a Proprietary Information Access Application in accordance with subrule (1), the appropriate investigating authority shall issue to the Secretary or to the member a Proprietary Information Access Order.

14. (1) The responsible Secretary shall file with the investigating authority one original, and any additional copies required by the investigating authority, of every Proprietary Information Access Application and any amendments or modifications thereto, filed by a panelist, assistant to a panelist, court reporter, interpreter or translator pursuant to rule 47.

(2) The responsible Secretary shall ensure that every panelist, assistant to a panelist, court reporter, interpreter and translator, before taking up duties in a panel review, files with the responsible Secretariat a copy of a Proprietary Information Access Order.

15. Where a document containing proprietary information or privileged information is filed with the responsible Secretariat, each involved Secretary shall ensure that

- a) the document is stored, maintained, handled and distributed in accordance with the terms of any applicable Proprietary Information Access Order;
- b) the inner wrapper of the document is clearly marked to indicate that it contains proprietary information or privileged information; and
- c) access to the document is limited to officials of, and counsel for, the investigating authority whose final determination is under review and
 - (i) in the case of proprietary information, the person who submitted the proprietary information to the investigating authority or counsel for that person and any persons who have been granted access to the information under a Proprietary Information Access Order with respect to the document, and
 - (ii) in the case of privileged information filed in a panel review of a final determination made in the United States, persons with respect to whom the panel has ordered disclosure of the privileged information under rule 52, if the persons have filed with the responsible Secretariat a Proprietary Information Access Order with respect to the document.

16. (1) Each Secretary shall permit access by any person to the information in the file in a panel review that is not proprietary information or privileged information and shall provide copies of that information on request and payment of an appropriate fee.

(2) Each Secretary shall, in accordance with subrule 15(c) and the terms of the applicable Proprietary Information Access Order or order of the panel,

- a) permit access to proprietary information or privileged information in the file of a panel review; and
- b) on payment of an appropriate fee, provide a copy of the information referred to in subrule (a).

(3) No document filed in a panel review shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a panel.

Internal Functioning of Panels

17. (1) A panel may adopt its own internal procedures, not inconsistent with these rules, for routine administrative matters.

(2) A panel may delegate to its chairperson

- a) the authority to accept or reject filings in accordance with subrule 10(4); and
- b) the authority to grant motions consented to by all participants, other than a motion filed pursuant to rule 20 or 52, a motion for remand of a final determination or a motion that is inconsistent with an order or decision previously made by the panel.

(3) A decision of the chairperson referred to in subrule (2) shall be issued as an order of the panel.

(4) Subject to subrule 26(b), meetings of a panel may be conducted by means of a telephone conference call.

18. Only panelists may take part in the deliberations of a panel, which shall take place in private and remain secret. Staff of the involved Secretariats and assistants to panelists may be present by permission of the panel. Computation of Time

19. (1) In computing any time period fixed in these rules or by an order or decision of a panel, 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) 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.

20. (1) A panel may extend any time period fixed in these rules if

- a) adherence to the time period would result in unfairness or prejudice to a participant or the breach of a general legal principle of the country in which the final determination was made;
- b) the time period is extended only to the extent necessary to avoid the unfairness, prejudice or breach;
- c) the decision to extend the time period is concurred in by four of the five panelists; and

- d) in fixing the extension, the panel takes into account the intent of the rules to secure just, speedy and inexpensive reviews of final determinations.
- (2) A participant may request an extension of time by filing a Notice of Motion no later than the tenth day prior to the last day of the time period. Any response to the Notice of Motion shall be filed no later than seven days after the Notice of Motion is filed.
- (3) A participant who fails to request an extension of time pursuant to subrule (2) may file a notice of motion for leave to file out of time, which shall include reasons why additional time is required and why the participant has failed to comply with the provisions of subrule (2).
- (4) The panel will normally rule on such a motion before the last day of the time period which is the subject of the motion.

Counsel of Record

- 21. (1) A counsel who signs a document filed pursuant to these rules on behalf of a participant shall be the counsel of record for the participant from the date of filing until a change is effected in accordance with subrule (2).
- (2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and other participants. Filing, Service and Communications
- 22. (1) Subject to subrule 46(1), rule 47 and subrules 52(3) and 73(2)(a), no document is filed with the Secretariat until one original and eight copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.
- (2) The responsible Secretariat shall accept, date and time stamp and place in the appropriate file every document submitted to the responsible Secretariat.
- (3) Receipt, date and time stamping or placement in the file of a document by the responsible Secretariat does not constitute a waiver of any time period fixed for filing or an acknowledgement that the document has been filed in accordance with these rules.
- 23. The responsible Secretary shall be responsible for the service of
 - a) Notices of Intent to Commence Judicial Review and Complaints on each Party;
 - b) Requests for Panel Review on the Parties, the investigating authority and the persons listed on the service list; and
 - c) Notices of Appearance, Proprietary Information Access Orders granted to panelists, assistants to panelists, court reporters, interpreter or translators and any amendments or modifications thereto or notices of revocation thereof, decisions and orders of a panel, Notices of Final Panel Action and Notices of Completion of Panel Review on the participants.

24. (1) Subject to subrules (4) and (5), all documents filed by a participant, other than the administrative record, any supplementary remand record and any document required by rule 23 to be served by the responsible Secretary, shall be served by the participant on the counsel of record of each of the other participants, or where a participant is not represented by counsel, on the participant.

(2) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(3) Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the expedited delivery courier or expedited mail service.

(4) A document containing proprietary information or privileged information shall be filed and served under seal in accordance with rule 44, and shall be served only on

- a) the investigating authority; and
- b) participants who have been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel.

(5) A complainant shall serve a Complaint on the investigating authority and on all persons listed on the service list. 25. Subject to subrule 26(a), a document may be served by

- a) delivering a copy of the document to the service address of the participant;
- b) sending a copy of the document to the service address of the participant by facsimile transmission or by expedited delivery courier or expedited mail service, such as express mail in the United States or Priority Post in Canada; or
- c) personal service on the participant. 26. Where proprietary information or privileged information is disclosed in a panel review to a person pursuant to a Proprietary Information Access Order, the person shall not (a) file, serve or otherwise communicate the proprietary information or privileged information by facsimile transmission; or
- d) communicate the proprietary information or privileged information by telephone.

27. Service on an investigating authority does not constitute service on a Party and service on a Party does not constitute service on an investigating authority. Pleadings and Simultaneous Translation of Panel Reviews in Canada

28. Rules 29 to 31 apply with respect to a panel review of a final determination made in Canada.

29. Either English or French may be used by any person or panelist in any document or oral proceeding.

30. (1) Subject to subrule (2), any order or decision including the reasons therefor, issued by a panel shall be made available simultaneously in both English and French where

- a) in the opinion of the panel, the order or decision is in respect of a question of law of general public interest or importance; or
- b) the proceedings leading to the issuance of the order or decision were conducted in whole or in part in both English and French.

(2) Where

- a) an order or decision issued by a panel is not required by subrule (1) to be made available simultaneously in English and French, or
- b) an order or decision is required by subrule (1)(a) to be made available simultaneously in both English and French but the panel is of the opinion that to make the order or decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant, the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

31. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) Where a participant requests simultaneous translation of oral proceedings in a panel review, the request shall be made as early as possible in the panel review and preferably at the time of filing a Complaint or Notice of Appearance.

(3) Where the chairperson of a panel is of the opinion that there is a public interest in the panel review, the chairperson may direct the responsible Secretary to arrange for simultaneous translation of any of the oral proceedings in the panel review.

Costs

32. Each participant shall bear the costs of, and those incidental to, its own participation in a panel review.

PART II
COMMENCEMENT OF PANEL REVIEW

Notice of Intent to Commence Judicial Review

33. (1) Where an interested person intends to commence judicial review of a final determination, the interested person shall

- a) where the final determination was made in Canada, publish a notice to that effect in the Canada Gazette and serve a Notice of Intent to Commence Judicial Review on both involved Secretaries and on all persons listed on the service list; and
- b) where the final determination was made in Mexico or the United States, within 20 days after the date referred to in subrule (3)(b) or (c), serve a Notice of Intent to Commence Judicial Review on
 - (i) both involved Secretaries,
 - (ii) the investigating authority, and
 - (iii) all persons listed on the service list.

(2) Where the final determination referred to in subrule (1) was made in Canada, the Secretary of the Canadian Section of the Secretariat shall serve a copy of the Notice of Intent to Commence Judicial Review on the investigating authority.

(3) Every Notice of Intent to Commence Judicial Review referred to in subrule (1) shall include the following information (model form provided in the Schedule):

- a) the information set out in subrules 55(1)(c) to (f);
- b) the title of the final determination for which judicial review is sought, the investigating authority that issued the final determination, the file number assigned by the investigating authority and, if the final determination was published in an official publication, the appropriate citation, including the date of publication; and
- c) the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication.

Request for Panel Review

34. (1) A Request for Panel Review shall be made in accordance with the requirements of

- a) section 77.011 or 96.21 of the Special Import Measures Act, as amended, and any regulations made thereunder;
- b) section 516A of the Tariff Act of 1930, as amended, and any regulations made thereunder;

- c) section 404 of the United States North American Free Trade Agreement Implementation Act and any regulations made thereunder; or (d) articles 97 and 98 of the Ley de Comercio Exterior and its regulations.

(2) A Request for Panel Review shall contain the following information (model form provided in the Schedule):

- a) the information set out in subrule 55(1);
- b) the title of the final determination for which panel review is requested, the investigating authority that issued the final determination, the file number assigned by the investigating authority and, if the final determination was published in an official publication, the appropriate citation;
- c) the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication;
- d) where a Notice of Intent to Commence Judicial Review has been served and the sole reason that the Request for Panel Review is made is to require review of the final determination by a panel, a statement to that effect; and
- e) the service list, as defined in rule 3.

35. (1) On receipt of a first Request for Panel Review, the responsible Secretary shall

- a) forthwith forward a copy of the Request to the other involved Secretary;
- b) forthwith inform the other involved Secretary of the Secretariat file number; and
- c) serve a copy of the first Request for Panel Review on the persons listed on the service list together with a statement setting out the date on which the Request was filed and stating that
 - (i) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days after the filing of the first Request for Panel Review,
 - (ii) a Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review, and
 - (iii) the panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

(2) On the filing of a first Request for Panel Review, the responsible Secretary shall forthwith publish a notice of that Request in the official publications of the involved Parties, stating that a Request for Panel Review has been received and specifying the date on which the Request was filed, the final determination for which panel review is requested and the information set out in subrule (1)(c).

Joint Panel Reviews

36. (1) Subject to rule 37, where

- a) a panel is established to review a final determination made under paragraph 41(1)(a) of the Special Import Measures Act, as amended, with respect to particular goods of the United States or Mexico and a Request for Panel Review of a final determination made under subsection 43(1) of that Act with respect to those goods is filed, or
- b) a panel is established to review a final determination made under section 705(a) or 735(a) of the Tariff Act of 1930, as amended, with respect to particular goods of Canada or Mexico and a Request for Panel Review of a final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, within 10 days after that Request is filed, a participant in the former panel review, the investigating authority in the latter panel review or an interested person listed in the service list of the latter panel review may file a motion in the former panel review requesting that both final determinations be reviewed jointly by one panel.

(2) Any participant in the former panel review, the investigating authority in the latter panel review or an interested person listed in the service list of the latter panel review who certifies an intention to become a participant in the latter panel review may, within 10 days after a motion is filed under subrule (1), file an objection to the motion, in which case the motion shall be deemed to be denied and separate panel reviews shall be held.

37. (1) Where a panel is established to review a final determination made under paragraph 41(1)(a) of the Special Import Measures Act, as amended, that applies with respect to particular goods of the United States or Mexico and a Request for Panel Review of a negative final determination made under subsection 43(1) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

(2) Where a panel is established to review a final determination made under section 705(a) or 735(a) of the Tariff Act of 1930, as amended, that applies with respect to particular goods of Canada or Mexico and a Request for Panel Review of a negative final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

38. (1) Subject to subrules (2) and (3), where final determinations are reviewed jointly pursuant to rule 36 or 37, the time periods fixed under these rules for the review of the final determination made under subsection 43(1) of the Special Import Measures Act, as amended,

or section 705(b) or 735(b) of the Tariff Act of 1930, as amended, shall apply to the joint review, commencing with the date fixed for filing briefs pursuant to rule 57.

(2) Unless otherwise ordered by a panel as a result of a motion under subrule (3), where final determinations are reviewed jointly pursuant to rule 37, the panel shall issue its decision with respect to the final determination made under subsection 43(1) of the Special Import Measures Act, as amended, or section 705(b) or 735(b) of the Tariff Act of 1930, as amended, and where the panel remands the final determination to the investigating authority and the Determination on Remand is affirmative, the panel shall thereafter issue its decision with respect to the final determination made under paragraph 41(1)(a) of the Special Import Measures Act, as amended, or section 705(a) or 735(a) of the Tariff Act of 1930, as amended.

(3) Where the final determinations are reviewed jointly pursuant to rule 36 or 37, any participant may, unilaterally or with the consent of the other participants, request by motion that time periods, other than the time periods referred to in subrule (1), be fixed for the filing of pleadings, oral proceedings, decisions and other matters.

(4) A Notice of Motion pursuant to subrule (3) shall be filed no later than 10 days after the date fixed for filing Notices of Appearance in the review of the final determination made under subsection 43(1) of the Special Import Measures Act, as amended, or section 705(b) or 735(b) of the Tariff Act of 1930, as amended.

(5) Unless otherwise ordered by a panel, where the panel has not issued a ruling on a motion filed pursuant to subrule (3) within 30 days after the filing of the Notice of Motion, the motion shall be deemed denied.

Complaint

39. (1) Subject to subrule (3), any interested person who intends to make allegations of errors of fact or law, including challenges to the jurisdiction of the investigating authority, with respect to a final determination, shall file with the responsible Secretariat, within 30 days after the filing of a first Request for Panel Review of the final determination, a Complaint, together with proof of service on the investigating authority and on all persons listed on the service list.

(2) Every Complaint referred to in subrule (1) shall contain the following information (model form provided in the Schedule):

- a) the information set out in subrule 55(1);
- b) the precise nature of the Complaint, including the applicable standard of review and the allegations of errors of fact or law, including challenges to the jurisdiction of the investigating authority;
- c) a statement describing the interested person's entitlement to file a Complaint under this rule; and

- d) where the final determination was made in Canada, a statement as to whether the complainant
 - (i) intends to use English or French in pleadings and oral proceedings before the panel, and
 - (ii) requests simultaneous translation of any oral proceedings.
- (3) Only an interested person who would otherwise be entitled to commence proceedings for judicial review of the final determination may file a Complaint.
- (4) Subject to subrule (5), an amended Complaint shall be filed no later than 5 days before the expiration of the time period for filing a Notice of Appearance pursuant to rule 40.
- (5) An amended Complaint may, with leave of the panel, be filed after the time limit set out in subrule (4) but no later than 20 days before the expiration of the time period for filing briefs pursuant to subrule 57(1).
- (6) Leave to file an amended Complaint may be requested of the panel by the filing of a Notice of Motion for leave to file an amended Complaint accompanied by the proposed amended Complaint.
- (7) Where the panel does not grant a motion referred to in subrule (6) within the time period for filing briefs pursuant to subrule 57(1), the motion shall be deemed to be denied.

Notice of Appearance

40. (1) Within 45 days after the filing of a first Request for Panel Review of a final determination, the investigating authority and any other interested person who proposes to participate in the panel review and who has not filed a Complaint in the panel review shall file with the responsible Secretariat a Notice of Appearance containing the following information (model form provided in the Schedule):

- a) the information set out in subrule 55(1);
- b) a statement as to the basis for the person's claim of entitlement to file a Notice of Appearance under this rule;
- c) in the case of a Notice of Appearance filed by the investigating authority, any admissions with respect to the allegations set out in the Complaints;
- d) a statement as to whether appearance is made
 - (i) in support of some or all of the allegations set out in a Complaint under subrule 39(2)(b),
 - (ii) in opposition to some or all of the allegations set out in a Complaint under subrule 39(2)(b), or

- (iii) in support of some of the allegations set out in a Complaint under subrule 39(2)(b) and in opposition to some of the allegations set out in a Complaint under subrule 39(2)(b); and
 - e) where the final determination was made in Canada, a statement as to whether the person filing the Notice of Appearance
 - (i) intends to use English or French in pleadings and oral proceedings before the panel, and
 - (ii) requests simultaneous translation of any oral proceedings.
- (2) Any complainant who intends to appear in opposition to allegations set out in a Complaint under subrule 39(2)(b) shall file a Notice of Appearance containing the statements referred to in subrules (1)(b) and (1)(d)(ii) or (iii).

Record for Review

41. (1) The investigating authority whose final determination is under review shall, within 15 days after the expiration of the time period fixed for filing a Notice of Appearance, file with the responsible Secretariat

- a) nine copies of the final determination, including reasons for the final determination;
- b) two copies of an Index comprised of a descriptive list of all items contained in the administrative record, together with proof of service of the Index on all participants; and }
- c) subject to subrules (3), (4) and (5), two copies of the administrative record.

(2) An Index referred to in subrule (1) shall, where applicable, identify those items that contain proprietary information, privileged information or government information by a statement to that effect.

(3) Where a document containing proprietary information is filed, it shall be filed under seal in accordance with rule 44.

(4) No privileged information shall be filed with the responsible Secretariat unless the investigating authority waives the privilege and voluntarily files the information or the information is filed pursuant to an order of a panel.

(5) No government information shall be filed with the responsible Secretariat unless the investigating authority, after having reviewed the government information and, where applicable, after having pursued appropriate review procedures, determines that the information may be disclosed.

PART III
PANELS

Announcement of Panel

42. On the completion of the selection of a panel, the responsible Secretary shall notify the participants and the other involved Secretary of the names of the panelists.

Violation of Code of Conduct

43. Where a participant believes that a panelist or an assistant to a panelist is in violation of the Code of Conduct, the participant shall forthwith 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.

PART IV

PROPRIETARY INFORMATION AND PRIVILEGED INFORMATION

Filing or Service under Seal

44. (1) Where, under these rules, a document containing proprietary information or privileged information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed or served in accordance with this rule and, where the document is a pleading, in accordance with rule 56.

(2) A document filed or served under seal shall be

- a) bound separately from all other documents;
- b) clearly marked
 - (i) with respect to a panel review of a final determination made in Canada,
 - A. in the case of a document containing proprietary information, Proprietary, Confidential, De nature exclusive or Confidentiel, and
 - B. in the case of a document containing privileged information, Privileged or Protégé,
 - (ii) with respect to a panel review of a final determination made in Mexico,
 - A. in the case of a document containing proprietary information, Confidencial, and
 - B. in the case of a document containing privileged information, Privilegiada, and
 - (iii) with respect to a panel review of a final determination made in the United States,
 - A. in the case of a document containing proprietary information, Proprietary, and
 - B. in the case of a document containing privileged information, Privileged; and
- c) contained in an opaque inner wrapper and an opaque outer wrapper.

(3) An inner wrapper referred to in subrule (2)(c) shall indicate

- a) that proprietary information or privileged information is enclosed, as the case may be; and
- b) the Secretariat file number of the panel review.

45. Filing or service of proprietary information or privileged information with the Secretariat does not constitute a waiver of the designation of the information as proprietary information or privileged information.

Proprietary Information Access Orders

46. (1) A counsel of record, or a professional retained by, or under the control or direction of, a counsel of record, who wishes disclosure of proprietary information in a panel review shall file a Proprietary Information Access Application with respect to the proprietary information as follows:

- a) with the responsible Secretariat, four copies; and
- b) with the investigating authority, one original and any additional copies that the investigating authority requires.

(2) A Proprietary Information Access Application referred to in subrule (1) shall be served

- a) where the Proprietary Information Access Application is filed before the expiration of the time period fixed for filing a Notice of Appearance in the panel review, on the persons listed in the service list; and
- b) in any other case, on all participants other than the investigating authority, in accordance with subrule 24(1).

47. (1) Every panelist, assistant to a panelist, court reporter, interpreter and translator shall, before taking up duties in a panel review, provide to the responsible Secretary a Proprietary Information Access Application.

(2) A panelist, assistant to a panelist, court reporter, interpreter or translator who amends or modifies a Proprietary Information Access Application shall provide the responsible Secretariat with a copy of the amendment or modification.

(3) Where the investigating authority receives, pursuant to subrule 14(1), a Proprietary Information Access Application or an amendment or modification thereto, the investigating authority shall issue a Proprietary Information Access Order, amendment or modification accordingly.

48. The investigating authority shall, within 30 days after a Proprietary Information Access Application is filed in accordance with subrule 46(1), serve on the person who filed the Proprietary Information Access Application

- a) a Proprietary Information Access Order; or
- b) a notification in writing setting out the reasons why a Proprietary Information Access Order is not issued

49. (1) Where

- a) an investigating authority refuses to issue a Proprietary Information Access Order to a counsel of record or to a professional retained by, or under the control or direction of, a counsel of record, or
- b) an investigating authority issues a Proprietary Information Access Order with terms unacceptable to the counsel of record, the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the panel review the decision of the investigating authority.

(2) Where, after consideration of any response made by the investigating authority referred to in subrule (1), the panel decides that a Proprietary Information Access Order should be issued or that the terms of a Proprietary Information Access Order should be modified or amended, the panel shall so notify counsel for the investigating authority.

(3) Where the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the panel may issue such orders as are just in the circumstances, including an order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings.

50. (1) Where a Proprietary Information Access Order is issued to a person in a panel review, the person shall file with the responsible Secretariat a copy of the Proprietary Information Access Order.

(2) Where a Proprietary Information Access Order is revoked, amended or modified by the investigating authority, the investigating authority shall provide to the responsible Secretariat and to all participants a copy of the Notice of Revocation, amendment or modification.

51. Where a Proprietary Information Access Order is issued to a person, the person is entitled

- a) to access to the document; and
- b) where the person is a counsel of record, to a copy of the document containing the proprietary information, on payment of an appropriate fee, and to service of pleadings containing the proprietary information.

Privileged Information

52. (1) A Notice of Motion for disclosure of a document in the administrative record identified as containing privileged information shall set out

- a) the reasons why disclosure of the document is necessary to the case of the participant filing the Notice of Motion; and
 - b) a statement of any point of law or legal authority relied on, together with a concise argument in support of disclosure.
- (2) Within 10 days after a Notice of Motion referred to in subrule (1) is filed, the investigating authority shall, if it intends to respond, file the following in response:
- a) an affidavit of an official of the investigating authority stating that, since the filing of the Notice of Motion, the official has examined the document and has determined that disclosure of the document would constitute disclosure of privileged information; and
 - b) a statement of any point of law or legal authority relied on, together with a concise argument in support of non-disclosure.
- (3) After having reviewed the Notice of Motion referred to in subrule (1) and any response filed under subrule (2), the panel may order
- a) that the document shall not be disclosed; or
 - b) that the investigating authority file two copies of the document under seal with the responsible Secretariat.
- (4) Where the panel has issued an order pursuant to subrule (3)(b), the panel shall select two panelists, one of whom shall be a lawyer who is a citizen of the country of one involved Party and the other of whom shall be a lawyer who is a citizen of the country of the other involved Party.
- (5) The two panelists selected under subrule (4) shall
- a) examine the document in camera; and
 - b) communicate their decision, if any, to the panel.
- (6) The decision referred to in subrule (5)(b) shall be issued as an order of the panel.
- (7) Where the two panelists selected under subrule (4) fail to come to a decision, the panel shall
- a) examine the document in camera; and
 - b) issue an order with respect to the disclosure of the document.
- (8) Where an order referred to in subrule (6) or (7) is to the effect that the document shall not be disclosed, the responsible Secretary shall return all copies of the document to the investigating authority by service under seal.
53. In a panel review of a final determination made in the United States, where, pursuant to rule 52, disclosure of a document is granted,

- a) the panel shall limit disclosure to
 - (i) persons who must have access in order to permit effective representation in the panel review,
 - (ii) persons, such as the Secretariat staff, court reporters, interpreters and translators, who must have access for administrative purposes in order to permit effective functioning of the panel, and
 - (iii) members of an Extraordinary Challenge Committee and their assistants who may need access pursuant to the NAFTA Extraordinary Challenge Committee Rules;
- b) the panel shall issue an order identifying by name and by title or position the persons who are entitled to access and shall allow for future access by new counsel of record and by members of an Extraordinary Challenge Committee and, as necessary, their assistants; and
- c) the investigating authority shall issue a Proprietary Information Access Order with respect to that document in accordance with the order of the panel.

Violations of Proprietary Information Access Applications or Orders

54. Where a person alleges that the terms of a Proprietary Information Access Application or of a Proprietary Information Access Order have been violated, the panel shall refer the allegations to the investigating authority for investigation and, where applicable, the imposition of sanctions in accordance with section 77.034 of the Special Import Measures Act, as amended, section 777(f) of the Tariff Act of 1930, as amended, or article 93 of the Ley de Comercio Exterior

PART V
WRITTEN PROCEEDINGS

Form and Content of Pleadings

55. (1) Every pleading filed in a panel review shall contain the following information:

- (a) the title of, and any Secretariat file number assigned for, the panel review;
- (b) a brief descriptive title of the pleading;
- (c) the name of the Party, investigating authority or interested person filing the document;
- (d) the name of counsel of record for the Party, investigating authority or interested person;
- (e) the service address, as defined in rule 3; and

(f) the telephone number of the counsel of record referred to in subrule (d) or, where an interested person is not represented by counsel, the telephone number of the interested person.

(2) Every pleading filed in a panel review shall be on paper 8 1/2 ö 11 inches (216 millimetres by 279 millimetres) in size. The text of the pleading shall be printed, typewritten or reproduced legibly on one side only with a margin of approximately 1 1/2 inches (40 millimetres) on the left-hand side with double spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs and columns of figures shall be presented in a readable form. Briefs and appendices shall be securely bound along the left-hand margin.

(3) Every pleading filed on behalf of a participant in a panel review shall be signed by counsel for the participant or, where the participant is not represented by counsel, by the participant.

56. (1) Where a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

- a) one set containing the proprietary information shall be filed under seal and
 - (i) with respect to a panel review of a final determination made in Canada, shall be labelled Proprietary, Confidential, Confidentiel or De nature exclusive, with the top of each page that contains proprietary information marked with the word Proprietary, Confidential, Confidentiel or De nature exclusive and with the proprietary information enclosed in brackets,
 - (ii) with respect to a panel review of a final determination made in Mexico, shall be labelled Confidencial, with the top of each page that contains proprietary information marked with the word Confidencial and with the proprietary information enclosed in brackets, and
 - (iii) with respect to a panel review of a final determination made in the United States, shall be labelled Proprietary, with the top of each page that contains proprietary information marked with the word Proprietary and with the proprietary information enclosed in brackets; and
- b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing proprietary information shall be filed and
 - (i) with respect to a panel review of a final determination made in Canada, shall be labelled Non-Proprietary, Non-Confidential, Non confidentiel or De nature non exclusive,
 - (ii) with respect to a panel review of a final determination made in Mexico, shall be labelled Noconfidencial, and
 - (iii) with respect to a panel review of a final determination made in the United States, shall be labelled Non-Proprietary, with each page from which proprietary information has been deleted marked to indicate the location from which the proprietary information was deleted.

(2) Where a participant files a pleading that contains privileged information, the participant shall file two sets of the pleading in the following manner:

- a) one set containing the privileged information shall be filed under seal and
 - (i) with respect to a panel review of a final determination made in Canada, shall be labelled Privileged or Protégé, with the top of each page that contains privileged information marked with the word Privileged or Protégé and with the privileged information enclosed in brackets,
 - (ii) with respect to a panel review of a final determination made in Mexico, shall be labelled Privilegiada, with the top of each page that contains privileged information marked with the word Privilegiada, and with the privileged information enclosed in brackets, and
 - (iii) with respect to a panel review of a final determination made in the United States, shall be labelled Privileged, with the top of each page that contains privileged information marked with the word Privileged and with the privileged information enclosed in brackets; and
- b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing privileged information shall be filed and
 - (i) with respect to a panel review of a final determination made in Canada, shall be labelled NonPrivileged or Non protégé,
 - (ii) with respect to a panel review of a final determination made in Mexico, shall be labelled No-privilegiada, and
 - (iii) with respect to a panel review of a final determination made in the United States, shall be labelled Non-Privileged, with each page from which privileged information has been deleted marked to indicate the location from which the privileged information was deleted. Filing of Briefs

57. (1) Subject to subrule 38(1), every participant who has filed a Complaint under rule 39 or a Notice of Appearance with a statement under subrule 40(1)(d) (i) or (iii) shall file a brief, setting forth grounds and arguments supporting allegations of the Complaint no later than 60 days after the expiration of the time period fixed, under subrule 41(1), for filing the administrative record.

(2) Every participant who has filed a Notice of Appearance with a statement under subrule 40(1)(d)(ii) or (iii) shall file a brief setting forth grounds and arguments opposing allegations of a Complaint no later than 60 days after the expiration of the time period for filing of briefs referred to in subrule (1).

(3) Every participant who has filed a brief pursuant to subrule (1) may file a brief replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2) no later than 15 days after the expiration of the time period for filing of briefs referred to in subrule (2). Reply briefs shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrule (2).

(4) An appendix containing authorities cited in all briefs filed under any of subrules (1) to (3) shall be filed with the responsible Secretariat within 10 days after the last day on which a brief under subrule (3) may be filed.

(5) Any number of participants may join in a single brief and any participant may adopt by reference any part of the brief of another participant.

(6) A participant may file a brief without appearing to present oral argument.

(7) Where a panel review of a final determination made by an investigating authority of United States with respect to certain goods involves issues that may relate to the final determination of the other investigating authority with respect to those goods, the latter investigating authority may file an amicus curiae brief in the panel review in accordance with subrule (2).

Failure to File Briefs

58. (1) In respect of a panel review of a final determination made in the United States or Canada, where a participant fails to file a brief within the time period fixed and no motion pursuant to rule 20 is pending, on a motion of another participant, the panel may order that the participant who fails to file a brief is not entitled

- a) to present oral argument;
- b) to service of any further pleadings, orders or decisions in the panel review; or
- c) to further notice of the proceedings in the panel review.

(2) Where

- a) no brief is filed by any complainant or by any participant in support of any of the complainants within the time periods established pursuant to these rules, and
- b) no motion pursuant to rule 20 is pending, the panel may, on its own motion or pursuant to the motion of a participant, issue an order to show cause why the panel review should not be dismissed.

(3) If, pursuant to an order under subrule (2), good cause is not shown, the panel shall issue an order dismissing the panel review.

(4) Where no brief is filed by an investigating authority, or by an interested person in support of the investigating authority, within the time period fixed in subrule 57(2), a panel may issue a decision referred to in rule 72.

Content of Briefs and Appendices

59. (1) Every brief filed pursuant to subrule 57(1) or (2) shall contain information, in the following order, divided into five parts:

Part I:

- a) A table of contents; and
- b) A table of authorities cited: The table of authorities shall contain references to all treaties, statutes and regulations cited, any cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to except documents from the administrative record. The table of authorities shall refer to the page(s) of the brief where each authority is cited and mark, with an asterisk in the margin, those authorities primarily relied on.

Part II: A statement of the case:

- a) in the brief of a complainant or of a participant filing a brief pursuant to subrule 57(1), this Part shall contain a concise statement of the relevant facts;
- b) in the brief of an investigating authority or of a participant filing a brief pursuant to subrule 57(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to the statement of facts set out in the briefs referred to in paragraph (a), including a concise statement of other facts relevant to its case; and
- c) in all briefs, references to evidence in the administrative record shall be made by page and, where practicable, by line.

Part III: A statement of the issues:

- a) in the brief of a complainant or of a participant filing a brief pursuant to subrule 57(1), this Part shall contain a concise statement of the issues; and
- b) in the brief of an investigating authority or of a participant filing a brief pursuant to subrule 57(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to each issue relevant to its case.

Part IV: Argument This Part shall consist of the argument setting out concisely the points of law relating to the issues, with applicable citations to authorities and the administrative record.

Part V: Relief

This part shall consist of a concise statement precisely identifying the relief requested.

(2) Paragraphs in Parts I to V of a brief may be numbered consecutively.

(3) A reply brief filed pursuant to rule 57(3) shall include a table of contents and a table of authorities, indicating those principally relied upon in the argument.

Appendix to the Briefs

60. (1) Authorities referred to in the briefs shall be included in an appendix, which shall be organized as follows: a table of contents, copies of all treaty and statutory references, references to regulations, cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to in the briefs except documents from the administrative record.

(2) The appendix required under subrule 57(4) shall be compiled by a participant who filed a brief under subrule 57(1) and who was so designated by all the participants who filed a brief. Each participant who filed a brief under subrule 57(2) shall provide the designated participant with a copy of each authority on which it primarily relied in its brief that was not primarily relied on in any other brief filed under subrule 57(1). Each participant who filed a brief under subrule 57(3) shall provide the designated participant with a copy of each authority on which it primarily relied in its brief that was not primarily relied on in briefs filed pursuant to subrule 57(1) or (2).

(3) The costs for compiling the appendix shall be borne equally by all participants who file briefs.

Motions

61. (1) A motion shall be made by Notice of Motion in writing (model form provided in the Schedule) unless the circumstances make it unnecessary or impracticable.

(2) Every Notice of Motion, and any affidavit in support thereof, shall be accompanied by a proposed order of the panel (model form provided in the Schedule) and shall be filed with the responsible Secretariat, together with proof of service on all participants.

(3) Every Notice of Motion shall contain the following information:

- a) the title of the panel review, the Secretariat file number for that panel review and a brief descriptive title indicating the purpose of the motion;
- b) a statement of the precise relief requested;
- c) a statement of the grounds to be argued, including a reference to any rule, point of law or legal authority to be relied on, together with a concise argument in support of the motion; and
- d) where necessary, references to evidence in the administrative record identified by page and, where practicable, by line.

(4) The pendency of any motion in a panel review shall not alter any time period fixed in these rules or by an order or decision of the panel.

(5) A Notice of Motion to which all participants consent shall be entitled a Consent Motion.

62. Subject to subrules 20(2) and 76(5), unless the panel otherwise orders, a participant may file a response to a Notice of Motion within 10 days after the Notice of Motion is filed.

63. (1) A panel may dispose of a motion based upon the pleadings filed pertaining to the motion.

(2) The panel may hear oral argument or, subject to subrule 26(b), direct that a motion be heard by means of a telephone conference call with the participants.

(3) A panel may deny a motion before responses to the Notice of Motion have been filed.

64. Where a panel chooses to hear oral argument or, pursuant to subrule 63(2), directs that a motion be heard by means of a telephone conference call with the participants, the responsible Secretary shall, at the direction of the chairperson, fix a date, time and place for the hearing of the motion and shall notify all participants of the same.

PART VI *ORAL PROCEEDINGS*

Location

65. Oral proceedings in a panel review shall take place at the office of the responsible Secretariat or at such other location as the responsible Secretary may arrange.

Pre-hearing Conference

66. (1) A panel may hold a pre-hearing conference, in which case the responsible Secretary shall give notice of the conference to all participants.

(2) A participant may request that the panel hold a pre-hearing conference by filing with the responsible Secretariat a written request setting out the matters that the participant proposes to raise at the conference.

(3) The purpose of a pre-hearing conference shall be to facilitate the expeditious advancement of the panel review by addressing such matters as

- a) the clarification and simplification of the issues;
- b) the procedure to be followed at the hearing of oral argument; and
- c) any outstanding motions.

(4) Subject to subrule 26(b), a pre-hearing conference may be conducted by means of a telephone conference call.

(5) Following a pre-hearing conference, the panel shall promptly issue an order setting out its rulings with respect to the matters considered at the conference.

Oral Argument

67. (1) A panel shall commence the hearing of oral argument no later than 30 days after the expiration of the time period fixed under subrule 57(3) for filing reply briefs. At the direction

of the panel, the responsible Secretary shall notify all participants of the date, time and place for the oral argument.

(2) Oral argument shall be subject to the time constraints set by the panel and shall, unless the panel otherwise orders, be presented in the following order:

- a) the complainants and any participant who filed a brief in support of the allegations set out in a Complaint or partly in support of the allegations set out in a Complaint and partly in opposition to the allegations set out in a Complaint;
- b) the investigating authority and any participant who filed a brief in opposition to the allegations set out in a Complaint, other than a participant referred to in subrule (a); and
- c) argument in reply, at the discretion of the panel.

(3) If a participant fails to appear at oral argument, the panel may hear argument on behalf of the participants who are present. If no participant appears, the panel may decide the case on the basis of briefs.

(4) Oral argument on behalf of a participant on a motion or at a hearing shall be conducted by the counsel of record for that participant or, where the participant is an individual appearing pro se, by the participant.

(5) Oral argument shall be limited to the issues in dispute.

Subsequent Authorities

68. (1) A participant who has filed a brief may bring to the attention of the panel,

- a) at any time before the conclusion of oral argument, an authority that is relevant to the panel review;
- b) at any time after the conclusion of oral argument and before the panel has issued its decision,
 - (i) an authority that was reported subsequent to the conclusion of oral argument, or
 - (ii) with the leave of the panel, an authority that is relevant to the panel review and that came to the attention of counsel of record after the conclusion of oral argument, by filing with the responsible Secretariat a written request, setting out the citation of the decision or judgment, the page reference of the brief of the participant to which the decision or judgment relates and a concise statement, of no more than one page in length, of the relevance of the decision or judgment.

(2) A request referred to in subrule (1) shall be filed as soon as possible after the issuance of the decision or judgment by the court.

(3) Where a request referred to in subrule (1) is filed with the responsible Secretariat, any other participant may, within five days after the date on which the request was filed, file a concise statement, of no more than one page in length, in response.

Oral Proceedings in Camera

69. During that part of oral proceedings in which proprietary information or privileged information is presented, a panel shall not permit any person other than the following persons to be present:

- a) the person presenting the proprietary information or privileged information;
- b) a person who has been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel;
- c) in the case of privileged information, a person as to whom the confidentiality of the privileged information has been waived; and
- d) officials of, and counsel for, the investigating authority

PART VII

DECISIONS AND COMPLETIONS OF PANEL REVIEWS

Orders, Decisions and Terminations

70. The responsible Secretary shall cause notice of every decision of a panel issued pursuant to rule 72 to be published in the official publications of the involved Parties.

71. (1) Where a Notice of Motion requesting dismissal of a panel review is filed by a participant, the panel may issue an order dismissing the panel review.

(2) Where a Notice of Motion requesting termination of a panel review is filed by a participant and is consented to by all the participants, and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting termination, the panel review is terminated and, if a panel has been appointed, the panelists are discharged.

72. A panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of the panelists, in accordance with Article 1904.8 of the Agreement. The decision will normally be released by noon on the date of issuance.

Panel Review of Action on Remand

73. (1) An investigating authority shall give notice of the action taken pursuant to a remand of the panel by filing with the responsible Secretariat a Determination on Remand within the time specified by the panel.

(2) If, on remand, the investigating authority has supplemented the administrative record,

- a) the investigating authority shall file with the responsible Secretariat an Index listing each item in the supplementary remand record, and a copy of each non-privileged item listed in that Index, within five days after the date on which the investigating authority filed the Determination on Remand with the panel;
- b) any participant who intends to challenge the Determination on Remand shall file a written submission with respect to the Determination on Remand within 20 days after the date on which the investigating authority filed the Index and supplementary remand record; and
- c) any response to the written submissions referred to in subrule (b) shall be filed by the investigating authority, and by any participant supporting the investigating authority, within 20 days after the last day on which written submissions in opposition to the Determination on Remand may be filed.

(3) If, on remand, the investigating authority has not supplemented the record,

- a) any participant who intends to challenge the Determination on Remand shall file a written submission within 20 days after the date on which the investigating authority filed the Determination on Remand with the panel; and
- b) any response to the written submissions referred to in subrule (a) shall be filed by the investigating authority, and by any participant filing in support of the investigating authority, within 20 days after the last day on which such written submissions may be filed.

(4) In the case of a panel review of a final determination made in Mexico, where a participant who fails to file a brief under rule 57 files a written submission pursuant to subrule (2) or (3), the submission shall be disregarded by the panel.

(5) If no written submissions are filed under subrule (2)(b) or (3)(a) within the time periods established by these rules, and if no motion pursuant to rule 20 is pending, the panel shall, within 10 days after the later of the due date for such written submissions and the date of the denial of a motion pursuant to rule 20, issue an order affirming the investigating authority's Determination on Remand.

(6) Where a Determination on Remand is challenged, the panel shall issue a written decision pursuant to rule 72, either affirming the Determination on Remand or remanding it to the investigating authority, no later than 90 days after the Determination on Remand is filed.

74. In setting the date by which a Determination on Remand shall be due from the investigating authority, the panel shall take into account, among other factors,

- a) the date that any Determination on Remand with respect to the same goods is due from the other investigating authority; and

- b) the effect the Determination on Remand from the other investigating authority might have on the deliberations of the investigating authority with respect to the making of a final Determination on Remand.

Re-examination of Orders and Decisions

75. A clerical error in an order or decision of a panel, or an error in an order or decision of a panel arising from any accidental oversight, inaccuracy or omission, may be corrected by the panel at any time during the panel review.

76. (1) A participant may, within 10 days after a panel issues its decision, file a Notice of Motion requesting that the panel re-examine its decision for the purpose of correcting an accidental oversight, inaccuracy or omission, which shall set

- a) the oversight, inaccuracy or omission with respect to which the request is made;
- b) the relief requested; and
- c) if ascertainable, a statement as to whether other participants consent to the motion.

(2) The grounds for a motion referred to in subrule (1) shall be limited to one or both of the following grounds:

- a) that the decision does not accord with the reasons therefor; or
- b) that some matter has been accidentally overlooked, stated inaccurately or omitted by the panel.

(3) No Notice of Motion referred to in subrule (1) shall set out any argument already made in the panel review.

(4) There shall be no oral argument in support of a motion referred to in subrule (1).

(5) Except as the panel may otherwise order under subrule (6)(b), no participant shall file a response to a Notice of Motion filed pursuant to subrule (1).

(6) Within seven days after the filing of a Notice of Motion under subrule (1), the panel shall (a) issue a decision ruling on the motion; or (b) issue an order identifying further action to be taken concerning the motion.

(7) A decision or order under subrule (6) may be made with the concurrence of any three panelists. Subsequent Authorities

PART VIII
COMPLETION OF PANEL REVIEW

77. (1) Subject to subrule (2), when a panel issues: (a) an order dismissing a panel review under subrule 58(3) or 71(1), (b) a decision under rule 72 or subrule 73(6) that is the final action in the panel review, or (c) an order under subrule 73(5), the panel shall direct the responsible Secretary to issue a Notice of Final Panel Action (model form provided in the Schedule) on the eleventh day thereafter.

(2) Where a motion is filed pursuant to subrule 76(1) regarding a decision referred to in subrule (1)(b), the responsible Secretary shall issue the Notice of Final Panel Action on the day on which the panel

- a) issues a ruling finally disposing of the motion; or
- b) directs the responsible Secretary to issue the Notice of Final Panel Action, the issuance of which shall constitute a denial of the motion.

78. If no Request for an Extraordinary Challenge Committee is filed, the responsible Secretary shall publish a Notice of Completion of Panel Review in the official publications of the involved Parties, effective

- a) on the day on which a panel is terminated pursuant to subrule 71(2); or
- b) in any other case, on the 31st day following the date on which the responsible Secretary issues a Notice of Final Panel Action.

79. Where a Request for an Extraordinary Challenge Committee has been filed, the responsible Secretary shall publish a Notice of Completion of Panel Review in the official publications of the involved Parties, effective on the day after the day referred to in rule 64 or subrule 65(a) of the NAFTA Extraordinary Challenge Committee Rules.

80. Panelists are discharged from their duties on the day on which a Notice of Completion of Panel Review is effective, or on the day on which an Extraordinary Challenge Committee vacates a panel review pursuant to subrule 65(b) of the NAFTA Extraordinary Challenge Committee Rules.

Stays and Suspensions

81. Where a panelist becomes unable to fulfil panel duties, is disqualified or dies, panel proceedings and the running of time periods shall be suspended, pending the appointment of a substitute panelist in accordance with the procedures set out in Annex 1901.2 to Chapter Nineteen of the Agreement.

82. Where a panelist is disqualified, dies or otherwise becomes unable to fulfil panel duties, after the oral argument, the chairperson may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute panelist.

83. (1) A Party may make a request, pursuant to Article 1905.11(a)(ii) of the Agreement, that an ongoing panel review be stayed by filing the request with the responsible Secretariat.

(2) A Party who files a request under subrule (1) shall forthwith give written notice of the request to the other involved Party and to the other involved Secretariat.

(3) On receipt of a request under subrule (1), the responsible Secretary shall

- a) immediately give written notice of the stay of the panel review to all participants in the panel review; and
- b) publish a notice of the stay of the panel review in the official publications of the involved Parties.

84. On receipt of a report containing an affirmative finding with respect to a ground specified in Article 1905.1 of the Agreement, the responsible Secretary for panel reviews referred to in Article 1905.11(a)(i) of the Agreement shall

- a) immediately give notice in writing to all participants in those reviews; and
- b) publish a notice of the affirmative finding in the official publications of the involved Parties.

85. (1) A Party who intends to suspend the operation of Article 1904 of the Agreement pursuant to Article 1905.8 or 1905.9 of the Agreement shall endeavour to give written notice of that intention to the other involved Party and to the involved Secretaries at least five days prior to the suspension.

(2) On receipt of a notice under subrule (1), the involved Secretaries shall publish a notice of the suspension in the official publications of the involved Parties.