

Code of Conduct for Dispute Settlement Procedures under Chapters 19 & 20 of the North American Free Trade Agreement

Preamble

Whereas the Parties place prime importance on the integrity and impartiality of proceedings conducted pursuant to Chapters 19 and 20 of the North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, this Code of Conduct is hereby established to ensure that these principles are respected.

Interpretation

A. In this Code of Conduct,

"Agreement" means the North American Free Trade Agreement;

"assistant" means a person who, under the terms of appointment of a member, conducts research or provides support for the member;

"candidate" means

- (a) an individual whose name appears on a roster or list established under Article 1414, Annex 1901.2 or 1904.13 or Article 2009,
- (b) an individual who is under consideration for appointment as a member of a panel pursuant to Annex 1901.2 or Article 1903, 1904 or 2011, or
- (c) an individual who is under consideration for appointment as a member of a committee pursuant to Annex 1904.13 or Article 1905;

"member" means

- (a) a member of a panel constituted pursuant to Annex 1901.2 or Article 1414, 1903, 1904, 2008 or 2011,
- (b) a member of an extraordinary challenge committee constituted pursuant to Annex 1904.13, or
- (c) a member of a special committee constituted pursuant to Article 1905;

"participant" has the meaning assigned in the Rules of Procedure for Article 1904 Binational Panel Reviews;

"Party" means a Party to the Agreement;

"proceeding", unless otherwise specified, means

- (a) a panel review under Article 1903 or 1904,
- (b) an extraordinary challenge proceeding under Annex 1904.13,
- (c) a special committee proceeding under Article 1905,
- (d) a panel proceeding under Chapter 20, or
- (e) a proceeding in a dispute arising under Chapter 11 or 14 to which Chapter 20 applies;

"Secretariat" means the Secretariat established pursuant to Article 2002; and

"staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

B. Any reference made in this Code of Conduct to an Article, Annex or Chapter is a reference to the appropriate Article, Annex or Chapter of the Agreement.

I. Responsibilities to the Process

Every candidate, member and former member shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

II. Disclosure Obligations

[Introductory Note:

The governing principle of this Code of Conduct is that a candidate or member must disclose the existence of any interest, relationship or matter that is likely to affect the candidate's or member's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias. An appearance of impropriety or an apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that a candidate's or member's ability to carry out the duties with integrity, impartiality and competence is impaired.

These disclosure obligations, however, should not be interpreted so that the burden of detailed disclosure makes it impractical for persons in the legal or business community to serve as members, thereby depriving the Parties and participants of the services of those who might be best qualified to serve as members. Thus, candidates and members should not be called upon to disclose interests, relationships or matters whose bearing on their role in the proceeding would be trivial.

Throughout the proceeding, candidates and members have a continuing obligation to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process.

This Code of Conduct does not determine whether or under what circumstances the Parties will disqualify a candidate or member from being appointed to, or serving as a member of, a panel or committee on the basis of disclosures made.]

A. A candidate shall disclose any interest, relationship or matter that is likely to affect the candidate's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

The candidate shall disclose such interests, relationships and matters by completing an Initial Disclosure Statement provided by the Secretariat and sending it to the Secretariat.

Without limiting the generality of the foregoing, candidates shall disclose the following interests, relationships and matters:

- (1) any financial interest of the candidate
 - (a) in the proceeding or in its outcome, and
 - (b) in an administrative proceeding, a domestic court proceeding or another

- panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
- (2) any financial interest of the candidate's employer, partner, business associate or family member
 - (a) in the proceeding or in its outcome, and
 - (b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
- (3) any past or existing financial, business, professional, family or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate or family member; and
- (4) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods.

B. A member in an Article 1904 proceeding shall, after receiving the complaint, disclose any interests, advocacy or representation referred to in paragraph A(1)(b) or (2)(b) or subsection (4) by completing a Supplementary Disclosure Statement provided by the Secretariat and sending it to the Secretariat for consideration by the appropriate Parties.

C. Once appointed, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in section A and shall disclose them. The obligation to disclose is a continuing duty which requires a member to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

The member shall disclose such interests, relationships and matters by communicating them in writing to the Secretariat for consideration by the appropriate Parties.

III. The Performance of Duties by Candidates and Members

A. A candidate who accepts an appointment as a member shall be available to perform, and shall perform, a member's duties thoroughly and expeditiously throughout the course of the proceeding.

B. A member shall ensure that the Secretariat can, at all reasonable times, contact the member in order to conduct panel or committee business.

C. A member shall carry out all duties fairly and diligently.

D. A member shall comply with the provisions of Chapter 19 or 20 and the applicable rules.

E. A member shall not deny other members the opportunity to participate in all aspects of the proceeding.

F. A member shall consider only those issues raised in the proceeding and necessary to a decision and shall not delegate the duty to decide to any other person, except as provided in the applicable rules.

G. A member shall take all reasonable steps to ensure that the member's assistant and staff comply with Parts I, II and VI of this Code of Conduct.

H. A member shall not engage in ex parte contacts concerning the proceeding.

I. A candidate or member shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to the Secretariat or is necessary to ascertain whether that candidate or member has violated or may violate the Code.

IV. Independence and Impartiality of Members

- A. A member shall be independent and impartial. A member shall act in a fair manner and shall avoid creating an appearance of impropriety or an apprehension of bias.
- B. A member shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.
- C. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.
- D. A member shall not use the member's position on the panel or committee to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.
- E. A member shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the member's conduct or judgment.
- F. A member shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.

V. Duties in Certain Situations

- A. For a period of one year after the completion of an Article 1904 proceeding, a former member shall not personally advise or represent any participant in the proceeding with regard to antidumping or countervailing duty matters.
- B. In the case of an Article 1904 proceeding, a member or a former member shall not represent a participant in an administrative proceeding, a domestic court proceeding or another Article 1904 proceeding involving the same goods.
- C. A former member shall avoid actions that may create the appearance that the member was biased in carrying out the member's duties or would benefit from the decision of the panel or committee.

VI. Maintenance of Confidentiality

- A. A member or former member shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of another.
- B. A member shall not disclose a declaratory opinion under Article 1903 or a panel or extraordinary challenge committee order or decision under Article 1904 prior to its issuance by the panel or committee.
- C. A member shall not disclose a special committee report or decision under Article 1905 prior to its public release by the Secretariat. A member or former member shall not at any time disclose which members are associated with majority or minority opinions in an Article 1905 proceeding.

D. A member shall not disclose a panel report issued under Chapter 20 prior to its publication by the Commission. A member or former member shall not at any time disclose which members are associated with majority or minority opinions in a proceeding under Chapter 20.

E. A member or former member shall not at any time disclose the deliberations of a panel or committee, or any member's view, except as required by law.

VII. Responsibilities of Assistants and Staff

Parts I (Responsibilities to the Process), II (Disclosure Obligations) and VI (Maintenance of Confidentiality) of this Code of Conduct apply also to assistants and staff.