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## Bilateral Free Trade Agreements

### Canada - Chile

## Canada-Chile Free Trade Commission DECISION No. 1

November 4, 1999

### *Model Rules of Procedure for Chapter N of the Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*

The Free Trade Commission, pursuant to its authority under Article N-12, of the *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*,

HEREBY DECIDES to establish the attached *Model Rules of Procedure for Chapter N* of the aforesaid Agreement, for the purpose of resolving disputes referred to in that chapter.

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For the Government of  
Canada

For the Government of the Republic  
of Chile

### Model Rules of Procedure for Chapter N of the Canada-Chile Free Trade Agreement

#### Table of Contents

- ≪ [Application](#)
- ≪ [Definitions](#)
- ≪ [Terms of Reference](#)
- ≪ [Written Submissions and Other Documents](#)
- ≪ [Operation of Panels](#)
- ≪ [Hearings](#)
- ≪ [Argument](#)
- ≪ [Supplementary Written Submissions](#)
- ≪ [Burden of Proof Regarding Inconsistent Measures and Exceptions](#)
- ≪ [Availability of Information](#)
- ≪ [Ex Parte Contacts](#)
- ≪ [Scientific Review Boards](#)
- ≪ [Translation and Interpretation](#)
- ≪ [Computation of Time](#)
- ≪ [Suspension of Benefits Panels](#)

- ⌘ [Responsible Section of the Secretariat](#)
- ⌘ [Maintenance of Rosters](#)
- ⌘ [Appendix I](#)

## Application

1. These rules are established under Article N-12(1) and shall apply to dispute settlement proceedings under Chapter N unless the Parties otherwise agree.

2. **Definitions**

In these rules:

- ⌘ "adviser" means a person retained by a Party to advise or assist the Party in connection with the panel proceeding;
- ⌘ "Agreement" means the Canada-Chile Free Trade Agreement;
- ⌘ "complaining Party" means a Party that requests the establishment of an arbitral panel under Article N-8(1);
- ⌘ "legal holiday", with respect to a Party's section of the Secretariat, means every Saturday and Sunday and any other day designated by that Party as a holiday for the purposes of these rules and notified by that Party to its section of the Secretariat and by that section to the other section of the Secretariat and the other Party;
- ⌘ "panel" means a panel established under Article N-08(2);
- ⌘ "Party" means a Party to the Agreement;
- ⌘ "representative of a Party" means an employee of a government department or agency or of any other government entity of a Party;
- ⌘ "responsible section of the Secretariat" means the section of the Secretariat of the Party complained against; and
- ⌘ "Secretariat" means the Secretariat established under Article N-02(1).

3. Any reference made in these rules to an Article, Annex or Chapter is a reference to the appropriate Article, Annex or Chapter of the Agreement. **Terms of Reference**

4. The Parties shall promptly deliver any agreed terms of reference to the responsible section of the Secretariat which, in turn, shall provide for their delivery to the other section of the Secretariat, and to the panel on designation of the last panelist, by the most expeditious means practicable.

5. If the Parties have not agreed on terms of reference within 20 days following the request for the establishment of the panel, the complaining Party may so notify the responsible section of the Secretariat. On receipt of such notification, that section shall deliver the terms of reference set out in Article N-12(4) to the other Party, to the other section of the Secretariat, and to the panel on designation of the last panelist, by the most expeditious means practicable.

## Written Submissions and Other Documents

6. A complaining Party shall deliver the original and as many copies as the Secretariat requires and in any event no less than seven copies of its written submissions to its section of the Secretariat which, in

- turn, shall retain a copy and forward the remaining copies by the most expeditious means practicable to the responsible section of the Secretariat. Subject to rule 53, the responsible section of the Secretariat shall provide for delivery of that submission by the most expeditious means practicable to the Party complained against and the panel.
7. The Party complained against shall deliver the original and as many copies as the Secretariat requires and in any event no less than seven copies of its written submissions to the responsible section of the Secretariat. Subject to rule 53, the responsible section of the Secretariat shall provide for delivery of that submission by the most expeditious means practicable to the other section of the Secretariat and the panel. The other section of the Secretariat, in turn, shall provide for delivery of that submission by the most expeditious means practicable to the complaining Party.
  8. A complaining Party shall deliver its initial written submission to its section of the Secretariat no later than 10 days after the date on which the last panelist is designated. The Party complained against shall deliver its written counter-submission to the responsible section of the Secretariat no later than 20 days after the date of delivery to it of the initial written submission.
  9. In the case of any request, notice or other document related to the panel proceeding that is not covered by rule 6, 7 or 8, the Party shall deliver copies of the document to both sections of the Secretariat and to the other Party by facsimile or other means of electronic transmission.
  10. Minor errors of a clerical nature in any request, notice, written submission or other document related to the panel proceeding may be corrected by delivery of a new document clearly indicating the changes.
  11. A Party that delivers any request, notice, written submission or other document to its section of the Secretariat shall, to the extent practicable, deliver a copy of the document in electronic form to that section.
  12. Any delivery to a section of the Secretariat under these rules shall be made during the normal business hours of that section.
  13. If the last day for delivery of a document to a section of the Secretariat falls on a legal holiday observed by that section or on any other day on which the offices of that section are closed by order of the government or by force majeure, the document may be delivered to that section on the next business day.

#### **Operation of Panels**

14. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.
15. Except as otherwise provided in these rules, the panel may conduct its business by any means, including by telephone, facsimile

transmission or computer links.

16. Only panelists may take part in the deliberations of the panel but the panel may permit assistants, Secretariat personnel, interpreters or translators to be present during such deliberations.
17. Where a procedural question arises that is not addressed by these rules, a panel may adopt an appropriate procedure that is not inconsistent with the Agreement.
18. If a panelist dies, withdraws or is removed, a replacement shall be selected as expeditiously as possible in accordance with the designation procedure followed to designate the panelist.
19. Any time period applicable to the panel proceeding shall be suspended for a period beginning on the date the panelist dies, withdraws or is removed and ending on the date the replacement is selected.
20. A panel may, in consultation with the disputing Parties, modify any time period applicable in the panel proceeding and make such other procedural or administrative adjustments as may be required in the proceeding, such as where a panelist is replaced or where the Parties are required to reply in writing to the questions of a panel.

### **Hearings**

21. The chair shall fix the date and time of the hearing in consultation with the Parties, the other members of the panel and the responsible section of the Secretariat. The responsible section of the Secretariat shall notify the Parties in writing of the date, time and location of the hearing.
22. The hearing shall be held in the capital of the Party complained against.
23. The panel may convene additional hearings if the disputing Parties so agree.
24. All panelists shall be present at hearings.
25. The following persons may attend a hearing:
  - a. representatives of a the Parties;
  - b. advisers of the Parties provided that they do not address the panel and provided further that neither they nor their employers, partners, business associates or family members have a financial or personal interest in the proceeding;
  - c. Secretariat personnel, interpreters, translators and court reporters; and
  - d. panelists' assistants.

26. No later than five days before the date of a hearing, each Party shall deliver to the other Party and the responsible section of the Secretariat a list of the names of those persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.
27. The hearing shall be conducted by the panel in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

Argument

- i. Argument of the complaining Party.
- ii. Argument of the Party complained against.

Reply and Counter-Reply

- iii. Reply of the complaining Party.
- iv. Counter-reply of the Party complained against.

28. The panel may direct questions to any Party at any time during a hearing.
29. The responsible section of the Secretariat shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties, the other section of the Secretariat and the panel.

### **Supplementary Written Submissions**

30. The panel may at any time during a proceeding address questions in writing to one or both of the Parties. The panel shall deliver the written questions to the Party or Parties to whom the questions are addressed through the responsible section of the Secretariat which, in turn, subject to rule 53, shall provide for the delivery of copies of the questions by the most expeditious means practicable to the other section of the Secretariat and the other Party.
31. The Party to whom the panel addresses written questions shall deliver a copy of any written reply to its section of the Secretariat which, in turn, subject to rule 53, shall provide for delivery of that submission by the most expeditious means practicable to the other section of the Secretariat and the panel. The other section of the Secretariat shall provide for delivery of that submission by the most expeditious means practicable to the other Party. The other Party shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.

Within 10 days after the date of the hearing, each Party may deliver to its section of the Secretariat a supplementary written submission responding to any matter that arose during the hearing.

### **Burden of Proof Regarding Inconsistent Measures and**

**Exceptions**

32. The Party asserting that a measure of another Party is inconsistent with the provisions of the Agreement shall have the burden of establishing such inconsistency.
33. The Party asserting that a measure is subject to an exception under the Agreement shall have the burden of establishing that the exception applies.

**Availability of Information**

34. The Parties shall maintain the confidentiality of the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel, in accordance with the following procedures:
  1. A Party or, subject to its direction, the Party's section of the Secretariat, may make available to the public at any time that Party's written submissions and those of the other Party. Before such documents are made available to the public they shall be redacted to remove any information designated for confidential treatment by a Party pursuant to paragraph (4).
  2. A Party or, subject to its direction, the Party's section of the Secretariat, may make the hearing transcript available to the public 15 days after the final report of the panel is published pursuant to Article N-16(4). Before the transcript is made available to the public it shall be redacted again to remove any information designated for confidential treatment by a Party pursuant to paragraph (4).
  3. Where information has been removed from a document pursuant to paragraph (1) or (2), the document shall indicate clearly each place where such information has been removed.
  4. To the extent it considers strictly necessary to protect personal privacy or to address essential confidentiality concerns, a Party may designate specific information included in its written submissions, or that it has presented in the panel hearing, for confidential treatment.
  5. A Party may disclose to other persons such information in connection with the panel proceedings as it considers necessary for the preparation of its case, but it shall ensure that those persons maintain the confidentiality of any such information.
  6. A Party shall treat as confidential the initial report and information submitted by the other Party to the panel that the Party has designated as confidential pursuant to paragraph (4).
  7. The responsible section of the Secretariat shall take such reasonable steps as are necessary to ensure that experts, scientific review board members, interpreters, translators, court reporters and other individuals retained by the

Secretariat maintain the confidentiality of the panel proceedings.

8. Except as provided under paragraphs (1) and (2), Secretariat personnel shall maintain the confidentiality of the panel proceedings.

#### **Ex Parte Contacts**

35. The panel shall not meet or contact one Party in the absence of the other Party.
36. No panelist may discuss any aspect of the subject matter of the proceeding with a Party or with the Parties in the absence of the other panelists.

#### **Scientific Review Boards**

37. No panel may decide to request a written report of a scientific review board any later than 15 days after the date of the hearing, whether on its own initiative or at the request of a Party.
38. Within five days after the date on which the panel decides to request a written report of a scientific review board, in accordance with Article N-14 of the Agreement, the panel shall request that the scientific bodies designated by each Party and set out in Appendix I provide, within 15 days after the date of the delivery of the request, a list of the names of possible members of the scientific review board, in such numbers as the panel requests and having expertise in the scientific matters that the panel identifies.
39. The panel shall deliver the request for the list of names of possible members of the scientific review board to the responsible section of the Secretariat which, in turn, shall provide for the delivery of copies of the request by the most expeditious means practicable to the other section of the Secretariat and the Parties.
40. Within 25 days after its decision to request a written report of a scientific review board and after consulting the Parties, the panel shall select up to three members to constitute the scientific review board. The panel shall make its selection from the lists provided by the scientific bodies wherever possible.
41. The panel shall not select as a member of a scientific review board an individual who has, or whose employers, partners, business associates or family members have, a financial or personal interest in the proceeding.
42. A Party may, before the date on which the last member of the scientific review board is selected, submit written comments to the panel on the factual issues to be referred to the board.
43. Within five days after the date on which the last member of the scientific review board is selected, the panel shall finalize the factual issues to be referred to the board, and may consult with members of the board in this regard.

44. The panel shall deliver a copy of its referral concerning the questions of fact being referred to the responsible section of the Secretariat which, in turn, shall provide for the delivery of copies of the referral by the most expeditious means practicable to the other section of the Secretariat, the Parties and the board.
45. The scientific review board shall deliver its report to the responsible section of the Secretariat within 30 days after the date on which the factual issues are referred to the board.
46. The responsible section of the Secretariat shall deliver without delay the board's report to the Parties and their respective sections of the Secretariat. A Party may provide comments on the report to its section of the Secretariat within 14 days after the date of delivery of the report. The appropriate section of the Secretariat shall promptly deliver any such comments to the responsible section of the Secretariat which, in turn, shall no later than the next business day deliver such comments to the other Party and its section of the Secretariat, and shall deliver the report and all such comments to the panel.
47. Where a request is made for a written report of a scientific review board, any time period applicable to the panel proceeding shall be suspended for a period beginning on the date of delivery of the request and ending on the date the report is delivered to the panel.

#### **Translation and Interpretation**

48. A Party shall, within a reasonable period of time before it delivers its initial written submission in a panel proceeding, advise its section of the Secretariat in writing of the language in which its written submissions will be made and in which it wishes to receive the written submissions of the other Party. A section of the Secretariat that is so advised shall promptly notify the responsible section of the Secretariat which, in turn, shall promptly notify the other section of the Secretariat, the other Party and the panel.
49. A Party shall, within a reasonable period of time before the date of a hearing, advise its section of the Secretariat in writing of the language in which it will make oral arguments or presentations at the hearing and in which it wishes to hear oral arguments and presentations. A section of the Secretariat that is so advised shall promptly notify the responsible section of the Secretariat which, in turn, shall promptly notify the other section of the Secretariat, the other Party and the panel.
50. In lieu of the procedure set out in rule 49 or 50, a Party may advise its section of the Secretariat of:
  - a. the language in which it will make, and in which it wishes to receive, written submissions in all panel proceedings; or
  - b. the language in which it will make, and in which it wishes to hear, oral arguments and presentations at hearings in all panel proceedings.

The section of the Secretariat that is so advised shall promptly notify



the other section of the Secretariat and the other Party.

51. Where in accordance with the advice provided by each Party under rules 49 through 51, written submissions or oral arguments and presentations in a panel proceeding will be made in more than one language, or if a panelist requests, the responsible section of the Secretariat shall arrange for the translation of the written submissions and the panel reports or for the interpretation of arguments at any hearing, as the case may be.
52. Where the responsible section of the Secretariat is required to arrange for the translation of a written submission, report, or other documents in one or more languages, it shall not provide for the delivery of that written submission as required by rules 8, 30 or 31 or for the delivery of that report until all translated versions of that written submission or report have been prepared.
53. Any time period applicable to a panel proceeding shall be suspended for the period necessary to complete the translation of any written submissions.
54. The costs incurred to prepare a translation of a written submission shall be borne by the Party making the submission. The costs incurred to prepare a translation of a final report shall be borne equally by each section of the Secretariat. The costs of all other translation and interpretation requirements in a panel proceeding shall be borne equally by the Parties.
55. Either Party may provide comments on a translated version of a document that is prepared in accordance with these rules.

#### **Computation of Time**

56. Where anything under the Agreement or these rules is to be done, or the panel requires anything to be done, within a number of days after, before or on a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.
57. Where, by reason of the operation of rule 13, a Party receives a document on a date other than the date on which the same document is received by the other Party, any period of time the calculation of which is dependent on such receipt shall be calculated from the date of receipt of the last such document.

#### **Suspension of Benefits Panels**

58. These rules shall apply to a panel established under Article N-18(3) except that:
  - a. the Party that requests the establishment of the panel shall deliver its initial written submission to its section of the Secretariat within 10 days after the date on which the last panelist is designated;
  - b. the responding Party shall deliver its written counter-submission to its section of the Secretariat within 15 days after

the date of delivery of the initial written submission;

- c. the panel shall fix the time limit for delivering any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject to the time limits for panel proceedings set out in the Agreement and these Rules; and
- d. unless the Parties disagree, the panel may decide not to convene a hearing.

### **Responsible Section of the Secretariat**

59. The responsible section of the Secretariat shall:

- a. provide administrative assistance to the panel and any scientific review board;
- b. compensate, and provide administrative assistance to, experts, panelists and their assistants, members of scientific review boards, interpreters, translators, court reporters or other individuals that it retains in a panel proceeding;
- c. make available to the panelists, on confirmation of their appointment, copies of the Agreement and other documents relevant to the proceedings of the panel, such as the Uniform Regulations and these Rules; and
- d. retain indefinitely a copy of the complete record of the panel proceeding.

### **Maintenance of Rosters**

60. The Parties shall inform each section of the Secretariat of the composition of the roster established under Article N-09(1). The Parties shall promptly inform their counterpart sections of the Secretariat of any changes made to the roster.


### **Appendix I**

Scientific Bodies  
Canada  
The Royal Society of Canada  
Chile

That designated in each case, according to the required specialty, by the Dirección General de Relaciones Económicas Internacionales of the Ministerio de Relaciones Exteriores

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[Top of Page](#)

[Important Notices](#)