

## **RULES OF PROCEDURE FOR ANNEX 10-B.3 (EXTRAORDINARY CHALLENGE COMMITTEES)**

### **Part I: Initial Provisions and Definitions (Rules 1-10)**

#### **Application**

1. These Rules are established in accordance with Annex 10-B.3.2 (Extraordinary Challenge Procedure) of the Agreement and apply to all extraordinary challenge committee proceedings conducted pursuant to Article 10.12.13 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement. These Rules will be published in Canada in the *Canada Gazette*, in Mexico in the *Diario Oficial de la Federación*, and in the United States in the *Federal Register*.

#### **Short Title**

2. These Rules may be cited as the Extraordinary Challenge Committee Rules.

#### **Statement of General Intent**

3. These Rules give effect to the provisions of Chapter 10 (Trade Remedies) of the Agreement with respect to extraordinary challenge procedures conducted pursuant to Article 10.12.13 (Review of Final Antidumping and Countervailing Duty Determinations) and Annex 10-B.3 (Extraordinary Challenge Procedure) of the Agreement and are designed to result in decisions within 90 days after the establishment of the committee. If a procedural question arises that is not covered by these Rules, a committee may adopt an appropriate procedure that is not inconsistent with the Agreement.

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

#### **Definitions and Interpretation**

5. For the purposes of these Rules:

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

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

**committee** means an extraordinary challenge committee established pursuant to Annex 10-B.3 (Extraordinary Challenge Procedure) of the Agreement;

**counsel** means, with respect to an extraordinary challenge of a panel review of a final determination made in:

- (a) Canada, a person entitled to appear as counsel before the Federal Court of Canada;
- (b) Mexico, a person entitled to appear as counsel before the Tribunal Federal de Justicia Administrativa; and
- (c) the United States, a person entitled to appear as counsel before a federal court in the United States;

**counsel of record** means a counsel referred to in subrule 18(1);

**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;

**investigating authority** means the competent investigating authority, as defined in Article 10.8 (Definitions) of the Agreement, that issued the final determination that was the subject of the panel review to which an extraordinary challenge procedure relates and includes, in respect of the issuance, amendment, modification or revocation of a Proprietary Information Access Order, a person authorized by the investigating authority;

**involved Secretariat** means the Section of the Secretariat located in the country of an involved Party;

**legal holiday** for 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 Sections of the Secretariat and the other Parties;

**official publication** means in the case of the Government of:

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

**panel** means a binational panel established pursuant to Annex 10-B.1 (Establishment of Binational Panels) of the Agreement, the decision of which is the subject of an extraordinary challenge;

**participant** means a Party who files a Request for an Extraordinary Challenge Committee or any of the following persons who files a Notice of Appearance pursuant to these Rules:

- (a) the other involved Party;
- (b) a person who participated in the panel review that is the subject of the extraordinary challenge; and
- (c) a panelist against whom an allegation referred to in Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement is made;

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

**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;

**personal information** means, with respect to an extraordinary challenge proceeding in which an allegation is made that a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct, information submitted pursuant to subrule 43(2) and Rule 45;

**pleading** means a Request for an Extraordinary Challenge Committee, a Notice of Appearance, a Change of Service Address, a Notice of Change of Counsel of Record, a Notice of Motion, a brief, or any other written submission filed by a participant;

**President** means the President of the Canada Border Services Agency appointed under subsection 7(1) of the *Canada Border Services Agency Act*, as amended, and includes a person authorized to perform a power, duty, or function of the President under the *Special Import Measures Act*, as amended;

**privileged information** means with respect to an extraordinary challenge of a panel review of a final determination made in:

- (a) 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, with respect to which the privilege has not been waived;
- (b) 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 Secretariat of Economy (*Secretaría de Economía*) 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) 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 and with respect to which the privilege has not been waived;

**proof of service** means with respect to an extraordinary challenge of a panel review of a final determination made in:

- (a) Canada or Mexico,
  - (i) an affidavit of service stating the name of the person who served the document, the date on which it was served, where it was served, and the manner of service, or
  - (ii) a written acknowledgement of service by counsel for a participant stating the name of the person who served the document, the date on which it was served, and the manner of service and, if 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) 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;

**proprietary information** means with respect to an extraordinary challenge of a panel review of a final determination made in:

- (a) 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, and 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) Mexico, *información confidencial*, as defined under article 80 of the *Ley de Comercio Exterior* and its regulations; and
- (c) 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;

**Proprietary Information Access Application** means with respect to an extraordinary challenge of a panel review of a final determination made in:

- (a) Canada, a disclosure undertaking in the prescribed form, which form,
  - (i) in respect of a final determination by the President, is available from the President, and
  - (ii) in respect of a final determination by the Tribunal, is available from the Tribunal;
- (b) Mexico, a disclosure undertaking in the prescribed form, which form is available from the Secretariat of Economy (*Secretaría de Economía*); and
- (c) 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;

**Proprietary Information Access Order** means in the case of:

- (a) Canada, a Disclosure Order issued by the President or the Tribunal pursuant to a Proprietary Information Access Application;

- (b) Mexico, a Disclosure Order issued by the Secretariat of Economy (*Secretaría de Economía*) pursuant to a Proprietary Information Access Application; and
- (c) 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;

**responsible Secretariat** means, with respect to an extraordinary challenge of a panel review, the Section of the Secretariat located in the country in which the final determination reviewed by the panel was made;

**responsible Secretary** means the Secretary of the responsible Secretariat;

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

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

**service address** means:

- (a) with respect to a Party or panelist, the address filed with the Secretariat as the service address of the Party or panelist, including an electronic mail address submitted with that address;
- (b) with respect to a participant other than a Party or panelist, the service address of the participant filed with the Secretariat in the panel review; or
- (c) if a Change of Service Address has been filed by a Party, panelist, or participant, the address set out as the new service address of the participant in that form, including an electronic mail address submitted with that address; and

**Tribunal** means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf.

6. The definitions set forth in Article 10.8 (Definitions) of the Agreement are hereby incorporated into these Rules.

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

## **Code of Conduct**

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

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

10. If a participant believes that a committee member, assistant, or staff to a committee member 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 II: General (Rules 11-27)**

### **Duration and Scope of Proceedings**

11. An extraordinary challenge proceeding commences on the day on which a Request for an Extraordinary Challenge Committee is filed with the Secretariat and terminates on the day on which a Notice of Completion of Extraordinary Challenge is effective.

12. The general legal principles of the country in which a final determination was made apply in an extraordinary challenge of the decision of a panel with respect to the final determination.

13. A committee may review any part of the record of the panel review relevant to the extraordinary challenge.

### **Internal Functioning of Committees**

14. (1) For routine administrative matters governing its own internal functioning, a committee may adopt procedures not inconsistent with these Rules or the Agreement.

(2) Subject to subrule 38(b), meetings of a committee may be conducted by means of a telephone or video conference call.

15. Only committee members may take part in the deliberations of a committee, which shall take place in private and remain secret. Staff of the involved Secretariats and assistants to committee members may be present by permission of the committee.

### **Computation of Time**

16. (1) In computing any time period fixed in these Rules or by an order or decision of a committee, the day from which the time period begins to run shall be excluded and, subject to subrules (2) and (3), the last day of the time period shall be included.

(2) If the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat or on any other day on which the offices of that Section are closed by order of the government or because of unforeseen circumstances outside that Party's control, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

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

17. A committee may extend any time period fixed in these Rules if:

- (a) the extension is made in the interests of fairness and justice; and
- (b) in fixing the extension, the committee takes into account the intent of the Rules to secure just, speedy and inexpensive final resolutions of challenges to decisions of panels.

### **Counsel of Record**

18. (1) Subject to subrule (2), the counsel of record for a participant in an extraordinary challenge proceeding shall be:

- (a) the counsel for the participant in the panel review; or
- (b) in the case of a Party who was not a participant in the panel review or of a panelist, the counsel who signs any document filed on behalf of the Party or panelist in the extraordinary challenge proceeding.

(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.

### **Costs of Participation, Committee Remuneration, and Expenses**

19. (1) Each participant shall bear the costs of, and those incidental to, its own participation in an extraordinary challenge proceeding.



(2) The involved Parties shall bear equally the remuneration and expenses of committee members selected under Annex 10-B.3 (Extraordinary Challenge Procedure), and of their assistants, and all administrative expenses of the committee.

(3) Unless the involved Parties agree otherwise, remuneration for committee members shall be paid at the rate for non-governmental panelists used by the WTO on the date the Request for Extraordinary Challenge Committee is made pursuant to Article 10.12.13 (Review of Final Antidumping and Countervailing Duty Determinations).

(4) Unless the involved Parties agree otherwise, travel expenses shall be paid at the Daily Subsistence Allowance rate for the location of the hearing established by the United Nations International Civil Service Commission on the date a Request for Extraordinary Challenge Committee is made pursuant to Article 10.12.13 (Review of Final Antidumping and Countervailing Duty Determinations).

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

(6) The expenses authorized for a committee established under Annex 10-B.3 (Extraordinary Challenge Procedure), shall be as follows:

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

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

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

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

(10) In case of resignation or removal of a committee member or assistant, or if a committee issues an Order terminating a proceeding, the responsible Secretariat will make payment of the remuneration and expenses owed up until the date of resignation or removal of the committee member or assistant, or the date of the Order terminating the proceeding, using resources provided equally by the involved Parties. A committee member's or assistant's final account of time or expenses must follow the procedures in paragraph 7 and should be submitted within 60 days of the date of their resignation, or removal, or of an Order terminating the committee proceeding.

### **Proprietary Information and Privileged Information**

20. (1) If proprietary information has been filed in a panel review that is the subject of an extraordinary challenge proceeding, every committee member, assistant to a committee member, court reporter, interpreter, and translator shall provide the responsible Secretariat, physically or electronically<sup>1</sup>, with a Proprietary Information Access Application.

(2) Upon receipt of a Proprietary Information Access Application, the responsible Secretary shall file the Proprietary Information Access Application either physically, one original and any additional copies required, or electronically, with the appropriate investigating authority.

(3) The investigating authority shall issue the Proprietary Information Access Order and provide the responsible Secretariat with the original and any additional copies of those documents required by the responsible Secretariat.

(4) Upon receipt of a Proprietary Information Access Order, the responsible Secretary shall transmit the original Proprietary Information Access Order to the appropriate committee member, assistant to a committee member, court reporter, interpreter or translator.

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<sup>1</sup> For greater certainty, for electronic filings, the Mexican Secretariat will verify the authenticity of the application and the documents submitted.

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

(2) Upon receipt of an amendment or modification to a Proprietary Information Access Application, the responsible Secretary shall file the amendment or modification with the appropriate investigating authority and any additional copies required by the investigating authority.

(3) Upon receipt of an amendment or modification to a Proprietary Information Access Application, the investigating authority shall, as appropriate, amend, modify or revoke the Proprietary Information Access Order and provide the responsible Secretariat with the original of the amendment, modification or notice of revocation and any additional copies of the document required by the responsible Secretariat.

(4) Upon receipt of an amendment or modification to a Proprietary Information Access Order or a notice of revocation, the responsible Secretary shall transmit the amendment, modification or notice of revocation to the appropriate committee member, assistant to a committee member, court reporter, interpreter or translator.

22. The responsible Secretary shall serve Proprietary Information Access Orders granted to committee members, assistants to committee members, court reporters, interpreters, or translators, and any amendments or modifications thereto or notices of revocation thereof, on all participants other than the investigating authority.

23. (1) A counsel of record, or a professional retained by, or under the control or direction of, a counsel of record, who has not been issued a Proprietary Information Access Order in the panel review or in these proceedings and who wishes disclosure of proprietary information in the file of an extraordinary challenge proceeding, must file a Proprietary Information Access Application, as follows:

(a) with the responsible Secretariat, two 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 on all participants.

(3) Electronic means may be used to satisfy the service and filing requirements of subrules (1) and (2).<sup>2</sup>

(4) The investigating authority shall, no later than 10 days after a Proprietary Information Access Application is filed with it in accordance with subrule (1), serve on the person who filed the Proprietary Information Access Application a:

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

24. (1) If an investigating authority:

- (a) 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) issues a Proprietary Information Access Order with terms unacceptable to a counsel of record,

the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the committee review the decision of the investigating authority.

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

(3) If 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 committee 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.

25. (1) If a Proprietary Information Access Order is issued to a person in an extraordinary challenge proceeding, the person shall file with the responsible Secretariat a copy of the Proprietary Information Access Order.

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<sup>2</sup> For greater certainty, for electronic filings with respect to subrule 23(1)(b), the Mexican investigating authority may verify the authenticity of the application and the documents submitted.

(2) If a Proprietary Information Access Order is revoked, amended or modified by an 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.

26. In an extraordinary challenge proceeding that commences with a Request for an Extraordinary Challenge Committee pursuant to Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, personal information shall be kept confidential:

- (a) if a Notice of Motion is filed pursuant to subrule 45(1)(c),
  - (i) until the committee makes an order referred to in subrule 49(1)(a), or
  - (ii) if the committee makes an order referred to in subrule 49(1)(b), indefinitely, unless otherwise ordered by the committee; and
- (b) in any other case, until the day after the expiration of the time period fixed, pursuant to Rule 45, for filing a Notice of Motion referred to in subrule 45(1)(c).

27. If a person alleges that the terms of a Proprietary Information Access Application or Proprietary Information Access Order have been violated, the committee shall refer the allegations to the investigating authority for investigation and, if 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*.

### **Pleadings and Simultaneous Translation of Extraordinary Challenge Proceedings in Canada**

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

29. A person, panelist, or committee member may use either English or French in any document or oral proceeding.

30. (1) Subject to subrule (2), any order or decision including the reasons for it, issued by a committee shall be made available simultaneously in both English and French if:

- (a) in the opinion of the committee, 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) If an order or decision:

- (a) issued by a committee is not required by subrule (1) to be made available simultaneously in English and French; or
- (b) is required by subrule (1)(a) to be made available simultaneously in both English and French but the committee 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) If a participant requests simultaneous translation of an extraordinary challenge proceeding, the request shall be made as early as possible in the proceedings.

(3) If a committee is of the opinion that there is a public interest in the extraordinary challenge proceedings, the committee may direct the responsible Secretary to arrange for simultaneous translation of the oral proceedings, if any.

## **Part II: Written Proceedings (Rules 32-44)**

### **Filing, Service, and Communications**

32. (1) Subject to subrule 34(1) and, if applicable, Rule 36, a document is filed with the Secretariat when the responsible Secretariat receives the document, during its normal business hours and within the time period fixed for filing, physically, with one original and two copies, or when the document is filed by electronic means.

(2) The responsible Secretariat shall also acknowledge receipt, physically or electronically, to the party filing the document.

(3) Acknowledgement pursuant to subrule (2) 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.

33. (1) All documents filed by a participant, other than documents required by Rule 62 to be served by the responsible Secretary and documents referred to in subrule 42(2), Rule 43, subrule 44(2)(a) and Rule 45 shall be served by the participant on the counsel of record of each of the other participants or, if another participant is not represented by counsel, on the other participant.

(2) If an electronic filing platform agreed upon by the involved Parties is used for filing, electronic notification by the filing platform shall satisfy the service requirements of this Rule.

(3) Subject to subrules 34(1) and 38(a), a document may be served by:

- (a) mailing or delivering a copy of the document to the service address of the participant by expedited delivery courier or expedited mail service;
- (b) transmitting a copy of the document to the electronic service address of the participant;
- (c) personal service on the participant; or
- (d) any means, including the use of an electronic filing platform agreed upon by the involved Parties, that the responsible Secretariat, in consultation with participants, may direct.

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

(5) If 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.

(6) If a document is served electronically, the date of service shall be the day on which the document is sent by the sender.

34. (1) If, under these Rules, a document containing proprietary, privileged, or personal 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, if applicable, in accordance with Rule 36.

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

- (a) separate from all other documents;

- (b) clearly marked:
  - (i) with respect to an extraordinary challenge of 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”,
    - (B) in the case of a document containing privileged information, “Privileged” or “Protégé”, and
    - (C) in the case of a document containing personal information, “Personal Information” or “Renseignements personnels”; and
  - (ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico,
    - (A) in the case of a document containing proprietary information, “Confidencial”,
    - (B) in the case of a document containing privileged information, “Privilegiada”, and
    - (C) in the case of a document containing personal information, “Información Personal”; and
  - (iii) with respect to an extraordinary challenge of a panel review of a final determination made in the United States,
    - (A) in the case of a document containing proprietary information, “Proprietary”,
    - (B) in the case of a document containing privileged information, “Privileged”, and
    - (C) in the case of a document containing personal information, “Personal Information”; and
- (c) inside:
  - (i) an opaque inner wrapper and an opaque outer wrapper, if filed or served physically,



- (ii) a cover sheet, if filed or served electronically.
- (3) An inner wrapper or cover sheet referred to in subrule (2)(c) shall indicate:
  - (a) that proprietary, privileged, or personal information is enclosed, as the case may be; and
  - (b) the Secretariat file number of the extraordinary challenge proceeding.

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

36. (1) If 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, with respect to an extraordinary challenge of a panel review of a final determination made in:
  - (i) 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) Mexico, shall be labelled “Confidential”, with the top of each page that contains proprietary information marked with the word “Confidential” and with the proprietary information enclosed in brackets, and
  - (iii) 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 (1)(a) is filed, another set not containing proprietary information shall be filed and, with respect to an extraordinary challenge of a panel review of a final determination made in:
  - (i) Canada, shall be labelled “Non-Proprietary”, “Non-Confidential”, “Non confidentiel” or “De nature non exclusive”,
  - (ii) Mexico, shall be labelled “No confidential”, and

- (iii) 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) If 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, with respect to an extraordinary challenge of a panel review of a final determination made in:

- (i) Canada, the other set 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) for Mexico, the other set 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) the United States, the other set 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 (2)(a) is filed, another set not containing privileged information shall be filed and, with respect to an extraordinary challenge of a panel review of a final determination made in:

- (i) Canada, shall be labelled “Non-Privileged” or “Non protégé”,
- (ii) Mexico, shall be labelled “No privilegiada”, and
- (iii) 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.

(3) If a participant files a pleading that contains personal information, the pleading shall be filed under seal and, with respect to an extraordinary challenge of a panel review of a final determination made in:

- (a) Canada, shall be labelled “Personal Information” or “Renseignements personnels”, with the top of each page that contains personal information marked with the words “Personal Information” or “Renseignements personnels” and with the personal information enclosed in brackets;
- (b) Mexico, shall be labelled “Información Personal”, with the top of each page that contains personal information marked with the words “Información personal” and with the personal information enclosed in brackets; and
- (c) the United States, shall be labelled “Personal Information”, with the top of each page that contains personal information marked with the words “Personal Information” and with the personal information enclosed in brackets.

37. (1) Subject to subrule (2), a document containing proprietary or privileged information shall be filed under seal in accordance with Rule 34 and shall be served only on the investigating authority and on those participants who have been granted access to the information under a Proprietary Information Access Order.

(2) If all proprietary information contained in a document was submitted to the investigating authority by one participant, the document shall be served on that participant even if that participant has not been granted access to proprietary information under a Proprietary Information Access Order.

(3) A document containing personal information shall be filed under seal in accordance with Rule 34 and shall be served only on persons or participants who have been granted access to the information under an order of the committee.

38. If proprietary, privileged, or personal information is disclosed to a person in an extraordinary challenge proceeding, the person shall not:

- (a) file, serve, or otherwise communicate the proprietary, privileged, or personal information by unsecure electronic means except as authorized by the terms of a Proprietary Information Access Order; or
- (b) communicate the proprietary, privileged, or personal information by telephone.

39. 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.

### **Form and Content of Pleadings**

40. (1) Every pleading filed in an extraordinary challenge proceeding shall contain the following information:

- (a) the title of, and any Secretariat file number assigned for, the extraordinary challenge proceeding;
- (b) a brief descriptive title of the pleading;
- (c) the name of the participant filing the pleading;
- (d) the name of counsel of record for the participant;
- (e) the service address, as defined in Rule 5; and
- (f) the telephone number and electronic mail address of the counsel of record of the participant or, if the participant is not represented by counsel, the telephone number and electronic mail address of the participant.

(2) Every pleading filed in an extraordinary challenge proceeding shall be on paper 8 1/2 X 11 inches (216 millimeters by 279 millimeters) 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 millimeters) 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) If a pleading is filed by electronic means, that pleading shall be formatted in a manner that, if printed, it would meet the requirements of subrule (2).

(4) Every pleading filed on behalf of a participant in an extraordinary challenge proceeding shall be signed by written or electronic signature, by counsel for the participant or, if the participant is not represented by counsel, by the participant.

### **Requests for an Extraordinary Challenge Committee**

41. (1) If a Party, in its discretion, files with the responsible Secretary a Request for an Extraordinary Challenge Committee referred to in Article 10.12.13(a)(ii) (Review of Final Antidumping and Countervailing Duty Determinations) or (iii) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, the Party shall file the Request (model form available from the Secretariat) no later than 30 days after the issuance, pursuant to Rule 81(2) of the Article 10.12 Binational Panel Rules, of the Notice of Final Panel Action in the panel review that is the subject of the Request.

(2) If a Party, in its discretion, files with the responsible Secretary a Request for an Extraordinary Challenge Committee referred to in Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, the Party shall file the Request (model form available from the Secretariat):

- (a) no later than 30 days after the issuance, pursuant to Rule 81(2) of the Article 10.12 Binational Panel Rules, of the Notice of Final Panel Action in the panel review that is the subject of the Request; or
  - (b) subject to subrule (3), if the Party gained knowledge of the action of the panelist giving rise to the allegation more than 30 days after the panel issued a Notice of Final Panel Action, no more than 30 days after gaining knowledge of the action of the panelist.
- (3) No Request for an Extraordinary Challenge Committee referred to in subrule (2) may be filed if two years or more have elapsed since the effective date of the Notice of Completion of Panel Review.
- (4) Notwithstanding subrules (1) to (3), the running of the time periods referred to in this section:
- (a) shall be suspended in the circumstances set out in Article 10.13.11(b) (Safeguarding the Panel Review System) of the Agreement; and
  - (b) if suspended under subrule (4)(a), shall be resumed in the circumstances set out in Articles 10.13.12 (Safeguarding the Panel Review System) and 10.13.13 (Safeguarding the Panel Review System) of the Agreement.
42. (1) Subject to subrule (2), every Request for an Extraordinary Challenge Committee shall be in writing and shall:
- (a) include a concise statement of the allegations relied on, together with a concise statement of how the actions alleged have materially affected the panel's decision and the way in which the integrity of the panel review process is threatened;
  - (b) contain the name of the Party in the panel review, name of counsel, service address, telephone number, and electronic mail address; and
  - (c) if the panel decision was made in Canada, state whether the Party filing the Request for an Extraordinary Challenge Committee:
    - (i) intends to use English or French in pleadings and oral proceedings before the committee, and
    - (ii) requests simultaneous translation of any oral proceedings.
- (2) If a Request for an Extraordinary Challenge Committee contains an allegation referred to in Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty

Determinations) of the Agreement, the identity of the panelist against whom such an allegation is made shall be revealed only in a confidential annex filed together with the Request and shall be disclosed only in accordance with Rule 60.

43. (1) Every Request for an Extraordinary Challenge Committee (model form available from the Secretariat) shall be accompanied by:

- (a) those items of the record of the panel review relevant to the allegations contained in the Request; and
- (b) an Index of the items referred to in subrule (1)(a).

(2) If a Request contains an allegation referred to in Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, the Request shall be accompanied by, in addition to the requirements of subrule (1),

- (a) any other material relevant to the allegations contained in the Request; and
- (b) if the Request is filed more than 30 days after the panel issued a Notice of Final Panel Action pursuant to Rule 81(2) of the Article 10.12 Binational Panel Rules, an affidavit certifying that the Party gained knowledge of the action of the panelist giving rise to the allegation no more than 30 days preceding the filing of the Request.

### **Notices of Appearance**

44. (1) No later than 10 days after the Request for an Extraordinary Challenge Committee is filed, a Party or participant in the panel review who proposes to participate in the extraordinary challenge proceeding shall file with the responsible Secretariat a Notice of Appearance (model form available from the Secretariat) containing the following information:

- (a) the name of the Party or participant, name of counsel, service address, telephone number and electronic mail address;
- (b) a statement as to whether appearance is made:
  - (i) in support of the Request, or
  - (ii) in opposition to the Request; and
- (c) if the extraordinary challenge is in respect of a panel review of a final determination 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 committee, and
- (ii) requests simultaneous translation of any oral proceedings.

(2) If a Party or participant referred to in subrule (1) proposes to rely on a document in the record of the panel review that is not specified in the Index filed with the Request for an Extraordinary Challenge Committee, the Party or participant shall file, with the Notice of Appearance:

- (a) the document; and
- (b) a statement identifying the document and requesting its inclusion in the extraordinary challenge record.

(3) On receipt of a document referred to in subrule (2), the responsible Secretary shall include the document in the extraordinary challenge record.

45. (1) No later than 10 days after a Request for an Extraordinary Challenge Committee referred to in Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement is filed, a panelist against whom an allegation contained in the Request is made and who proposes to participate in the extraordinary challenge proceeding:

- (a) must file a Notice of Appearance;
- (b) may file, under seal, documents to be included in the extraordinary challenge record relevant to the panelist's defense against the allegation; and
- (c) may file an *ex parte* motion requesting that the extraordinary challenge proceeding be conducted in camera.

(2) If a committee issues an order pursuant to subrule 49(1)(a), a panelist who filed documents described in subrule (1)(b) may, no later than five days after issuance of the order, withdraw any of those documents.

(3) If a panelist withdraws documents pursuant to subrule (2), the committee shall not consider those documents.

### **Filing and Content of Briefs and Appendices**

46. (1) The Party who has filed the Request for an Extraordinary Challenge Committee and every participant who has filed a Notice of Appearance under subrule 44(1)(b)(i) shall file a brief, setting forth grounds and arguments in support of the Request, no later than 21 days after the Request for an Extraordinary Challenge Committee is filed.

(2) Every participant who has filed a Notice of Appearance under subrule 44(1)(b)(ii) shall file a brief, setting forth grounds and arguments in opposition to the Request for an Extraordinary Challenge Committee, no later than 21 days after the expiration of the time period for filing of briefs referred to in subrule (1).

(3) The Party who has filed the Request for an Extraordinary Challenge Committee and every participant who has filed a Notice of Appearance under subrule 44(1)(b)(i) may file a brief, replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2), no later than 10 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) Every brief filed under this Rule shall be in the form required by Rule 47.

(5) Appendices shall be filed with the briefs.

47. (1) Briefs 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*

This Part shall contain a concise statement of the relevant facts with references to the panel record by page and, if applicable, by line.

*Part III: A Statement of the Issues*

(a) in the brief of the Party who files the Request for an Extraordinary Challenge Committee, this part shall contain a concise statement of the issues; and

(b) in the brief of any other participant, this part shall contain a concise statement of the position of the participant with respect to the issues.



*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 panel 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) 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, all documents relied on from the panel record, and all other materials relied on.

**Motions**

48. (1) Motions, other than motions referred to in subrule 45(1)(c), may be considered at the discretion of the committee.

(2) A committee may dispose of a motion based upon the pleadings filed on the motion.

(3) A committee may hear oral argument in person or, subject to subrule 38(b), direct that a motion be heard by means of a telephone or video conference call with the participants.

**Part III: Conduct of Oral Proceedings (Rules 49-52)**

49. (1) The order of a committee on a motion referred to in subrule 45(1)(c) shall set out:

(a) that the proceedings shall not be held in camera; or

(b) that the proceedings shall be held in camera; and

(i) that all the participants shall keep confidential all information received with respect to the extraordinary challenge proceeding and shall use the information solely for the purposes of the proceeding, and

(ii) which documents containing personal information the responsible Secretary shall serve under seal and on whom the documents shall be served.

(2) The responsible Secretary shall not serve any documents containing personal information until the time period for withdrawal of any documents pursuant to subrule 45(2) has expired.

50. A committee may decide the procedures to be followed in the extraordinary challenge proceeding and may, for that purpose, hold a pre-hearing conference to determine such matters as the presentation of evidence and of oral argument.

51. The decision as to whether oral argument will be heard shall be in the discretion of the committee.

### **Oral Proceedings in Camera**

52. During that part of oral proceedings in which proprietary information or privileged information is presented, a committee 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 or committee;
- (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 IV: Responsibilities of the Secretariat (Rules 53-64)**

53. 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, in the case of the:

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

54. On the completion of the selection of the committee members, the responsible Secretary must notify the participants and the other involved Secretary of the names of the committee members.

55. The responsible Secretary shall provide administrative support for each extraordinary challenge proceeding and shall make the arrangements necessary for meetings and any oral proceedings, including, if required, interpreters to provide simultaneous translation.

56. Each involved Secretary must maintain a file for each extraordinary challenge, comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these Rules.

57. The responsible Secretary shall forward to the other involved Secretary a copy of all documents filed with the responsible Secretary and of all orders and decisions issued by a committee.

58. If under these Rules a responsible Secretary is required to publish a notice or other document in the official publication of the involved Parties, the responsible Secretary and the other involved Secretary shall cause the notice or the other document to be published in the official publication of the country in which that Section of the Secretariat is located.

59. (1) If 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 an applicable Proprietary Information Access Order;
- (b) the inner wrapper or cover sheet 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:
  - (i) in the case of proprietary information, officials of, and counsel for, the investigating authority, the person who submitted the proprietary information to the investigating authority and counsel of record for that person, and any persons who have been granted access to the information under a Proprietary Information Access Order, and
  - (ii) in the case of privileged information relied upon in an extraordinary challenge of a decision of a panel with respect to a final determination made in the United States, committee members and their assistants and persons with respect to whom the panel ordered disclosure of the privileged information under Rule 56 of the Article 10.12 Binational Panel Rules, if

those persons have filed with the responsible Secretariat a Proprietary Information Access Order with respect to the document.

(2) If a document containing personal 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 or cover sheet of the document is clearly marked to indicate that it contains personal information; and
- (c) access to the document is limited to persons granted access to the information pursuant to subrule 49(1)(b).

60. No document filed in an extraordinary challenge proceeding 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 committee.

61. (1) Each involved Secretary shall permit access by any person to information in the file of an extraordinary challenge proceeding that is not proprietary information, privileged information or personal information.

(2) Each involved Secretary shall, in accordance with the terms of any applicable Proprietary Information Access Order or order of a panel or committee, permit access to proprietary information, privileged information or personal information in the file of an extraordinary challenge proceeding.

(3) Each involved Secretary shall, on request and on payment of the prescribed fee, provide copies of information in the file of an extraordinary challenge proceeding to any person who has been given access to that information.

62. (1) If a Request for an Extraordinary Challenge Committee pursuant to Article 10.12.13(a)(ii) or (iii) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement is filed with the responsible Secretariat, the responsible Secretary shall, upon receipt thereof,

- (a) forward a copy of the Request and Index to the other involved Secretary; and
- (b) serve a copy of the Request and Index on the other involved Party and on the participants in the panel review, together with a statement setting out the date on which the Request was filed and stating that all briefs of:

- (i) the Party who has filed the Request and of every participant who files a Notice of Appearance in support of the Request shall be filed no later than 21 days after the date of filing of the Request,
- (ii) every participant who files a Notice of Appearance in opposition to the Request shall be filed no later than 21 days after the expiration of the time period, referred to in subrule (1)(b)(i), for filing of briefs, and
- (iii) the Party who has filed the Request and of every participant who files a brief under subrule (1)(b)(i) in reply to the grounds and arguments set forth in the briefs filed pursuant to subrule (1)(b)(ii), shall be filed no later than 10 days after the expiration of the time period, referred to in subrule (1)(b)(ii), for filing of briefs.

(2) If a Request for an Extraordinary Challenge Committee pursuant to Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement is filed, the responsible Secretary shall, upon receipt thereof,

- (a) forward a copy of the Request, Index and annex to the other involved Secretary; and
- (b) serve a copy of the Request, Index and annex on the other involved Party, on the panelist against whom the allegation contained in the Request is made and on the participants in the panel review, together with a statement setting out the date on which the Request was filed and stating that all briefs of:
  - (i) the Party who has filed the Request and of every participant who files a Notice of Appearance in support of the Request shall be filed no later than 21 days after the date of filing of the Request,
  - (ii) every participant who files a Notice of Appearance in opposition to the Request shall be filed no later than 21 days after the expiration of the time period, referred to in subrule (2)(b)(i), for filing of briefs, and
  - (iii) the Party who has filed the Request and of every participant who files a brief under subrule (2)(b)(i) in reply to the grounds and arguments set forth in the briefs filed pursuant to subrule (2)(b)(ii) shall be filed no later than 10 days after the expiration of the time period, referred to in subrule (2)(b)(ii), for filing of briefs.

(3) The responsible Secretary must serve orders and decisions of a committee and Notices of Completion of Extraordinary Challenge on the participants.

(4) If the decision of a committee referred to in subrule (3) relates to a panel review of a final determination made in Canada, the decision shall be served by registered mail.

63. The responsible Secretary must cause Notice of a Final Decision of a committee issued pursuant to Rule 67, and any order that the committee directs the Secretary to publish, to be published in the official publications of the involved Parties.

64. If the time period fixed for filing an *ex parte* motion referred to in subrule 45(1)(c) has expired, the responsible Secretary shall serve on all participants:

- (a) if no motion is filed pursuant to that subrule, the documents referred to in Rules 43 and 45;
- (b) if the committee issues an order referred to in subrule 49(1)(a), the documents referred to in Rules 43 and 45 in accordance with any order of the committee; and
- (c) if the committee issues an order referred to in subrule 49(1)(b), the documents referred to in Rules 43 and 45, in accordance with subrule 49(1)(b)(ii) and any order made by the committee.

#### **Part V: Orders and Decisions (Rules 65-67)**

65. All orders and decisions of a committee shall be made by a majority of the votes of all committee members.

66. (1) If a participant files a Notice of Motion requesting dismissal of an extraordinary challenge proceeding, the committee may issue an order dismissing the proceeding.

(2) If all the participants consent to the motion referred to in subrule (1) and an affidavit to that effect is filed, or if all participants file Notices of Motion requesting dismissal, the extraordinary challenge proceeding is terminated.

67. (1) A final decision of a committee shall:

- (a) affirm the decision of the panel;
- (b) vacate the decision of the panel; or
- (c) remand the decision of the panel to the panel for action not inconsistent with the final decision of the committee.

(2) Every final decision of a committee shall be issued in writing with reasons, together with any dissenting or concurring opinions of the committee members.

(3) Subrule (2) shall not be construed as prohibiting the oral delivery of the decision of a committee.

#### **Part VI: Completion of Extraordinary Challenges (Rules 68-73)**

68. If all participants consent to the termination of the proceeding pursuant to Rule 66, the responsible Secretary shall cause to be published in the official publications of the involved Parties a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which the requirements of Rule 66 have been met.

69. If a committee issues its final decision, the responsible Secretary shall cause to be published in the official publications of the involved Parties a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which:

- (a) the committee affirms the decision of the panel;
- (b) the committee vacates the decision of the panel; or
- (c) if the committee remands the decision of the panel, the day the responsible Secretary gives notice to the committee that the panel has given notice that it has taken action not inconsistent with the committee's decision.

70. The committee members are discharged from their duties on the day on which a Notice of Completion of Extraordinary Challenge is effective.

#### **Stays and Suspensions**

71. (1) A Party may make a request, pursuant to Article 10.13.11(a)(ii) (Safeguarding the Panel Review System) of the Agreement, that an ongoing extraordinary challenge proceeding 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 extraordinary challenge proceedings to all participants in the extraordinary challenge proceedings; and

- (b) publish a notice of the stay of the extraordinary challenge proceedings in the official publications of the involved Parties.

72. On receipt of a report containing an affirmative finding with respect to a ground specified in Article 10.13.1 (Safeguarding the Panel Review System) of the Agreement, the responsible Secretary for extraordinary challenge proceedings referred to in Article 10.13.11(a)(i) (Safeguarding the Panel Review System) of the Agreement shall:

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

73. (1) A Party who intends to suspend the operation of Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement pursuant to Articles 10.13.8 or 10.13.9 (Safeguarding the Panel Review System) of the Agreement shall endeavor 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.