

## CODE OF CONDUCT

### Article 1: Application

The Parties place prime importance on the integrity and impartiality of proceedings conducted under Chapter 10 (Trade Remedies) and Chapter 31 (Dispute Settlement) of the Agreement. This Code of Conduct (the “Code”) is established to ensure that these principles are respected.

### Article 2: Interpretation

1. For the purposes of this Code:

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

**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 Annex 10-B.1 (Establishment of Binational Panels), Annex 10-B.3 (Extraordinary Challenge Procedure), Article 31.8 (Roster and Qualifications of Panelists), Annex 31-A (United States-Mexico Facility-Specific Rapid Response Labor Mechanism), or Annex 31-B (Canada-Mexico Facility-Specific Rapid Response Labor Mechanism);
- (b) an individual who is under consideration for appointment as a member of a panel under Annex 10-B.1 (Establishment of Binational Panels), Article 10.11 (Review of Statutory Amendments), Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations), Article 31.9 (Panel Composition), Annex 31-A (United States-Mexico Facility-Specific Rapid Response Labor Mechanism), or Annex 31-B (Canada-Mexico Facility-Specific Rapid Response Labor Mechanism); or
- (c) an individual who is under consideration for appointment as a member of a committee under Annex 10-B.3 (Extraordinary Challenge Procedure) or Article 10.13 (Safeguarding the Panel Review System);

**family member** means the spouse of a candidate or member; or a parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece, or nephew of the candidate or member or spouse of

the candidate or member, including whole and half blood relatives and step relatives; or the spouse of such an individual. A family member also includes any resident of a candidate's or member's household whom the candidate or member treats as a member of their family;

**member** means:

- (a) a member of a panel constituted under Annex 10-B.1 (Establishment of Binational Panels), Article 10.11 (Review of Statutory Amendments), Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations), Article 31.6 (Establishment of a Panel), Article 31.9 (Panel Composition), Article 31.19 (Non-Implementation – Suspension of Benefits, Article 31-A.4.8 (Requests for Review and Remediation), Article 31-B.4.8 (Requests for Review and Remediation), Article 31-A.5 (Requests for Establishment of Rapid Response Labor Panel), or Article 31-B.5 (Requests for Establishment of Rapid Response Labor Panel);
- (b) a member of an extraordinary challenge committee constituted under Annex 10-B.3 (Extraordinary Challenge Procedure); or
- (c) a member of a special committee constituted under Article 10.13 (Safeguarding the Panel Review System);

**participant** has the meaning assigned in the Rules of Procedure for Article 10.12 (Binational Panel Reviews);

**Party** means a Party to the Agreement;

**proceeding**, unless otherwise specified, means:

- (a) a panel review under Article 10.11 (Review of Statutory Amendments) or Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations);
- (b) an extraordinary challenge proceeding under Annex 10-B.3 (Extraordinary Challenge Procedure);
- (c) a special committee proceeding under Article 10.13 (Safeguarding the Panel Review System);
- (d) a panel proceeding under Section A of Chapter 31 (Dispute Settlement); or
- (e) a proceeding under Annex 31-A (United States-Mexico Facility-Specific Rapid Response Labor Mechanism) or Annex 31-B (Canada-Mexico Facility-Specific Rapid Response Labor Mechanism);

**Rules** mean the Rules of Procedure established under Article 10.12.14 (Review of Final

Antidumping and Countervailing Duty Determinations), Annex 10-B.3.2 (Extraordinary Challenge Procedure), or Annex 10-B.4 (Special Committee Procedures), and those established under Article 30.2.1(e) (Free Trade Commission) and Article 31.11 (Rules of Procedure for Panels);

**Secretariat** means the Secretariat established under Article 30.6 (The Secretariat); and

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

2. Unless otherwise specified, a reference made in this Code to an Article, Annex, or Chapter is a reference to the appropriate Article, Annex, or Chapter of the Agreement.

### **Article 3: 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.

### **Article 4: Disclosure Obligations**

1. 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. 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.

2. A candidate shall make all reasonable efforts to identify any interests, relationships, and matters referred to in paragraph 1.

3. 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.

4. Without limiting the generality of the disclosure requirement in paragraph 1, candidates shall disclose the following interests, relationships, and matters:

- (a) any financial interest of the candidate in:
  - (i) the proceeding or in its outcome, and
  - (ii) an administrative proceeding, a domestic judicial proceeding, or another

international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

- (b) any financial interest of the candidate's employer, business partner, business associate, or family member in:
  - (i) the proceeding or in its outcome, and
  - (ii) an administrative proceeding, a domestic judicial proceeding, or another international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
- (c) 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, business partner, business associate, or family member; and
- (d) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or concerning a dispute involving the same good, service, investment, or government procurement that is the subject of the dispute in the proceeding.

5. The candidate shall also include in their Initial Disclosure Statement any publication by the candidate that has a direct relationship with the matter in dispute in the proceeding in which the candidate was requested to serve.

6. A member in an Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) proceeding shall, after receiving the complaint, disclose any interests, advocacy or representation referred to in sub-subparagraph 4(a)(ii) or 4(b)(ii) or subparagraph 4(d) by completing a Supplementary Disclosure Statement provided by the Secretariat and sending it to the Secretariat for consideration by the appropriate Parties.

7. Throughout the proceeding, a candidate or member shall continue to make all reasonable efforts to identify any interests, relationships, or matters referred to in paragraphs 1 or 4 and shall disclose them. The obligation to disclose is a continuing duty that requires a candidate or member to disclose any such interests, relationships, and matters that may arise during any stage of the proceeding. The candidate or member shall promptly disclose such interests, relationships, and matters by completing a Supplementary Disclosure Statement and sending it to the Secretariat for consideration by the appropriate Parties.

8. In the event of any uncertainty regarding whether an interest, relationship, or matter must be disclosed, a candidate or member should err in favor of disclosure. Disclosure of an interest, relationship, or matter is without prejudice as to whether the interest, relationship, or matter is

covered by paragraph 1, 4, or 7, or whether it warrants recusal, disqualification, or other remedial measures.

9. The disclosure obligations referred to in paragraphs 1 through 8 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. Candidates and members are not called upon to disclose interests, relationships, or matters whose bearing on their role in the proceeding would be trivial.

10. This Code 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.

#### **Article 5: Duties of Candidates and Members**

1. A candidate or member shall avoid direct or indirect conflicts of interest.

2. A candidate should consider declining an appointment as a member of a panel or committee, and a member should consider refusing to continue to act, if:

(a) they have any doubt as to their ability to be impartial or independent; or

(b) facts or circumstances exist, or have arisen since the appointment, which would create an appearance of impropriety or an apprehension of bias.

3. A candidate who accepts an appointment as a member shall carry out all of their duties fairly and diligently, and shall be available to perform, and once appointed shall perform, their duties in a thorough and expeditious manner throughout the course of the proceeding.

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

5. A member shall comply with the provisions of Chapter 10 (Trade Remedies) or Chapter 31 (Dispute Settlement) and the Rules.

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

7. 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 Rules.

8. A member shall take all reasonable steps to ensure that the member's assistants and staff comply with Article 3 (Responsibilities to the Process), Article 4 (Disclosure Obligations), Articles 5.5, 5.9, and 5.10 (Duties of Candidates and Members), and Article 8 (Confidentiality) of this Code.

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

10. A candidate or member shall only communicate matters concerning actual or potential violations of this Code to the Secretariat, or if necessary to ascertain whether that candidate or member has violated or may violate this Code, to the Secretariat and the disputing Parties.

### **Article 6: Independence and Impartiality of Members**

1. 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.

2. A member shall not be influenced by self-interest, outside pressure, political considerations, public clamor, loyalty to a Party, or fear of criticism.

3. 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.

4. 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.

5. 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.

6. 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.

7. If the disputing Parties agree that an interest, relationship, or matter of a candidate or member is inconsistent with paragraphs 1 through 6, the candidate may accept appointment to a panel and a member may continue to serve on a panel or committee if the disputing Parties waive the inconsistency or if, after the candidate or member has taken steps to ameliorate the violation, the disputing Parties determine that the inconsistency has ceased and the disputing Parties agree that the candidate should be appointed or the member should continue to serve.

## **Article 7: Duties in Certain Situations**

1. For a period of one year after the completion of an Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) proceeding, a former member shall not personally advise or represent any participant in the proceeding with regard to antidumping or countervailing duty matters.
2. In the case of an Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) proceeding, a member or a former member shall not represent a participant in an administrative proceeding, a domestic court proceeding, or another Article 10.12 proceeding involving the same goods.
3. In any proceeding under Chapter 31 (Dispute Settlement), a member shall refrain, for the duration of the proceeding, from acting as counsel or party-appointed expert witness in any new or pending dispute, under the Agreement or another international agreement, that directly addresses the same measure in dispute in, or arises out of the facts giving rise to, the proceeding under Chapter 31.
4. 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.

## **Article 8: Confidentiality**

1. 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.
2. A member shall not disclose a declaratory opinion under Article 10.11 (Review of Statutory Amendments) or a panel or extraordinary challenge committee order or decision under Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) prior to its issuance by the panel or committee.
3. A member shall not disclose a special committee report or decision under Article 10.13 (Safeguarding the Panel Review System) 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 10.13 proceeding.
4. A member shall not disclose a panel report issued under Chapter 31 (Dispute Settlement) 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 31.

5. 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.
6. A member shall not make a public statement regarding the merits of a pending proceeding.

**Article 9: Responsibilities of Assistants, Experts, and Staff**

Article 3 (Responsibilities to the Process), Article 4 (Disclosure Obligations), Articles 5.5, 5.9, and 5.10 (Duties of Candidates and Members), and Article 8 (Confidentiality) of this Code apply also to assistants, experts, and staff.