

on the fifth. If the Commission is unable to agree on the fifth panelist within such period, then, at the request of either Party, the four appointed panelists shall decide on the fifth panelist within 30 days of establishment of the panel. If no agreement is possible, the fifth panelist will be selected by lot from the roster.

- b) The Commission shall develop and maintain a roster of individuals who are willing and able to serve as panelists in individual disputes. Wherever possible, and consistent with the nature of the dispute, panelists shall be chosen from this roster. In all cases, panelists shall be chosen strictly on the basis of objectivity, reliability, sound judgment, and, where appropriate, expertise in the particular areas or areas under consideration. Panelists shall not be affiliated with or take instructions from either Party.
- c) The panel shall establish its own rules of procedures, unless the Commission has agreed otherwise. The procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide written submissions and rebuttal arguments. The proceedings of the panel shall be confidential. Unless otherwise agreed by the Parties, the Panel shall base its decision on the arguments and submissions of the Parties.

3. Unless the Parties otherwise agree, the panel shall, within three months after its chairman is appointed, present to the Parties an initial report containing findings of fact, and its determination as to whether the measure or measures at issue are or would be inconsistent with the obligations of the Agreement and its recommendations, if any, for resolution of the dispute. If requested by either Party at the time of establishment of the panel, the panel shall also present findings as to the degree of adverse trade effect on the other party of any measure or measures found not in conformity with the obligations of the Agreement. Panelists shall be at liberty to furnish separate opinions on matters not unanimously agreed among the panel.