

Annex 1901.2

Establishment of Binational Panels

1. Prior to the entry into force of this Agreement, the Parties shall develop a roster of individuals to serve as panelists in disputes under this Chapter. The Parties shall consult in developing the roster, which shall include 50 candidates. Each Party shall select 25 candidates, and all candidates shall be citizens of Canada or the United States of America. Candidates shall be of good character, high standing and repute, and shall be chosen strictly on the basis of objectivity, reliability, sound judgment, and general familiarity with international trade law. Candidates shall not be affiliated with either Party, and in no event shall a candidate take instructions from either Party. Judges shall not be considered to be affiliated with either Party. The Parties shall maintain the roster, and may amend it, when necessary, after consultations.

2. A majority of the panelists on each panel shall be lawyers in good standing. Within 30 days of a request for a panel, each Party shall appoint two panelists, in consultation with the other Party. The Parties normally shall appoint panelists from the roster. If a panelist is not selected from the roster, the panelist shall be chosen in accordance with and be subject to the criteria of paragraph 1. Each Party shall have the right to exercise four preemptory challenges, to be exercised simultaneously and in confidence, disqualifying from appointment to the panel up to four candidates proposed by the other Party. Preemptory challenges and the selection of alternative panelists shall occur within 45 days of the request for the panel. If a Party fails to appoint its members to a panel within 30 days or if a panelist is struck and no alternative panelist is selected within 45 days, such panelist shall be selected by lot on the 31st or 46th day, as the case may be, from that Party's candidates on the roster.

3. Within 55 days of the request for a panel, the Parties shall agree on the selection of a fifth panelist. If the Parties are unable to agree, the four appointed panelists shall select, by agreement, from the roster the fifth panelist within 60 days of the request for a panel. If there is no agreement among the four appointed panelists, the fifth panelist shall be selected by lot on the 61st day from the roster, excluding candidates eliminated by preemptory challenges.