

ANNEX III

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RULES OF PROCEDURE FOR CHAPTER 31 (DISPUTE SETTLEMENT)

Section A: General Provisions

Article 1: Application

1. These Rules are established in accordance with Article 30.2.1(e) (Free Trade Commission) and Article 31.11 (Rules of Procedure for Panels) and apply to dispute settlement proceedings under Chapter 31, unless the disputing Parties agree otherwise.

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

Article 2: Definitions

For the purposes of these Rules:

adviser means a person retained by a Party to advise or assist the Party in connection with the panel proceeding;

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 panelist, conducts research for or provides support to a panelist;

authorized person means a person who is:

- (a) an authorized representative of a Party designated in accordance with Appendix 2;
- (b) an authorized employee of the responsible Section of the Secretariat designated in accordance with Appendix 2;
- (c) a member of the panel;
- (d) an assistant to a panelist designated in accordance with Appendix 2; or
- (e) an expert;

authorized representative means:

- (a) an official of a participating Party; or
- (b) a legal counsel or other advisor or consultant to a participating Party whom the Party has authorized to act on its behalf in the course of the dispute and whose authorization the Party has notified to the panel and to the other participating Parties, but excludes in all circumstances an individual or an employee, officer or agent of any entity that could reasonably be expected to benefit outside of proceedings under Chapter 31 (Dispute Settlement) from the receipt of confidential information;

complaining Party means any Party that requests the establishment of a panel under Article 31.6.1 (Establishment of a Panel), any Party that joins a panel proceeding under Article 31.6.5 (Establishment of a Panel), or a complainant Party 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);

disputing Parties means the complaining Party or Parties, and the Party complained against;

expert means a person or body providing information or technical advice to the panel under Article 31.15 (Role of Experts);

legal holiday, with respect to 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;

panel means a panel established under Article 31.6 (Establishment of a Panel), Article 31-A.4.8 (Requests for Review and Remediation), Article 31-A.5 (Requests for Establishment of Rapid Response Labor Panelists), Article 31-B.4.8 (Requests for Review and Remediation), or Article 31-B.5 (Requests for Establishment of Rapid Response Labor Panelists);

panelist means an individual appointed to a panel under Article 31.9 (Panel Composition), Article 31.10 (Replacement of Panelists), Article 31-A.5 (Requests for Establishment of Rapid Response Labor Panelists), or Article 31-B.5 (Requests for Establishment of Rapid Response Labor Panelists);

participating Parties means the disputing Parties and a third Party;

representative of a participating Party means an employee of a government department or agency or of an other government entity of a participating Party;

responding Party means a Party to whom a written notice of a request for the establishment of a panel under Article 31.6.1 (Establishment of a Panel) is delivered or the Party to whom a complainant Party requests a review of whether a Denial of Rights exists under Article 31-A.4.2

(Requests for Review and Remediation) or Article 31-B.4.2. (Requests for Review and Remediation);

responsible Section of the Secretariat means, with respect to a panel established under Article 31.6 (Establishment of a Panel), 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), the Section of the Secretariat of the responding Party, provided that if that Section fails to meet a deadline or is unable to complete a task, the Section of the Secretariat of the complaining Party shall become the responsible Section of the Secretariat for the remainder of the proceeding;

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

third Party means a Party, other than a disputing Party, that delivers a written notice in accordance with Article 31.6.5 (Establishment of a Panel); and

written submission means a participating Party's written submissions, written versions of its oral statements, or written responses to a request or questions from the panel or a disputing Party.

Article 3: Responsible Section of the Secretariat

1. The responsible Section of the Secretariat shall:
 - (a) provide administrative assistance to the panel and any expert;
 - (b) arrange for payment, and provide administrative assistance to, experts, panelists and their assistants, interpreters, translators, court reporters, or other individuals that it retains in a panel proceeding;
 - (c) make available to the panelists, on confirmation of their appointment, copies of the Agreement, these Rules and the Code of Conduct, and other documents relevant to the proceedings;
 - (d) notify the Parties and the panel as to its normal business hours and that the Parties should submit all documents to the responsible office no later than an hour before the end of the office's business hours;
 - (e) organize and coordinate the logistics required for a hearing;
 - (f) retain indefinitely a copy of the complete record of the panel proceeding; and
 - (g) act in a strictly impartial manner.

Article 4: Information to be Provided to the Secretariat

1. Each Party shall provide to the other Parties and each Party's Section of the Secretariat, no later than 30 days after the date of entry into force of the Agreement, the following information:
 - (a) e-mail addresses that shall be used for electronic delivery of documents;
 - (b) a service address for delivery of documents that cannot be delivered electronically; and
 - (c) a list of legal holidays on which the Party's Section of the Secretariat is closed and the normal business hours of that Party's offices.
2. Each Party shall update the information provided under paragraph 1 as soon as possible.
3. If necessary, any participating Party shall advise the responsible Section of the Secretariat of any changes to the information provided under paragraph 1 at the earliest possible opportunity and no later than 15 days from the date of delivery of the request for establishment of a panel.

Article 5: Code of Conduct

Panelists, assistants, and staff must comply with the Code of Conduct established by the Commission. The responsible Section of the Secretariat shall provide a copy of the Code of Conduct to each individual who is under consideration for appointment as a member of a panel and to any assistant or staff. Each natural person selected to serve as a panelist, assistant, or staff shall, at the time of selection, complete and return the Initial Disclosure Statement within the earlier of seven days or an earlier time provided in Article 26.4(b) (United States-Mexico Rapid Response Labor Panels) or Article 27.4(b) (Canada-Mexico Rapid Response Labor Panels) of these Rules for panels subject to those Articles.

Article 6: Procedures for Written Submissions and Other Documents

1. Each participating Party shall deliver all documents related to the dispute by electronic means through the responsible Section of the Secretariat, in accordance with Article 31.12 (Electronic Document Filing).
2. When a responsible Section of the Secretariat receives a document delivered by a participating Party, it shall distribute the document to the panel and the other participating Parties by electronic means on the same day, with a copy to the other participating Parties' Sections of the Secretariat. A document delivered outside the business hours of the responsible Section of the Secretariat shall be deemed to have been delivered on the next business day.

3. If the responsible Section of the Secretariat is unable to act in accordance with this Article, a participating Party shall deliver the document directly to the panel by electronic means, after having delivered a copy of the document by electronic means to any other participating Party via their respective Sections of the Secretariat.
4. When a participating Party delivers a document to the responsible Section of the Secretariat, the responsible Section of the Secretariat shall provide that Party with a confirmation of receipt, indicating the title of the document and the date of delivery.
5. Documents delivered by electronic means must be in searchable format. If that is not feasible at the time of submission, the relevant participating Party shall file a searchable version as soon as practicable unless it is not technically possible to do so.
6. A participating Party may correct minor errors of a clerical nature in any request, notice, written submission or other document related to the panel proceeding by delivery of a new document clearly indicating the changes. A participating Party must correct those errors within seven days of the date of delivery of the document. Any difference of views as to whether the correction is of a clerical nature will be resolved by the panel in consultation with the disputing Parties and any third Party, if relevant.
7. Any delivery to a Section of the Secretariat under these Rules shall be made during the normal business hours of that Section.
8. If the last day for delivery of a document to a Section of the Secretariat falls on a legal holiday observed by that Section 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 the document may be delivered to that Section on the next business day. When a time frame for submission of a document is extended in accordance with this paragraph, all subsequent time frames provided for in these Rules shall be extended by the amount of time that the time frame was extended.
9. The Parties, with the assistance of the Secretariat, will seek to agree on the use of an electronic platform for electronic filing of submissions.

Article 7: Treatment of Confidential Information

1. This Article and Appendix 1 apply to information that a participating Party or expert submits during a panel proceeding and designates as confidential. However, they do not apply to a participating Party or expert with respect to confidential information first submitted by itself, including in derivative form.
2. Each participating Party, the Secretariat, and other persons in connection with the panel proceedings shall treat as confidential the information submitted by any other participating Party

or expert that the submitting Party or expert has designated as confidential information in accordance with Appendix 1. Nothing precludes a participating Party from disclosing its own information to the public.

3. After consulting the participating Parties, the panel may establish any procedure that it considers necessary to protect confidential information in order to encourage disclosure and facilitate the fact-finding process.

Article 8: Computation of Time

1. Time periods are in calendar days unless provided otherwise.

2. When the Agreement, these Rules, or the panel requires anything to be done before or after a date or event, the time period does not include the day of that date or event.

3. If, by reason of application of this Section, a participating Party receives a document on a date other than the date on which the same document is received by another participating Party, the period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

Article 9: General Operation of Panels

1. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.

2. Except as otherwise provided in these Rules, the panel may conduct its business by any means, including by telephone, video conference, or electronic means.

3. The deliberations of the panel shall be confidential. Only panelists may take part in the deliberations of the panel. Assistants, Secretariat personnel, interpreters, or translators may be present if the panel determines they are necessary.

4. If a procedural question arises that is not covered by these Rules, a panel may, in consultation with the disputing Parties, adopt an appropriate procedure that is consistent with the Agreement.

5. A panel may, if the disputing Parties agree, modify a time period applicable in the panel proceeding and make such other procedural or administrative adjustments as may be required in the proceeding.

Article 10: Rules of Evidence

1. The panel may request, on its own initiative or at the request of a disputing Party, that a disputing Party make available documents or other information relevant to the dispute, and may take a failure to comply with such request and any of the reasons given for such failure into account in its decision.
2. The disputing Parties may, in accordance with procedures established by the panel, submit witness testimony in person or via declaration, affidavit, report, teleconference, or videoconference.
3. The other disputing Party shall have the opportunity to rebut or test the veracity of testimony or evidence. The Panel has the right to test the veracity of testimony or evidence.
4. In appropriate circumstances, a disputing Party may submit anonymous testimony and redacted evidence. The Party submitting anonymous testimony may disclose exclusively to the Panel the source of the anonymous testimony and redacted evidence on its own initiative or at the request of the Panel, provided that the Panel takes appropriate steps to safeguard the identity of the witness.
5. The disputing Parties may submit to the panel an agreed statement of facts that the disputing Parties consider are not in dispute. If an agreed statement of facts is submitted, the panel shall accept the facts stipulated by the disputing Parties.

Article 11: Ex Parte Contacts

1. No Party shall communicate with the panel or individual panelists without notifying the participating Parties. The panel or individual panelists shall not meet or contact one participating Party in the absence of, or without notifying, the other participating Parties.
2. No panelist shall meet, or have discussions concerning matters under consideration by the panel, with a person or body providing information or technical advice under Article 31.15 (Role of Experts).
3. No panelist shall discuss any aspect of the subject matter of the proceeding with a participating Party or Parties in the absence of the other panelists.

Article 12: Remuneration and Payment of Expenses

1. The disputing Parties shall bear equally the remuneration and expenses of panelists, assistants, and experts selected under Article 31.15 (Role of Experts) and Article 23.3 (Information and Technical Advice) of these Rules, and all administrative expenses of the panel.

2. Unless the disputing Parties agree otherwise, remuneration for panelists shall be paid at the rate for non-governmental panelists used by the WTO on the date a Party makes a written request for the establishment of a panel under Article 31.6 (Establishment of a Panel), 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).

3. Unless the disputing 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 Party makes a written request for the establishment of a panel under Article 31.6 (Establishment of a Panel), 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).

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

5. If the disputing Parties agree that the panel may seek information or technical advice pursuant to Article 31.15 (Role of Experts), and agree that an expert is to receive remuneration and expenses for providing the information or advice, the amount and details of the remuneration and expenses shall be determined by the disputing Parties.

6. The expenses authorized under a panel proceeding shall be as follows:

- (a) travel expenses: include the transportation costs of the panelists 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 Section of the 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 Section of the Secretariat to support the proceeding.

7. Each panelist and assistant shall keep and render a final account of his or her time and expenses to the responsible Section of the Secretariat, and the panel shall keep and render a final account to the responsible Section of the Secretariat of its administrative expenses. Each panelist and assistant shall submit this account, including relevant supporting documentation, such as invoices, in accordance with the administrative guidelines of the responsible Section of the

Secretariat. A panelist or assistant may submit requests for payment of remuneration or reimbursement for expenses during the proceeding.

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

9. The responsible Section of the Secretariat shall submit to the disputing Parties a final report on payments made in connection with a dispute. On request of a disputing Party, the responsible Section of the Secretariat shall submit to the disputing Parties a report of payments made to date at any time during the panel proceedings.

10. In case of resignation or removal of a panelist or assistant, or if the disputing Parties reach a mutually satisfactory solution or the complaining Party withdraws its request for establishment of a panel, the responsible Section of the Secretariat will make payment of the remuneration and expenses owed, using resources provided equally by the disputing Parties, on submission of the panelist's or assistant's final account of time or expenses, following the procedures in paragraph 7.

Article 13: Maintenance of Rosters

The Parties shall inform each Section of the Secretariat of the composition of the roster established under Article 31.8 (Roster and Qualifications of Panelists) and of the lists established for the rapid response labor panels. The Parties shall promptly inform each Section of the Secretariat of any changes made to the roster or the lists.

Article 14: Burden of Proof Regarding Inconsistent Measures and Exceptions

1. A complaining Party asserting that a measure of another Party is inconsistent with this Agreement, that another Party has failed to carry out its obligations under this Agreement, that a benefit the complaining Party could reasonably have expected to accrue to it is being nullified or impaired in the sense of Article 31.2(b) (Scope), or that there has been a denial of rights under Article 31-A.2 (Denial of Rights) or Article 31-B.2 (Denial of Rights), has the burden of establishing that inconsistency, failure, nullification or impairment, or denial of rights. In cases where the responding Party declines to participate in the panel proceeding, the panel shall only find that the complaining Party has satisfied its burden if the complaining Party establishes a *prima facie* case of such inconsistency, failure to carry out obligations, nullification or impairment, or denial of rights.

2. A responding Party asserting that a measure is subject to an exception or affirmative defence under the Agreement has the burden of establishing that the exception or defence applies.

Section B: Rules Applicable to Dispute Settlement under Section A of Chapter 31

Article 15: Terms of Reference

1. If the disputing Parties agree on terms of reference in accordance with Article 31.7 (Terms of Reference), within 20 days after the date of delivery of the request for the establishment of a panel, the complaining Party shall promptly deliver those agreed terms of reference to the responsible Section of the Secretariat by electronic means. That Section shall deliver them by electronic means to the other Sections of the Secretariat and to the panel on appointment of the last panelist.

2. If the disputing Parties have not agreed on terms of reference after 20 days of the request for the establishment of the panel, the complaining Party may so notify the responsible Section of the Secretariat. On receipt of that notification, that Section shall deliver the terms of reference set out in Article 31.7 (Terms of Reference) by electronic means to the participating Parties, to the other Sections of the Secretariat, and to the panel on selection of the last panelist.

Article 16: Three-Member Panels

The disputing Parties shall decide at the earliest possible time, and no later than seven days after the date of delivery of the request for establishment of the panel, whether to have a panel composed of only three members, as allowed under Article 31.9 (Panel Composition). If there is no agreement on a three-member panel, the panel shall be composed of five panelists.

Article 17: Composition of Panels

1. If a Party has failed to designate its individuals to the roster under Article 31.8 (Roster and Qualifications of Panelists) and this impedes the composition of a panel pursuant to Article 31.9 (Panel Composition) due to an insufficient number of individuals on the roster, the disputing Parties shall apply the following process to compose a panel:

- (a) If the chair is being selected under this process, within five days of the request for establishment of the panel, each disputing Party shall propose two candidates who shall not be a citizen of either disputing Party.

- (b) If the disputing Parties are unable to decide on the chair within 15 days of the request for the establishment of the panel, the chair shall be selected by lot within five days, from the candidates proposed pursuant to subparagraph (a) who are not citizens of either disputing Party.
- (c) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure under subparagraph (b), the complaining Party shall select an individual to serve as chair from the candidates proposed pursuant to subparagraph (a) who is not a citizen of that Party. The complaining Party shall notify the responding Party of the selection no later than the next working day.
- (d) If the panelists other than the chair are being selected under this process, no later than five days after the selection of the chair, each disputing Party shall propose:
 - (i) in the case of a five-member panel, four candidates, at least two of which shall not be citizens of that disputing Party; or
 - (ii) in the case of a three-member panel, two candidates, at least one of which shall not be a citizen of that disputing Party,and each disputing Party shall notify the other Party of its proposed candidates no later than the next working day.
- (e) If the responding Party fails to propose all of its candidates pursuant to subparagraph (d), the proposed candidates will be those proposed by the complaining Party.
- (f) If one or more panelists other than the chair are being selected under this process, then within 15 days of selection of the chair, each disputing Party shall select:
 - (i) in the case of a five-member panel, two panelists who are citizens of the other disputing Party from the candidates proposed pursuant to subparagraph (d); or
 - (ii) in the case of a three-member panel, one panelist who is a citizen of the other disputing Party from the candidates proposed pursuant to subparagraph (d).
- (g) If a disputing Party fails to select its panelists under subparagraph (f), within five days the panelist or panelists shall be selected by lot from the candidates proposed pursuant to subparagraph (d) who are citizens of the other disputing Party.

- (h) If the disputing Party who failed to select its panelists under subparagraph (f) refuses to participate in or fails to appear for the choosing by lot procedure, within five days the other disputing Party shall select:
 - (i) in the case of a five-member panel, two panelists of its own citizenship from the candidates proposed pursuant to subparagraph (d); or
 - (ii) in the case of a three-member panel, one panelist of its own citizenship from the candidates proposed pursuant to subparagraph (d),

and the disputing Party that selects shall notify the disputing Party who refused to or failed to appear for the choosing by lot procedure of the selection no later than the next working day.

Article 18: Written Submissions and Other Documents

1. A complaining Party shall submit its initial written submission to the responsible Section of the Secretariat no later than seven days after the date on which the last panelist is selected.
2. No later than five days after the last panelist is selected, and after consulting the disputing Parties, the panel shall issue a timetable for the proceeding that normally shall provide for:
 - (a) submission of the initial written submission of the responding Party no later than 31 days after the date of the submission of the initial written submission of the complaining Party or Parties;
 - (b) submission of the written submission of a third Party no later than 10 days after the date set for submission of the initial written submission of the responding Party;
 - (c) submission of any written rebuttal submission of any complaining Party no later than 21 days after the date set for the submission of the initial written submission of the responding Party;
 - (d) submission of any written rebuttal submission of the responding Party no later than 21 days after the date set for the submission of the rebuttal written submission of the complaining Party or Parties;
 - (e) a hearing no later than 14 days after the date set for submission of the written rebuttal submission of the responding Party;
 - (f) delivery to the participating Parties of written questions, if any, from the panel within three days of the last day of the hearing;

- (g) submission of a Party's responses to written questions, if any, from the panel, within seven days of the delivery of the written questions;
 - (h) submission of a Party's comments on responses to written questions by another disputing Party within seven days of the delivery of the responses to the written questions.
3. A participating Party shall submit with its written submissions all evidence on which it intends to rely upon in support of the factual and legal arguments it advances.
 4. In their rebuttal submissions, the disputing Parties shall submit only evidence to respond to or rebut evidence presented or arguments raised in the other disputing Party's prior written submission.
 5. In the case of any request, notice, or other document related to the panel proceeding that is not covered by this Section, the participating Party shall deliver the document in accordance with Article 31.12 (Electronic Document Filing).

Article 19: Public Release of Documents

1. A disputing Party or third Party making a request or issuing a notification under Article 31.4 (Consultations), Article 31.6 (Establishment of a Panel), or Article 31.14 (Third Party Participation) shall release a copy of the request or notification to the public no later than seven days after it delivers that request or notification.
2. Each participating Party shall release to the public a public version of its written submissions as soon as possible after those documents are submitted to the panel, and at the latest by the time the final report is issued.
3. If the Party required to release a document publicly under paragraphs 1 and 2 has not done so at the end of the required period, at the direction of a disputing Party, its Section of the Secretariat or the responsible Section of the Secretariat shall release the document publicly. Before those documents are made available to the public they shall be redacted to remove any information designated for confidential treatment by a participating Party pursuant to Appendix 1.
4. If the disputing Parties agree, the responsible Section of the Secretariat shall make the hearing transcript available to the public after the Parties have proposed any corrections in accordance with Article 21.14 (Hearings) of these Rules, and at the latest 15 days after the final report of the panel is published. Before the transcript is made available to the public, it shall be redacted to remove any information designated for confidential treatment by a participating Party pursuant to Appendix 1.

5. No disputing Party shall publicly disclose the content of an initial report presented to the disputing Parties under Article 31.17 (Panel Report) or the content of any comments made on an initial report.
6. To the extent it considers necessary to protect confidential information, a participating Party may designate confidential in accordance with Appendix 1 any factual information it includes in a written submission that is not in the public domain. To the extent possible, confidential information should be contained in an exhibit or annex to the submission. Each participating Party shall exercise the utmost restraint in designating information as confidential.
7. If a participating Party designates information contained in a document as confidential, it shall also prepare and deliver a redacted non-confidential version of the document no later than 10 days after the date of submission of the document that contained the confidential information.
8. If a participating Party redacts confidential information, the non-confidential version of the document shall indicate clearly each place that the information has been redacted.
9. No later than 15 days after the issuance of the final report, and after taking any steps to protect confidential information, the disputing Parties through the responsible Section of the Secretariat shall make the final report available to the public.

Article 20: Submission of Written Views by Non-governmental Entities

1. A panel may, on application made by a non-governmental entity located in the territory of a disputing Party, within 20 days after the last panelist is appointed, grant leave to that entity to file written views that may assist the panel in evaluating the submissions and arguments of the disputing Parties.
2. The application for leave must:
 - (a) contain a description of the non-governmental entity, including, as applicable, a statement of its nationality or place of establishment, membership, sources of financing, legal status, and the nature of its activities;
 - (b) identify the specific issues of fact and law the non-governmental entity will address in its submission;
 - (c) explain how the non-governmental entity's submission would assist the panel in the determination of the factual or legal issue related to the dispute by bringing a perspective, particular knowledge, or insight that is different from that of the participating Parties and why its views would be unlikely to repeat legal and factual arguments that a Party has made or is expected to make; and

- (d) contain a statement disclosing:
 - (i) whether the non-governmental entity has or had any relationship, direct or indirect, with a Party;
 - (ii) whether the non-governmental entity received or will receive assistance, financial or otherwise, in the preparation of its application for leave or its submission; and
 - (iii) if the non-governmental entity has received assistance referred to in subparagraph (ii), the Party or person providing the assistance and the nature of that assistance;
- (e) be made in writing, dated and signed by an official of the non-governmental entity, and include the address and other contact details of the official;
- (f) be no longer than 1000 words;
- (g) be made in a language notified by Article 24 (Translation and Interpretation) of these Rules; and
- (h) be delivered to the responsible Section of the Secretariat.

3. The responsible Section of the Secretariat shall promptly provide any request made by a non-governmental entity to each Party and the panel, and make the request available to the public. The panel shall, after consulting the Parties, decide within seven days after the date of its receipt of the request whether to grant the non-governmental entity leave to submit written views in whole or in part. The responsible Section shall promptly (a) notify the non-governmental entity and the Parties of its decision, and (b) make the decision available to the public.

4. The panel shall set a reasonable date by which the Parties may comment on the application for leave.

5. In making its decision to grant leave, the panel shall take into account the requirements in paragraph 2 and any views by the disputing Parties on the application for leave.

6. If the panel has granted leave to a non-governmental entity to file written views, the panel shall set the date for delivery of the non-governmental entity's written submission, and the date for delivery of any responses to that submission by the Parties.

7. The submission of the non-governmental entity must:

- (a) be dated and signed by an official of the non-governmental entity;

- (b) be no longer than 10 typed pages, including any appendices;
 - (c) address only the issues of fact and law that the non-governmental entity described in its application for leave, subject to any further limitations imposed by the panel in its granting of leave;
 - (d) be made in a language notified by a Party under Article 24 (Translation and Interpretation) of these Rules; and
 - (e) be delivered to the responsible Section of the Secretariat.
8. The panel shall ensure that the disputing Parties have an appropriate opportunity to provide comments to the panel on any submission by a non-governmental entity.
9. A panel is not required to address in its report any issue raised in a written submission by a non-governmental entity of a Party.
10. The responsible Section of the Secretariat shall make submissions by non-governmental entities public as soon as possible after it is submitted to the panel and at the latest by the time the final report is issued.
11. Each disputing Party shall, no later than 14 days after the date of the establishment of the panel, make public:
- (a) the establishment of the panel;
 - (b) the opportunity for non-governmental entities in each Party's territory to submit requests to provide written views in the dispute; and
 - (c) the procedures and requirements for making such submissions, consistent with these Rules.

Article 21: Hearings

1. The chair shall fix the date and time of the hearing in consultation with the participating Parties, the other members of the panel and the responsible Section of the Secretariat. The responsible Section of the Secretariat shall notify in writing the participating Parties of the date, time, and location of the hearing.
2. Unless the disputing Parties agree otherwise, the hearing shall be held in the capital of the responding Party.
3. The panel may convene additional hearings if the disputing Parties so agree.

4. All panelists shall be present at hearings. Where a replacement panelist has been selected after the initial hearing has been held, the panel shall hold a new hearing if one of the Parties requests after consultation with the other disputing Party, or if the panel considers a new hearing to be appropriate. The new hearing could be limited to particular issues.
5. Hearings shall be open to the public to observe,¹ unless the disputing Parties decide otherwise. The panel, in consultation with the disputing Parties, shall adopt appropriate logistical arrangements and procedures to ensure that hearings are not disrupted by the attendance of the public.
6. Hearings shall be held in closed session for the duration of any discussion of information designated as confidential. Only authorized persons may attend a portion of the hearing that is closed.
7. A participating Party that wishes to submit or discuss confidential information during a hearing shall provide prior notice to the panel, the other participating Parties, and the responsible Section of the Secretariat. To the extent possible, the participating Party shall provide the notice at least 10 days before the first day of the hearing.
8. No later than five days before the date of a hearing, each participating Party shall deliver to the responsible Section of the Secretariat and the other participating Parties a list of the names of those persons who will make oral arguments, presentations, or provide witness testimony at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.
9. No later than 30 days before the date of the hearing, the disputing Parties may submit to the panel an agreed statement of facts that the disputing Parties consider are not in dispute. If an agreed statement of facts is submitted, the panel shall accept the facts stipulated by the disputing Parties.
10. The disputing Parties may, in accordance with procedures established by the panel, submit witness testimony in person or via declaration, affidavit, report, teleconference, or videoconference.
11. If a disputing Party submits witness testimony at a hearing, the disputing Parties and the panel may test the veracity of that witness testimony.
12. The panel shall conduct the hearing in the following manner, ensuring that the complaining Party or Parties and the responding Party are afforded equal time:

¹ To facilitate public observation of panel hearings, the Panel may make hearings public in the manner that it decides in consultation with the Parties, including by electronic means. However, consent of the disputing Parties is required for a broadcast of a hearing other than a closed-circuit broadcast.

Argument –

- (a) Argument of the complaining Party or Parties;
- (b) Argument of the responding Party;
- (c) Presentation of a third Party;

Rebuttal Argument –

- (d) Reply of the complaining Party or Parties;
- (e) Counter-reply of the responding Party;

Closing Statement –

- (f) Closing statement of the complaining Party or Parties; and
- (g) Closing statement of the responding Party.

13. The panel may direct questions to a participating Party or its witnesses at any time during a hearing.

14. The responsible Section of the Secretariat shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript, including any audio recordings from the hearing, to the participating Parties through their respective Sections of the Secretariat, and to the panel. The participating Parties may propose corrections to the transcript no later than 21 days from its delivery. In case of disagreement, the participating Parties shall seek guidance from the panel.

Article 22: Supplementary Written Submissions

1. The panel may at any time during a proceeding address questions in writing to one or more of the participating Parties. The panel shall deliver the written questions by electronic means to the participating Parties via the responsible Section of the Secretariat.

2. A participating Party to whom the panel addresses written questions shall deliver its written reply to the panel and the participating Parties via the responsible Section of the Secretariat by the deadline fixed by the panel.

3. Each participating Party shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.

4. With the agreement of the panel, a disputing Party may submit a supplementary written submission responding to any matter that arose during the hearing.

Article 23: Information and Technical Advice

1. If a panel wishes to seek information or technical advice under Article 31.15 (Role of Experts), it shall notify the disputing Parties of its request at the earliest possible time and no later than 15 days after the last day of the hearing.

2. If a disputing Party considers that a panel should seek information or technical advice under Article 31.15 (Role of Experts), it shall notify the panel in accordance with paragraph 1 at the earliest possible time and no later than 15 days after the hearing.

3. No later than 15 days after the date of the request under paragraph 1 or 2, the panel and the disputing Parties shall consult to determine whether the information or technical advice should be sought, and if so which person or body should be selected as an expert. If the panel and the disputing Parties agree, they shall decide from whom to seek the information or technical advice, within a further five days. If the panel and the disputing Parties cannot agree, the panel proceeding shall resume at the end of the 15 day period.

4. No later than five days after the selection of a person or body under paragraph 3, the panel or the initiating disputing Party shall circulate draft terms and conditions of the request for information or technical advice and provide the other disputing Party with seven days to comment on that draft.

5. No later than 15 days after the selection of the person or body under paragraph 3, the disputing Parties, in consultation with the panel, shall endeavor to agree on the terms and conditions of the request for information or technical advice.

6. The panel shall deliver a copy of its request for information or technical advice to the responsible Section of the Secretariat which, in turn, shall provide for the delivery of electronic copies of the request by electronic means to the other participating Parties via their Section of the Secretariat and to any person or body selected under paragraph 3. The responsible Section of the Secretariat shall make the request available to the public, subject to the protection of any confidential information.

7. The expert selected under paragraph 3 shall deliver the information or technical advice to the responsible Section of the Secretariat on the date agreed by the disputing Parties, which normally shall be within 30 days after the receipt of the panel's request.

8. The responsible Section of the Secretariat shall deliver the information or technical advice to the panel and the participating Parties by electronic means via their respective Sections of the

Secretariat, and shall make it available to the public, subject to the protection of confidential information. The panel shall establish a date for the participating Parties to provide comments on the information or technical advice. That date normally shall be within 14 days after the date of delivery of the information or technical advice.

9. If a request is made for information or technical advice, any time period applicable to the panel proceeding shall be suspended for a period beginning on the date of the request by a panel under paragraphs 1 or 2 and ending on the date of delivery of the comments on the information or technical advice under paragraph 8, or on any other date that the disputing Parties provide.

10. If the information or technical advice is delivered before the hearing is held, the panel may request, at the request of a disputing Party, or on its own initiative if the disputing Parties agree, that the expert attend the hearing in order to provide the opportunity for the panel and the disputing Parties to ask questions regarding the information or technical advice sent by that expert. If the information or technical advice is delivered after the hearing is held, the panel may arrange, at the request of a disputing Party, or on its own initiative if the disputing Parties agree, a hearing, including through a teleconference or videoconference, in order to provide the opportunity for the panel and the disputing Parties to ask questions regarding the information or technical advice sent by that expert.

Article 24: Translation and Interpretation

1. A participating Party shall, within five days after the last panelist is selected, notify the responsible Section of the Secretariat in writing of the language in which it will make its written submissions, oral arguments and presentations, and in which it wishes to receive the written submissions and hear the oral arguments and presentations of the other participating Parties. The responsible Section of the Secretariat shall promptly provide this information to the panel and the other participating Parties.

2. If, in accordance with the notification provided by each Party under paragraph 1, written submissions or oral arguments and presentations in a panel proceeding will be made in more than one language, or on the request of a panelist, the responsible Section of the Secretariat shall arrange for the translation of the written submissions and the panel reports or for the interpretation of arguments at any hearing, as the case may be.

3. If the responsible Section of the Secretariat is required to arrange for the translation of a written submission or report in one or more languages, it shall not deliver that written submission to the panel and other participating Parties until all translated versions of that written submission or report have been prepared.

4. Any time period applicable to a panel proceeding shall be suspended for the period necessary to complete the translation of any written submissions.

5. The costs incurred to prepare a translation of a final report and all other translation and interpretation requirements in a panel proceeding shall be borne equally by each disputing Party's Section of the Secretariat. The costs of translation for a written submission of a third Party in a panel proceeding shall be borne by that third Party.

6. Any disputing Party may provide comments on a translated version of a document that is prepared in accordance with these Rules. In the case of an inconsistency between an original document and a translation prepared in accordance with these Rules, the original document prevails.

Article 25: Suspension of Benefits Panels

1. If a responding Party requests that a panel be reconvened pursuant to Article 31.19.3 (Non-Implementation – Suspension of Benefits), the responsible Section of the Secretariat shall promptly notify the panelists. If a panelist is unavailable, the disputing Parties shall select a new panelist in accordance with Article 31.9 (Panel Composition). The responsible Section of the Secretariat shall promptly notify the disputing Parties that the panel has been reconvened or that a new panelist has been selected. The panel is reconvened when all panelists are confirmed to be available.

2. These Rules apply to a panel established under Article 31.19.3 (Non-Implementation – Suspension of Benefits) except that:

- (a) the Party that requests the establishment of the panel shall deliver its initial written submission to its Section of the Secretariat within seven days after the date on which the panel is reconvened;
- (b) the responding Party shall deliver its written counter-submission to its Section of the Secretariat within 15 days after the date of delivery of the initial written submission;
- (c) the panel shall fix the time limit for delivering any further written submissions, including rebuttal written submissions, so as to provide each disputing Party with the opportunity to make an equal number of written submissions subject to the time limits for panel proceedings set out in the Agreement and these Rules; and
- (d) the panel may decide not to convene a hearing unless any disputing Party requests a hearing.

**Section C: Rules of Procedures for the
United States-Mexico Facility-Specific Rapid Response Labor Mechanism (RRM)**

Article 26: United States-Mexico Rapid Response Labor Panels

General

1. These procedures apply to a panel established under Article 31-A.5 (Requests for Establishment of Rapid Response Labor Panelists). For purposes of these procedures, the United States and Mexico are collectively “the Parties” and individually “a Party.”
2. A Party submitting any document to the Secretariat shall at the same time submit a copy to the other Party.
3. Submission or transmission of documents by a Party, the Secretariat, or the panel shall occur by electronic mail, except when the panel provides otherwise.

Selection of Panelists

4. If a panel has been requested, the responsible Section of the Secretariat, in coordination with the Section of the Secretariat of the other Party, shall:
 - (a) immediately contact the individuals on the lists of panelists to determine their availability to serve on a panel if necessary;
 - (b) request that the available individuals complete the Initial Disclosure Statement and return it to the responsible Section of the Secretariat within two days; and
 - (c) inform the Parties of the responses received under subparagraph (a) and provide the Parties with the disclosure statements received under subparagraph (b).

If, following receipt of responses pursuant to subparagraph (a), there is no individual available on any one of the lists referred to in Article 31-A.3 (Lists of Rapid Response Labor Panelists), the procedure in paragraph 10 of this Article shall be followed.

5. Following receipt of responses pursuant to paragraph 4(a) and the disclosure statements made pursuant to paragraph 4(b), the responsible Section of the Secretariat, shall select each panelist by lot in accordance with Article 31-A.5.3 (Requests for Establishment of Rapid Response Labor Panel). The responsible Section of the Secretariat shall provide notice and opportunity for a representative of the other Party or Party’s Section of the Secretariat to participate in the selection

by lot. Only the individuals that have confirmed their availability pursuant to subparagraph 4(a) shall be eligible to be selected by lot.

6. The panelist selected from the joint list under Article 31-A.5.3 (Requests for Establishment of Rapid Response Labor Panel) shall serve as the chair of the panel.

7. After the panelists have been selected by lot, the responsible Section of the Secretariat shall immediately transmit the petition to the selected panelists and notify the Parties and the other Party's Section of the Secretariat of the composition of the panel. Upon the transmission of the petition, the panel shall be considered constituted.

8. If a panelist dies, withdraws, declines or is unable to serve on a panel, or is removed, a replacement shall be selected as expeditiously as possible, and in no case later than three business days from the date on which the vacancy arises, in accordance with the selection procedure followed to select the panelist.

9. Any time period applicable to the panel proceeding shall be suspended for a period beginning on the date the panelist dies, withdraws, declines or is unable to serve on a panel, or is removed and ending on the date the replacement is selected.

10. If a Party has failed to appoint individuals to its own list or if the Parties have failed to reach consensus on the individuals to be appointed to the joint list, as required by Article 31-A.3 (Lists of Rapid Response Labor Panelists), or if there are no individuals available from any list, the following procedures shall apply to compose a panel:

- (a)
 - (i) if there is no joint list, the Party requesting the establishment of the panel shall propose two candidates who are non-nationals of the Parties to serve as chair of the panel at the same time as the request is made, the other Party may propose two candidates who are non-nationals of the Parties within two days of the request for establishment of the panel, and the responsible Section of the Secretariat will use the list of two candidates, or four if the other Party has made a proposal, for the selection by lot under subparagraph (c);
 - (ii) if the Party requesting the establishment of the panel has not appointed individuals to its own list, it shall propose three candidates at the same time as the request is made, and failing that, the panel shall not be established;
 - (iii) if the other Party has not appointed individuals to its list, that Party may propose three candidates within two days from the request of the establishment of the panel. If the responding Party fails to propose the three candidates the requesting Party shall propose three candidates for the list of that other Party.

- (b) A Party proposing candidates under subparagraph (a) shall submit the names and curriculum vitae of those candidates by electronic means to the other Party and the responsible Section of the Secretariat and shall include an Initial Disclosure Statement from each candidate.
- (c) Within three business days of the request for the establishment of a panel, the responsible Section of the Secretariat shall select by lot the panelists. The responsible Section of the Secretariat shall provide notice and opportunity for a representative of the other Party or Party's Section of the Secretariat to participate in the selection by lot.
- (d) Following the establishment of a panel, the responsible Section of the Secretariat shall immediately transmit the petition to the selected panelists and notify the disputing Parties of the composition of the panel. Upon the transmission of the petition, the panel shall be considered constituted.

Verification

11. Without limiting the panel from conducting the verification as provided for under Article 31-A.7 (Verification), when formulating an appropriate request for verification under Article 31-A.7.1 (Verification), the panel shall provide an explanation about the actions it intends to conduct (e.g. onsite verification, in person or virtual review of documentary evidence, or in person or virtual direct testimony from individuals, among others).

12. The following procedures shall apply when a panel conducts a verification under Article 31-A.7 (Verification):

- (a) Within three days of receiving the consent to the verification request:
 - (i) the panel shall provide the Parties, the owner of the Covered Facility, and the manager, or its equivalent, of the Covered Facility with the proposed dates and times of the verification and shall notify the respondent Party if any assistance or logistical support will be required; and
 - (ii) each Party shall indicate if it requests that observers, who shall be public officials or other appropriate designees of that Party, be permitted to accompany the panel on its verification.
- (b) If both Parties have requested that observers accompany the panel on its verification, at least five days before the verification, each Party shall notify the panel of the names of the observers, if any, who will attend the on-site verification on its behalf.

- (c) In connection with any verification, the panel shall inform the owner and the manager, or its equivalent, of the Covered Facility that interference with the verification, or an inability for the panel to conduct the verification in the manner it believes is most appropriate to gather relevant information, may be taken into account by the panel when making its determination. A failure to so inform individuals connected with the Covered Facility shall not impact the panel's ability to take these matters into account.

Opportunity to be Heard

13. No later than five days after the panel is composed, the chair shall consult and agree with the Parties on the deadlines of any written submissions the Parties wish to make and to decide whether any hearing should be scheduled. In setting the deadlines for any submissions or hearing, the chair and the Parties shall keep in mind the need to comply with the deadlines in Annex 31-A (United States-Mexico Facility-Specific Rapid Response Labor Mechanism) of the Agreement and the need to ensure the Parties an equal opportunity to present their positions.

14. If a hearing is held, the responsible Section of the Secretariat shall arrange for a transcript of the hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties through their respective Sections of the Secretariat, and to the panel.

15. Unless the disputing Parties agree otherwise, the hearing shall be held in the territory of the responding Party.

16. If the panel or a disputing Party considers that the panel should seek information or technical advice under Article 31.15 (Role of Experts), the panel and the disputing Parties shall seek to agree at the earliest possible time on whether, from whom, and how, including timing, to seek such information or technical advice. If the disputing Parties do not agree, the information or technical advice shall not be sought.

Languages

17. Any document presented to the panel may be presented in English or Spanish. If the panel or a Party requests the translation of any document presented to it, the responsible Section of the Secretariat shall notify the Parties, arrange the translation, and provide the panel and both parties with the translation once it has been produced.

18. If the panel conducts a hearing, and the Parties and panel do not all agree that the hearing shall be conducted exclusively in one language, the responsible Section of the Secretariat shall arrange for interpretation. If the panel conducts a verification, the responsible Section of the Secretariat shall arrange for any interpretation desired by the panel.

19. The panel may issue its written determination in either English or Spanish. As soon as possible after issuance of the written determination, the responsible Section of the Secretariat shall arrange for the determination to be translated into the other language. Any disputing Party may provide comments on a translated version of a document that is prepared in accordance with these Rules.
20. If both Parties agree, any time period applicable to a panel proceeding shall be suspended for the period necessary to complete the translation.
21. The costs incurred to prepare a translation of a written determination and all other translation and interpretation requirements in a panel proceeding shall be borne equally by each disputing Party's Section of the Secretariat.

Public Release of Documents

22. A disputing Party making a request under Article 31-A.5 (Requests for Establishment of Rapid Response Labor Panel) shall release a copy of the request to the public no later than seven days after it delivers that request.
23. Each disputing Party shall release to the public a public version of its written submissions as soon as possible after those documents are submitted to the panel, and at the latest by the time the determination is issued.
24. If the Party required to release a document publicly under paragraphs 22 and 23 has not done so at the end of the required period, at the direction of a disputing Party, its Section of the Secretariat or the responsible Section of the Secretariat shall release the document publicly. Before those documents are made available to the public they shall be redacted to remove any information designated for confidential treatment by a disputing Party pursuant to Appendix 1.
25. If the disputing Parties agree, the responsible Section of the Secretariat shall make the hearing transcript available to the public after the Parties have proposed any corrections. Before the transcript is made available to the public, it shall be redacted to remove any information designated for confidential treatment by a disputing Party pursuant to Appendix 1.
26. To the extent it considers necessary to protect confidential information, a disputing Party may designate confidential in accordance with Appendix 1 any factual information it includes in a written submission that is not in the public domain. To the extent possible, confidential information should be contained in an exhibit or annex to the submission. Each disputing Party shall exercise the utmost restraint in designating information as confidential.
27. If a disputing Party designates information contained in a document as confidential, it shall also prepare and deliver a redacted non-confidential version of the document no later than 10 days after the date of submission of the document that contained the confidential information.

28. If a disputing Party redacts confidential information, the non-confidential version of the document shall indicate clearly each place that the information has been redacted.

29. No later than 15 days after the issuance of the determination, and after taking any steps to protect confidential information, the disputing Parties through the responsible Section of the Secretariat shall make the determination available to the public.

Report on the Functioning of the Facility-Specific Rapid Response Labor Mechanism

30. A panelist from the joint list, selected by mutual agreement of the panelists on that list, shall coordinate the drafting of the report on the functioning of the Facility-Specific Rapid Response Labor Mechanism required under Article 31-A.3.6 (Lists of Rapid Response Labor Panelists).

Section D: Rules of Procedures for the Canada-Mexico Facility-Specific Rapid Response Labor Mechanism (RRM)

Article 27: Canada-Mexico Rapid Response Labor Panels

General

1. These procedures apply to a panel established under Article 31-B.5 (Requests for Establishment of Rapid Response Labor Panelists). For purposes of these procedures, Canada and Mexico are collectively “the Parties” and individually “a Party.”

2. A Party submitting any document to the Secretariat shall at the same time submit a copy to the other Party.

3. Submission or transmission of documents by a Party, the Secretariat, or the panel shall occur by electronic mail, except when the panel provides otherwise.

Selection of Panelists

4. If a panel has been requested, the responsible Section of the Secretariat, in coordination with the Section of the Secretariat of the other Party, shall:

- (a) immediately contact the individuals on the lists of panelists to determine their availability to serve on a panel if necessary;
- (b) request that the available individuals complete the Initial Disclosure Statement and return it to the responsible Section of the Secretariat within two days; and
- (c) inform the Parties of the responses received under subparagraph (a) and provide the Parties with the disclosure statements received under subparagraph (b).

If, following receipt of responses pursuant to subparagraph (a), there is no individual available on any one of the lists referred to in Article 31-B.3 (Lists of Rapid Response Labor Panelists), the procedure in paragraph 10 of this Article shall be followed.

5. Following receipt of responses pursuant to paragraph 4(a) and the disclosure statements made pursuant to paragraph 4(b), the responsible Section of the Secretariat, shall select each panelist by lot in accordance with Article 31-B.5.3 (Requests for Establishment of Rapid Response Labor Panel). The responsible Section of the Secretariat shall provide notice and opportunity for a representative of the other Party or Party's Section of the Secretariat to participate in the selection by lot. Only the individuals that have confirmed their availability pursuant to subparagraph 4(a) shall be eligible to be selected by lot.

6. The panelist selected from the joint list under Article 31-B.5.3 (Requests for Establishment of Rapid Response Labor Panel) shall serve as the chair of the panel.

7. After the panelists have been selected by lot, the responsible Section of the Secretariat shall immediately transmit the petition to the selected panelists and notify the Parties and the other Party's Section of the Secretariat of the composition of the panel. Upon the transmission of the petition, the panel shall be considered constituted.

8. If a panelist dies, withdraws, declines or is unable to serve on a panel, or is removed, a replacement shall be selected as expeditiously as possible, and in no case later than three business days from the date on which the vacancy arises, in accordance with the selection procedure followed to select the panelist.

9. Any time period applicable to the panel proceeding shall be suspended for a period beginning on the date the panelist dies, withdraws, declines or is unable to serve on a panel, or is removed and ending on the date the replacement is selected.

10. If a Party has failed to appoint individuals to its own list or if the Parties have failed to reach consensus on the individuals to be appointed to the joint list, as required by Article 31-B.3 (Lists of Rapid Response Labor Panelists), or if there are no individuals available from any list, the following procedures shall apply to compose a panel:

- (a)
 - (i) if there is no joint list, the Party requesting the establishment of the panel shall propose two candidates who are non-nationals of the Parties to serve as chair of the panel at the same time as the request is made, the other Party may propose two candidates who are non-nationals of the Parties within two days of the request for establishment of the panel, and the responsible Section of the Secretariat will use the list of two candidates, or four if the other Party has made a proposal, for the selection by lot under subparagraph (c);
 - (ii) if the Party requesting the establishment of the panel has not appointed individuals to its own list, it shall propose three candidates at the same time as the request is made, and failing that, the panel shall not be established;
 - (iii) if the other Party has not appointed individuals to its list, that Party may propose three candidates within two days from the request of the establishment of the panel. If the responding Party fails to propose the three candidates the requesting Party shall propose three candidates for the list of that other Party.
- (b) A Party proposing candidates under subparagraph (a) shall submit the names and curriculum vitae of those candidates by electronic means to the other Party and the responsible Section of the Secretariat and shall include a Disclosure Statement from each candidate.
- (c) Within three business days of the request for the establishment of a panel, the responsible Section of the Secretariat shall select by lot the panelists. The responsible Section of the Secretariat shall provide notice and opportunity for a representative of the other Party or Party's Section of the Secretariat to participate in the selection by lot.
- (d) Following the establishment of a panel, the responsible Section of the Secretariat shall immediately transmit the petition to the selected panelists and notify the disputing Parties of the composition of the panel. Upon the transmission of the petition, the panel shall be considered constituted.

Verification

11. Without limiting the panel from conducting the verification as provided for under Article 31-B.7 (Verification), when formulating an appropriate request for verification under Article 31-B.7.1 (Verification), the panel shall provide an explanation about the actions it intends to conduct (e.g. onsite verification, in person or virtual review of documentary evidence, or in person or virtual direct testimony from individuals, among others).

12. The following procedures shall apply when a panel conducts a verification under Article 31-B.7 (Verification):

- (a) Within three days of receiving the consent to the verification request:
 - (i) the panel shall provide the Parties, the owner of the Covered Facility, and the manager, or its equivalent, of the Covered Facility with the proposed dates and times of the verification and shall notify the respondent Party if any assistance or logistical support will be required; and
 - (ii) each Party shall indicate if it requests that observers, who shall be public officials or other appropriate designees of that Party, be permitted to accompany the panel on its verification.
- (b) If both Parties have requested that observers accompany the panel on its verification, at least five days before the verification, each Party shall notify the panel of the names of the observers, if any, who will attend the on-site verification on its behalf.
- (c) In connection with any verification, the panel shall inform the owner and the manager, or its equivalent, of the Covered Facility that interference with the verification, or an inability for the panel to conduct the verification in the manner it believes is most appropriate to gather relevant information, may be taken into account by the panel when making its determination. A failure to so inform individuals connected with the Covered Facility shall not impact the panel's ability to take these matters into account.

Opportunity to be Heard

13. No later than five days after the panel is composed, the chair shall consult and agree with the Parties on the deadlines of any written submissions the Parties wish to make and to decide whether any hearing should be scheduled. In setting the deadlines for any submissions or hearing, the chair and the Parties shall keep in mind the need to comply with the deadlines in Annex 31-B (Canada-Mexico Facility-Specific Rapid Response Labor Mechanism) of the Agreement and the need to ensure the Parties an equal opportunity to present their positions.

14. If a hearing is held, the responsible Section of the Secretariat shall arrange for a transcript of the hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties through their respective Sections of the Secretariat, and to the panel.

15. Unless the disputing Parties agree otherwise, the hearing shall be held in the territory of the responding Party.

16. If the panel or a disputing Party considers that the panel should seek information or technical advice under Article 31.15 (Role of Experts), the panel and the disputing Parties shall seek to agree at the earliest possible time on whether, from whom, and how, including timing, to seek such information or technical advice. If the disputing Parties do not agree, the information or technical advice shall not be sought.

Languages

17. Any document presented to the panel may be presented in English or Spanish. If the panel or a Party requests the translation of any document presented to it, the responsible Section of the Secretariat shall notify the Parties, arrange the translation, and provide the panel and both parties with the translation once it has been produced.

18. If the panel conducts a hearing, and the Parties and panel do not all agree that the hearing shall be conducted exclusively in one language, the responsible Section of the Secretariat shall arrange for interpretation. If the panel conducts a verification, the responsible Section of the Secretariat shall arrange for any interpretation desired by the panel.

19. The panel may issue its written determination in either English or Spanish. As soon as possible after issuance of the written determination, the responsible Section of the Secretariat shall arrange for the determination to be translated into the other language. Any disputing Party may provide comments on a translated version of a document that is prepared in accordance with these Rules.

20. If both Parties agree, any time period applicable to a panel proceeding shall be suspended for the period necessary to complete the translation.

21. The costs incurred to prepare a translation of a written determination and all other translation and interpretation requirements in a panel proceeding shall be borne equally by each disputing Party's Section of the Secretariat.

Public Release of Documents

22. A disputing Party making a request under Article 31-B.5 (Requests for Establishment of Rapid Response Labor Panel) shall release a copy of the request to the public no later than seven days after it delivers that request.

23. Each disputing Party shall release to the public a public version of its written submissions as soon as possible after those documents are submitted to the panel, and at the latest by the time the determination is issued.

24. If the Party required to release a document publicly under paragraphs 22 and 23 has not done so at the end of the required period, at the direction of a disputing Party, its Section of the Secretariat or the responsible Section of the Secretariat shall release the document publicly. Before those documents are made available to the public they shall be redacted to remove any information designated for confidential treatment by a disputing Party pursuant to Appendix 1.

25. If the disputing Parties agree, the responsible Section of the Secretariat shall make the hearing transcript available to the public after the Parties have proposed any corrections. Before the transcript is made available to the public, it shall be redacted to remove any information designated for confidential treatment by a disputing Party pursuant to Appendix 1.

26. To the extent it considers necessary to protect confidential information, a disputing Party may designate confidential in accordance with Appendix 1 any factual information it includes in a written submission that is not in the public domain. To the extent possible, confidential information should be contained in an exhibit or annex to the submission. Each disputing Party shall exercise the utmost restraint in designating information as confidential.

27. If a disputing Party designates information contained in a document as confidential, it shall also prepare and deliver a redacted non-confidential version of the document no later than 10 days after the date of submission of the document that contained the confidential information.

28. If a disputing Party redacts confidential information, the non-confidential version of the document shall indicate clearly each place that the information has been redacted.

29. No later than 15 days after the issuance of the determination, and after taking any steps to protect confidential information, the disputing Parties through the responsible Section of the Secretariat shall make the determination available to the public.

Report on the Functioning of the Facility-Specific Rapid Response Labor Mechanism

22. A panelist from the joint list, selected by mutual agreement of the panelists on that list, shall coordinate the drafting of the report on the functioning of the Facility-Specific Rapid Response Labor Mechanism required under Article 31-B.3.6 (Lists of Rapid Response Labor Panelists).

APPENDIX 1 – CONFIDENTIAL INFORMATION

1. A participating Party or expert shall identify confidential information by:
 - (a) clearly marking information recorded in paper and electronic records with the notation “CONFIDENTIAL INFORMATION” on the cover page of the record, including the timeframe during which the information shall be kept confidential, and on each page where confidential information appears, and by enclosing the confidential information in double square brackets;
 - (b) clearly marking information recorded in an electronic file which is used to store an electronic record, with the notation “CONFIDENTIAL INFORMATION” in the name of the electronic file and in any electronic transmission of the information and clearly indicating the confidential information where it appears in the electronic record that is stored on the electronic file as described in subparagraph (a); and
 - (c) declaring spoken information to be “confidential information” prior to its disclosure.
2. If a participating Party submits confidential information first submitted by another Party, it shall identify that information as confidential information by:
 - (a) clearly marking the information in accordance with paragraph 1(a) and (b); and with the name of the Party that first submitted the information on the cover page; and
 - (b) prior to its disclosure, declaring spoken information to be “confidential information” and identifying the Party that first submitted the information.
3. Only authorized persons designated in accordance with Appendix 2 may view or hear confidential information. No authorized person who views or hears confidential information may disclose it, or allow it to be disclosed to any other person except authorized persons.
4. An authorized person shall take all necessary precautions to safeguard confidential information when a record containing the information is in use or being stored.
5. Authorized persons who view or hear confidential information shall use that information only for the purposes of the panel proceedings.
6. The panel shall not disclose confidential information in its report, but may state conclusions drawn from that information.
7. After the conclusion of the panel proceeding, each participating Party shall, in accordance with its domestic law:

- (a) destroy any record provided by another participating Party containing the confidential information and promptly notify the responsible Section of the Secretariat when the confidential information has been destroyed;
- (b) return any record containing confidential information to the participating Party that submitted the information, unless the Party that first submitted the confidential information otherwise agrees and promptly notify the responsible Section of the Secretariat when the confidential information has been returned; or
- (c) maintain the confidentiality of any record containing confidential information.

8. After consulting the participating Parties, the panel may establish additional procedures that it considers necessary to protect confidential information.

9. The panel may, at the request of the participating Parties, or with the consent of the participating Parties, modify or waive any part of the procedures set out in this Appendix for treatment of confidential information. In that case, each authorized person must sign and submit to the panel a modified Declaration of Non-Disclosure, as appropriate.

APPENDIX 2 – AUTHORIZED PERSONS

1. Each participating Party shall submit to the panel and the other participating Parties a list of its authorized representatives who need access to confidential information submitted by a participating Party and whom it wishes to have the panel designate as authorized persons.
2. The responsible Section of the Secretariat shall submit to the panel and the participating Parties a list of the authorized employees of the responsible Section of the Secretariat or assistants of panelists who need access to confidential information in the panel proceeding and whom it wishes to have the panel designate as authorized persons.
3. Each participating Party and the responsible Section of the Secretariat shall keep the number of persons on its list as limited as possible and may each submit amendments to its list at any time. Upon request of a disputing Party, the panel, in consultation with the Parties, shall determine the maximum number of persons that may be on each participating Parties list of authorized persons at any one time. A participating Party or the responsible Section of the Secretariat may submit a modification to its list at any time.
4. In no circumstances shall a participating Party or the responsible Section of the Secretariat nominate as an authorized person any person, or any employee, officer or agent of any entity, who could reasonably be expected to benefit outside of panel proceedings under Chapter 31 from the receipt of confidential information.
5. A participating Party may object to the designation by the panel of a person as an authorized person within seven days after the date of delivery of the list or amendments to the list, or within seven days of becoming aware of information that would establish a violation of the Code of Conduct. Within seven days after the date of delivery of an objection, the panel shall decide on the objection, having regard to any potential harm arising from the designation to the interests of the owners or sources of confidential information.
6. If the panel designates a person as an authorized person after any participating Party makes an objection, confidential information may not be disclosed to that authorized person until the Party submitting the information has had a reasonable opportunity to:
 - (a) withdraw the information, in which case the panel shall return any record containing the information to the participating Party submitting it and each Party shall, in accordance with its domestic law, either:
 - (i) destroy any record containing the information, or
 - (ii) return that record to the Party submitting the information; or
 - (b) withdraw the designation of the information as confidential information.

7. Subject to any decision on an objection to designate a person as an authorized person, the panel shall designate the persons on the lists submitted under paragraphs 1 and 2 as authorized persons for the dispute. Each authorized person must sign and submit to the panel the Declaration of Non-Disclosure set out in Appendix 3.

APPENDIX 3 – DECLARATION OF NON-DISCLOSURE

1. I acknowledge having received a copy of the Rules of Procedure governing the treatment of confidential information (the “Procedures”).
2. I acknowledge having read and understood the Procedures.
3. I agree to be bound by, and to adhere to, the Procedures and, accordingly, without limitation, to treat confidentially all confidential information that I may view or hear from time to time in accordance with the Procedures and to use that information solely for purposes of the panel proceedings.

Executed on this ____ day of _____, 20____.

By: _____
Name

Signature _____