

## **CHAPTER 31**

### **DISPUTE SETTLEMENT**

#### **Section A: Dispute Settlement**

##### **Article 31.1: Cooperation**

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of a matter that might affect its operation or application.

##### **Article 31.2: Scope**

Unless otherwise provided for in this Agreement, the dispute settlement provisions of this Chapter apply:

- (a) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement;
- (b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation of this Agreement; or
- (c) when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Agriculture), Chapter 4 (Rules of Origin), Chapter 5 (Origin Procedures), Chapter 6 (Textile and Apparel Goods), Chapter 7 (Customs Administration and Trade Facilitation), Chapter 9 (Sanitary and Phytosanitary Measures), Chapter 11 (Technical Barriers to Trade), Chapter 13 (Government Procurement), Chapter 15 (Cross-Border Trade in Services), or Chapter 20 (Intellectual Property Rights), is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement.

##### **Article 31.3: Choice of Forum**

1. If a dispute regarding a matter arises under this Agreement and under another international trade agreement to which the disputing Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel under this Chapter or a panel or tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

#### **Article 31.4: Consultations**

1. A Party may request consultations with another Party with respect to a matter described in Article 31.2 (Scope).

2. The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the specific measure or other matter at issue and an indication of the legal basis for the complaint.

3. The requesting Party shall deliver the request concurrently to the other Parties through their respective Sections of the Secretariat, including a copy to its Section.

4. A third Party that considers it has a substantial interest in the matter may participate in the consultations by notifying the other Parties in writing through their respective Sections of the Secretariat, including a copy to its Section, no later than seven days after the date of delivery of the request for consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

5. Unless the consulting Parties decide otherwise, they shall enter into consultations no later than:

(a) 15 days after the date of delivery of the request for a matter concerning perishable goods;<sup>1</sup> or

(b) 30 days after the date of delivery of the request for all other matters.

6. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of a matter through consultations under this Article or other consultative provisions of this Agreement. To this end:

(a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure or other matter at issue might affect the operation or application of this Agreement;

---

<sup>1</sup> For the purposes of this Chapter, perishable goods means perishable agricultural and fish goods classified in HS Chapters 1 through 24.

- (b) a Party that participates in the consultations shall treat the information exchanged in the course of consultations that is designated as confidential on the same basis as the Party providing the information; and
- (c) the consulting Parties shall seek to avoid a resolution that adversely affects the interests of another Party under this Agreement.

7. Consultations may be held in person or by a technological means available to the consulting Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the consulting Parties decide otherwise.

8. In consultations under this Article, a consulting Party may request that another consulting Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

9. Consultations shall be confidential and without prejudice to the rights of a Party in another proceeding.

#### **Article 31.5: Good Offices, Conciliation, and Mediation**

1. Parties may decide at any time to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation, or mediation.

2. Proceedings that involve good offices, conciliation, or mediation shall be confidential and without prejudice to the rights of the Parties in another proceeding.

3. Parties participating in proceedings under this Article may suspend or terminate those proceedings.

4. If the disputing Parties decide, good offices, conciliation, or mediation may continue while a dispute proceeds for resolution before a panel established under Article 31.6 (Establishment of a Panel).

#### **Article 31.6: Establishment of a Panel**

1. If the consulting Parties fail to resolve the matter within:

- (a) 30 days after a Party has delivered a request for consultations under Article 31.4 (Consultations) in a matter regarding perishable goods;
- (b) 75 days after a Party has delivered a request for consultations under Article 31.4 (Consultations); or

(c) another period as the consulting Parties may decide,

a consulting Party may request the establishment of a panel by means of a written notice delivered to the responding Party through its Section of the Secretariat.

2. The complaining Party shall circulate the written notice concurrently to the other Parties through their respective Sections of the Secretariat.

3. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the issue clearly.

4. On delivery of the request, the panel is established.

5. A third Party that considers it has a substantial interest in the matter is entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties through their respective Sections of the Secretariat, including a copy to its Section. The third Party shall deliver the notice no later than seven days after the date of delivery of a request by a Party for the establishment of a panel.

6. Unless the disputing Parties decide otherwise, the panel shall be established and perform its functions in a manner consistent with this Chapter and the Rules of Procedure.

7. If a panel has been established regarding a matter and another Party requests the establishment of a panel regarding the same matter, a single panel should be established to examine those complaints whenever feasible.

#### **Article 31.7: Terms of Reference**

1. Unless the disputing Parties decide otherwise no later than 20 days after the date of delivery of the request for the establishment of a panel, the terms of reference shall be to:

(a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 31.6 (Establishment of a Panel); and

(b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 31.17 (Panel Report).

2. If, in its request for the establishment of a panel, a complaining Party claims that a measure nullifies or impairs a benefit within the meaning of Article 31.2 (Scope), the terms of reference shall so indicate.

3. If a disputing Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of a measure found not to conform with an obligation of this Agreement or to have caused nullification or impairment in the sense of Article 31.2(c) (Scope), the terms of reference shall so indicate.

### **Article 31.8: Roster and Qualifications of Panelists**

1. The Parties shall establish, by the date of entry into force of this Agreement, and maintain a roster of up to 30 individuals who are willing to serve as panelists. Each Party shall designate up to 10 individuals. The Parties shall endeavor to achieve consensus on the appointments. If the Parties are unable to achieve consensus by one month after the date of entry into force of this Agreement, the roster shall be comprised of the designated individuals. The roster shall remain in effect for a minimum of three years or until the Parties constitute a new roster. If a Party fails to designate its individuals to the roster, the Parties may still request the establishment of panels under Article 31.6 (Establishment of a Panel). The Rules of Procedure, which shall be established by the date of entry into force of this Agreement, shall provide for how to compose a panel in such circumstances. Members of the roster may be reappointed. In the event that an individual is no longer able or willing to serve as a panelist, the relevant Party shall designate a replacement. The Parties shall endeavor to achieve consensus on the appointment. If the Parties are unable to achieve consensus by one month after the date the replacement is designated, the individual shall be added to the roster.

2. Each roster member and panelist shall:

- (a) have expertise or experience in international law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be selected on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, a Party; and
- (d) comply with the Code of Conduct established by the Commission.

3. For a dispute arising under Chapter 23 (Labor) and Chapter 24 (Environment), each disputing Party shall select a panelist in accordance with the following requirements, in addition to those set out in paragraph 2:

- (a) in a dispute arising under Chapter 23 (Labor), panelists other than the chair shall have expertise or experience in labor law or practice; and

- (b) in a dispute arising under Chapter 24 (Environment), panelists other than the chair shall have expertise or experience in environmental law or practice.
4. In disputes regarding specialized areas of law not set out in paragraph 3, the disputing Parties should select panelists to ensure that the necessary expertise is available on the panel.
5. An individual shall not serve as a panelist in the same dispute in which the individual has participated pursuant to Articles 31.4 (Consultations) or Article 31.5 (Good Offices, Conciliation, and Mediation).

### **Article 31.9: Panel Composition**

1. If there are two disputing Parties, the following procedures shall apply:
- (a) The panel shall comprise five members, unless the disputing Parties agree to a panel comprised of three members.
  - (b) The disputing Parties shall endeavor to decide on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to decide on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.
  - (c) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Party shall select an individual from the roster 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) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.
  - (e) If a disputing Party fails to select its panelists within that period, those panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.
  - (f) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Party shall select two individuals from the roster who are citizens of the complaining Party. The complaining Party shall notify the responding Party of the selections no later than the next working day.
2. If there are more than two disputing Parties, the following procedures shall apply:

- (a) The panel shall comprise five members, unless the disputing Parties agree to a panel comprised of three members.
- (b) The disputing Parties shall endeavor to decide on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel and, if the disputing Parties are unable to decide on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of that Party or those Parties.
- (c) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Parties, or the complaining Party selected to represent them, shall select an individual from the roster who is not a citizen of either complaining Party. The complaining Parties shall notify the responding Party of the selection no later than the next working day.
- (d) Within 15 days of selection of the chair, the responding Party shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party and the complaining Parties shall select two panelists who are citizens of the responding Party.
- (e) If a disputing Party fails to select a panelist within that period, that panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (d).
- (f) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Parties, or the complaining Party selected to represent them, shall select an individual from the roster who is a citizen of one of the complaining Parties. The complaining Parties shall notify the responding Party of the selection no later than the next working day.

3. A panelist shall normally be selected from the roster. A disputing Party may exercise a peremptory challenge against an individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed, unless no qualified and available individual on the roster possesses necessary specialized expertise, including as required by Article 31.8.3 (Roster and Qualifications of Panelists), in which case a disputing Party may not exercise a peremptory challenge but may raise concerns that the panelist does not meet the requirements of Article 31.8.2 (Roster and Qualifications of Panelists).

4. If a disputing Party believes that a panelist is in violation of the Code of Conduct, the disputing Parties shall consult and if they concur the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

### **Article 31.10: Replacement of Panelists**

1. If a panelist resigns, is removed, or becomes unable to serve, the time frames applicable to that panel's proceeding shall be suspended until a replacement is appointed and shall be extended by the amount of time that the work was suspended.
2. If a panelist resigns, is removed, or becomes unable to serve on the panel, a replacement panelist shall be appointed within 15 days in accordance with the same method used to select the panelist in accordance with Article 31.9 (Panel Composition).
3. If a disputing Party believes that a panelist is in violation of the Code of Conduct, the disputing Parties shall consult. If they concur on removing the panelist, they shall be removed and a new panelist shall be selected in accordance with this Article.

### **Article 31.11: Rules of Procedure for Panels**

1. The Rules of Procedure, established under this Agreement in accordance with Article 30.2 (Functions of the Commission), shall ensure that:
  - (a) disputing Parties have the right to at least one hearing before the panel at which each may present views orally;
  - (b) subject to subparagraph (f), a hearing before the panel shall be open to the public, unless the disputing Parties decide otherwise;
  - (c) each disputing Party has an opportunity to provide an initial and a rebuttal written submission;
  - (d) subject to subparagraph (f), each disputing Party's written submissions, written version of an oral statement, and written response to a request or question from the panel, if any, are public as soon as possible after the documents are filed;
  - (e) the panel shall consider requests from non-governmental entities located in the territory of a disputing Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;
  - (f) confidential information is protected;
  - (g) written submissions and oral arguments shall be made in one of the languages of the Parties, unless the disputing Parties decide otherwise; and



- (h) unless the disputing Parties decide otherwise, hearings shall be held in the capital of the responding Party.
2. The Rules of Procedure shall include rules of evidence, which shall ensure that:
- (a) the disputing Parties have the right to submit testimony in person or via declaration, affidavit, report, teleconference, or videoconference, and the disputing Parties and the panel the right to test the veracity of such testimony;
  - (b) the disputing Parties have the right to submit anonymous testimony and redacted evidence, in appropriate circumstances;
  - (c) the panel may request, on its own initiative or at the request of a disputing Party, that a Party make available documents or other information relevant to the dispute, and may take a failure to comply with such request into account in its decision; and
  - (d) a panel shall accept the disputing Parties' stipulations in advance of the hearing.

#### **Article 31.12: Electronic Document Filing**

The disputing Parties shall file all documents relating to a dispute, including written submissions, written versions of oral statements, and written responses to panel questions, by electronic means through their respective Sections of the Secretariat.

#### **Article 31.13: Function of Panels**

1. A panel's function is to make an objective assessment of the matter before it and to present a report that contains:
- (a) findings of fact;
  - (b) determinations as to whether:
    - (i) the measure at issue is inconsistent with obligations in this Agreement,
    - (ii) a Party has otherwise failed to carry out its obligations in this Agreement,
    - (iii) the measure at issue is causing nullification or impairment within the meaning of Article 31.2 (Scope), or
    - (iv) any other determination requested in the terms of reference;

- (c) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and
  - (d) the reasons for the findings and determinations.
2. The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.
  3. Unless the disputing Parties decide otherwise, the panel shall perform its functions and conduct its proceeding in a manner consistent with this Chapter and the Rules of Procedure.
  4. The panel shall interpret this Agreement in accordance with customary rules of interpretation of public international law, as reflected in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, done at Vienna on May 23, 1969.
  5. A panel shall take its decision by consensus, except that, if a panel is unable to reach consensus, it may take its decision by majority vote.
  6. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information or advice put before it under Article 31.15 (Role of Experts).
  7. The panel shall draft its reports without the presence of any Party.
  8. Panelists may present separate views on matters not unanimously agreed and shall not disclose the identity of which panelists are associated with majority or minority views.

#### **Article 31.14: Third Party Participation**

A Party that is not a disputing Party shall, on delivery of a written notice to the disputing Parties through their respective Sections of the Secretariat, including a copy to its Section, be entitled to attend any hearing, to make written and oral submissions to the panel, and to receive written submissions of the disputing Parties. The Party shall provide written notice no later than 10 days after the date of delivery of the request for the establishment of the panel under Article 31.6 (Establishment of a Panel).

#### **Article 31.15: Role of Experts**

At the request of a disputing Party, or on its own initiative, a panel may seek information or technical advice from a person or body that it deems appropriate, provided that the disputing Parties agree and subject to any terms and conditions decided on by the disputing Parties. The

disputing Parties shall have an opportunity to comment on information or advice obtained under this Article.

#### **Article 31.16: Suspension or Termination of Proceedings**

1. The panel may suspend its work at any time at the request of the complaining Party, for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties decide otherwise.
2. The panel shall terminate its proceedings if the disputing Parties request it to do so.

#### **Article 31.17: Panel Report**

1. The panel shall present an initial report to the disputing Parties no later than 150 days after the date of the appointment of the last panelist. In cases of urgency related to perishable goods, the panel shall endeavour to present an initial report to the disputing Parties no later than 120 days after the date of the appointment of the last panelist.
2. In exceptional cases, if the panel considers that it cannot release its initial report within the time period specified in paragraph 1, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the disputing Parties decide otherwise.
3. A disputing Party may submit written comments to the panel on its initial report no later than 15 days after the presentation of the initial report or within another period as the disputing Parties may decide.
4. After considering those comments, the panel, on its own initiative or on the request of a disputing Party, may:
  - (a) request the views of a Party;
  - (b) reconsider its report; or
  - (c) make a further examination that it considers appropriate.
5. The panel shall present a final report including any separate opinions on matters not unanimously agreed to the disputing Parties no later than 30 days after presentation of the initial report, unless the disputing Parties decide otherwise.

6. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the disputing Parties shall make the final report available to the public.

### **Article 31.18: Implementation of Final Report**

1. Within 45 days from receipt of a final report that contains findings that:
  - (a) the measure at issue is inconsistent with a Party's obligations in this Agreement;
  - (b) a Party has otherwise failed to carry out its obligations in this Agreement; or
  - (c) the measure at issue is causing nullification or impairment within the meaning of Article 31.2 (Scope),

the disputing Parties shall endeavor to agree on the resolution of the dispute.

2. Resolution of the dispute can comprise elimination of the non-conformity or the nullification or impairment, if possible, the provision of mutually acceptable compensation, or another remedy the disputing Parties may agree.

### **Article 31.19: Non-Implementation – Suspension of Benefits**

1. If the disputing Parties are unable to agree on a resolution to the dispute under Article 31.18 (Implementation of Final Report) within 45 days from receipt of the final report, the complaining Party may suspend the application to the responding Party of benefits of equivalent effect to the non-conformity or the nullification or impairment until the disputing Parties agree on a resolution to the dispute.

2. In considering what benefits to suspend pursuant to paragraph 1:
  - (a) a complaining Party should first seek to suspend benefits in the same sector as that affected by the measure or other matter that was the subject of the dispute; and
  - (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector, may suspend benefits in other sectors unless otherwise provided for elsewhere in this Agreement.

3. If the responding Party considers that:
  - (a) the level of benefits proposed to be suspended is manifestly excessive; or

- (b) it has eliminated the non-conformity or the nullification or impairment that the panel has determined to exist,

it may request that the panel be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the disputing Parties no later than 90 days after it reconvenes to review a request under subparagraph (a) or (b), or 120 days after it reconvenes for a request under both subparagraphs (a) and (b). If the panel considers that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall provide its views as to the level of benefits it considers to be of equivalent effect.

- 4. If the panel's views are that the responding Party has not eliminated the non-conformity or the nullification or impairment, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 3.

## **Section B: Domestic Proceedings and Private Commercial Dispute Settlement**

### **Article 31.20: Referrals of Matters from Judicial or Administrative Proceedings**

- 1. If an issue of interpretation or application of this Agreement arises in a domestic judicial or administrative proceeding of a Party that a Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and its Section of the Secretariat. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.
- 2. The Party in whose territory the court or administrative body is located shall submit an agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.
- 3. If the Commission is unable to agree, a Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

### **Article 31.21: Private Rights**

No Party shall provide for a right of action under its law against another Party on the ground that a measure of that other Party is inconsistent with this Agreement.

## **Article 31.22: Alternative Dispute Resolution**

1. Each Party shall, to the extent possible, encourage, facilitate, and promote through education, the use of arbitration, mediation, online dispute resolution and other procedures for the prevention and resolution of international commercial disputes between private parties in the free trade area.
2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards and settlement agreements in those disputes, and to facilitate and encourage mediation procedures.
3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on June 10 1958, or the *Inter-American Convention on International Commercial Arbitration*, done at Panama on January 30, 1975.
4. The Commission shall establish and maintain an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall, to the extent possible, encourage, facilitate, and promote through education, the use of arbitration, mediation, online dispute resolution and other procedures for the prevention and resolution of international commercial disputes between private parties in the free trade area. The Committee shall report and provide recommendations to the Commission on general issues respecting the availability, use, and effectiveness of arbitration, mediation, online dispute settlement resolution, and other dispute resolution procedures for the prevention and resolution of those disputes in the free trade area.

## ANNEX 31-A

### UNITED STATES-MEXICO FACILITY-SPECIFIC RAPID RESPONSE LABOR MECHANISM

#### Article 31-A.1: Scope and Purpose

1. The United States and Mexico are agreeing to this annex pursuant to Article 31.5.1 (Good Offices, Conciliation, and Mediation).
2. The purpose of the Facility-Specific Rapid Response Labor Mechanism (the “Mechanism”), including the ability to impose remedies, is to ensure remediation of a Denial of Rights, as defined in Article 31-A.2, for workers at a Covered Facility, not to restrict trade. Furthermore, the Parties have designed this Mechanism to ensure that remedies are lifted immediately once a Denial of Rights is remediated.
3. The Parties shall make every attempt to cooperate and arrive at a mutually acceptable solution with respect to matters that can be raised through the Mechanism.
4. This Annex applies only as between Mexico and the United States.

#### Article 31-A.2: Denial of Rights

The Mechanism shall apply whenever a Party (the “complainant Party”) has a good faith basis belief that workers at a Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill the obligations of the other Party (the “respondent Party”) under this Agreement (a “Denial of Rights”).<sup>2</sup>

#### Article 31-A.3: Lists of Rapid Response Labor Panelists

1. The Parties shall establish and maintain three lists of Rapid Response Labor Panelists who are willing to commit to being generally available to serve as Labor Panelists for the Mechanism.
2. By the date of entry into force of this Agreement, each Party shall appoint three individuals to one list each and appoint, by consensus, three individuals to a joint list. The individuals in the joint list shall be non-nationals of either Mexico or the United States. If a Party fails to designate

---

<sup>2</sup> With respect to the United States, a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the National Labor Relations Board. With respect to Mexico, a claim can be brought only with respect to an alleged Denial of Rights under legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico).

its individuals, the Parties may still request the establishment of panels under Article 31-A.5 (Requests for Establishment of Rapid Response Labor Panel). The Rules of Procedure shall provide for how to compose a panel in such circumstances. Thereafter, at most six months from the date of entry into force of this Agreement, the Parties shall expand each list to at least five individuals each.

3. The Labor Panelists shall be appointed for a minimum of four years or until the Parties constitute new lists. Labor Panelists may be reappointed.

4. Each Labor Panelist shall:

- (a) have expertise and experience in labor law and practice, and with the application of standards and rights as recognized by the International Labor Organization;
- (b) be selected on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, a Party; and
- (d) comply with the Code of Conduct established by the Commission for dispute settlement under this chapter.

5. If a list falls below five individuals within the four-year term, the relevant Party shall promptly appoint replacements. With respect to the joint list, the Parties shall appoint replacements by consensus within 30 days from the date the list has fallen below the required number.

6. At the conclusion of the first four-year term, and every four years thereafter, the Labor Panelists shall submit a report to the Parties commenting on the functioning of the Mechanism. The Parties shall make the report public.

7. The Parties shall address the compensation of Labor Panelists in the Rules of Procedure established in accordance with Article 30.2 (Functions of the Commission). The Parties shall also provide for reasonable expenses, including logistical support and personnel as appropriate, associated with verification efforts and the drafting of determinations.

#### **Article 31-A.4: Requests for Review and Remediation**



1. If a Party has a domestic process for determining whether to invoke this mechanism and that process has started regarding a Covered Facility in the other Party, that Party shall notify the other Party within five business days of initiating such process.<sup>3</sup>
2. If a complainant Party has a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, it shall first request that the respondent Party conduct its own review of whether a Denial of Rights exists and, if the respondent Party determines that there is a Denial of Rights, the latter shall attempt to remediate within 45 days of the request. The complainant Party shall provide sufficient information for the respondent Party to conduct its review. The respondent Party shall have 10 days to notify the complainant Party as to whether it intends to conduct a review. If the respondent Party does not choose to conduct a review or does not notify within the 10-day period, the complainant Party may request the formation of a Rapid Response Labor Panel (the “panel”) to conduct a separate verification and determination pursuant to Article 31-A.5.
3. Upon delivering the request to the respondent Party, the complainant Party may delay final settlement of customs accounts related to entries of goods from the Covered Facility. Settlement of such accounts must resume immediately upon an agreement by the Parties that there is no Denial of Rights or a finding by a panel that there is no Denial of Rights.
4. If the respondent Party chooses to conduct its review, it shall report in writing the results of the review and any remediation to the complainant Party at the end of the 45-day period.
5. If the respondent Party has determined that there is no Denial of Rights, the complainant Party may agree that the issue is resolved or it may communicate in writing its reasons for disagreement with the respondent Party’s determination and immediately may request a panel verification and determination pursuant to Article 31-A.5.
6. If the respondent Party has determined there is a Denial of Rights, the Parties shall consult in good faith for a period of 10 days and shall endeavor to agree upon a course of remediation that will remediate the Denial of Rights without interrupting trade.
7. If the Parties agree on a course of remediation, the respondent Party shall undertake the remediation by the date agreed to by the Parties and no remedy may be imposed by the complainant Party until the expiration of the agreed upon period.
8. If, after the agreed-upon date for remediation, the Parties disagree as to whether the Denial of Rights has been remediated, the complainant Party may provide written notice to the respondent Party of its intention to impose remedies at least 15 days prior to imposing remedies. The respondent Party may, within 10 days of receiving such notice, request a determination from a

---

<sup>3</sup> The United States intends to establish such a domestic process under which the United States government will strive to complete initial reviews of complaints received by the government about a Covered Facility in the other Party in 30 days.

panel as to whether the Denial of Rights persists pursuant to Article 31-A.5. The complainant Party may not impose remedies until the Panel makes its determination.

9. If the Parties cannot agree on a course of remediation at the end of the 10-day period, the complainant Party may request a panel verification and determination pursuant to Article 31-A.5.

10. At any point during the 10-day consultation period, the complainant Party may request that the panel be established, and the panel may proceed to confirm the petition. However, the panel may not issue a request for verification until the 10-day period expires.

### **Article 31-A.5: Requests for Establishment of Rapid Response Labor Panel**

1. If, after the conditions precedent for the establishment of a panel under Article 31-A.4 are met, the complainant Party continues to have a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, that Party may submit to the Secretariat a petition:

- (a) requesting the establishment of a panel to request that the respondent Party allow the panel an opportunity to verify the Covered Facility's compliance with the law in question and determine whether there has been a Denial of Rights; or
- (b) requesting the establishment of a panel to determine whether there has been a Denial of Rights.

2. The Secretariat shall transmit the petition to the respondent Party.

3. The Secretariat shall within three business days from the date of the request for establishment of a panel select by lot one panelist from the complainant Party list, one from the respondent Party list, and one from the Joint List. The Secretariat shall immediately transmit the petition to the selected panelists.

### **Article 31-A.6: Confirmation of Petition**

A panel established under Article 31-A.5 shall have five business days after it is constituted to confirm that the petition:

- (a) identifies a Covered Facility;
- (b) identifies the respondent Party's laws relevant to the alleged Denial of Rights; and
- (c) states the basis for the complainant Party's good faith belief that there is a Denial of Rights.

### **Article 31-A.7: Verification**

1. Upon confirmation that the petition contains the relevant information, the panel shall issue a request for verification to the respondent Party. The panel shall formulate an appropriate request for verification, based on the circumstances and the nature of the allegations in the complainant Party's petition and any other submissions from the Parties.
2. In cases in which the respondent Party has concluded under Article 31-A.4.5 that there is no Denial of Rights by the Covered Facility but the complainant Party disagrees with the conclusions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request, a document establishing the results of the respondent Party's investigation and conclusions and any efforts it took as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party's submission.
3. In cases in which the timeframe granted to the Covered Facility to eliminate the Denial of Rights has elapsed and the Covered Facility has allegedly not taken the necessary measures to comply with the remediation, the panel shall request the respondent Party to submit, within 10 business days of the petition, a document establishing the results of the respondent Party's investigation and conclusions and the actions and sanctions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party's submission.
4. In cases in which the respondent Party has determined under Article 31-A.4.6 that there is a Denial of Rights by the Covered Facility, and the respondent Party alleges that the Covered Facility has taken the necessary measures to remediate the Denial of Rights, but the complainant Party disagrees with the conclusions and actions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request, a document explaining the actions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party's submission.
5. The respondent Party shall transmit a copy of the complainant Party's petition to the owner of the Covered Facility at issue.
6. The respondent Party shall reply within seven business days whether it consents to the verification request. If the respondent Party does not respond within that time it will be deemed to have refused the request.
7. If the respondent Party agrees to the verification, the panel shall conduct the verification within 30 days after receipt of the request by the respondent Party. Observers from both Parties may accompany the panel in any on-site verification if both Parties so request.

8. If the respondent Party agrees to the verification but there is interference with the verification or the panel is otherwise unable to conduct the verification in a manner that it believes is most appropriate to gather information relevant to the matter, the panel may take the Party's conduct into account in making its determination.

9. If the respondent Party refuses the request for a verification or does not respond within the period provided for in paragraph 6, the complainant Party may request that the panel make a determination as to whether there is a Denial of Rights.

10. If the complainant Party makes a petition under Article 31-A.5.1(b), the panel, at its discretion, may request a verification if it considers that a verification is necessary to assist them in making their determination and follow the procedures set out as for a verification request made under this Article.

#### **Article 31-A.8: Panel Process and Determination**

1. The panel shall make a determination, consistent with paragraphs 5, 7, and 8 of Article 31.13 (Function of Panels), as to whether there is a Denial of Rights within:

(a) 30 days after conducting a verification; or

(b) 30 days after it is constituted if there has not been a verification.

2. Before making its determination, the panel shall provide both Parties an opportunity to be heard.

3. In making its determination, the panel shall take the respondent Party's refusal to allow a verification into account.

4. If the respondent Party so requests, the panel shall include a recommendation on a course of remediation if the panel determines there is a Denial of Rights. The panel shall also provide its views on the severity of any denial of rights and, to the extent possible, identify the person or persons responsible for the Denial of Rights.

5. The panel's determination shall be in writing and shall be made public.

#### **Article 31-A.9: Consultations and Remediation**

After receipt of a determination by a panel that there has been a Denial of Rights, the complainant Party may impose remedies after providing written notice to the respondent Party at least 5 business days in advance. A respondent Party can request that consultations be held during that 5 day period.

## **Article 31-A.10: Remedies**

1. Once the conditions precedent to the imposition of remedies have been met, the complainant Party may impose remedies that are the most appropriate to remedy the Denial of Rights. The complainant Party shall select a remedy pursuant to paragraph 2 that is proportional to the severity of the Denial of Rights and shall take the panel's views on the severity of the Denial of Rights into account when selecting such remedies.
2. Remedies may include suspension of preferential tariff treatment for goods manufactured at the Covered Facility or the imposition of penalties on goods manufactured at or services provided by the Covered Facility.
3. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination, remedies may include suspension of preferential tariff treatment for such goods; or the imposition of penalties on such goods or services.
4. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination on at least two occasions, remedies may include suspension of preferential tariff treatment for such goods; the imposition of penalties on such goods or services; or the denial of entry of such goods.
5. After the imposition of remedies, the Parties shall continue to consult on an ongoing basis in order to ensure the prompt remediation of the Denial of Rights and the removal of remedies.
6. If, as a result of those ongoing consultations, the Parties reach agreement that the Denial of Rights has been remediated, the complainant Party shall remove all remedies immediately. If the Parties are in disagreement as to whether the Denial of Rights has been remediated, the respondent Party may request an opportunity to demonstrate to the panel that it has taken action to remediate the Denial of Rights. The panel shall make a new determination within 30 days after receipt of the respondent Party's request, consistent with the procedures set out in Article 31-A.8. The complainant Party may request a new verification consistent with the procedures set out in Article 31-A.7.
7. If the panel determines that the Denial of Rights has not been remediated, the respondent Party may not request another determination for 180 days, and any remedies shall remain in place until the Parties agree that remediation has occurred or a panel determines that the Denial of Rights has been remediated.

### **Article 31-A.11: Good Faith Use of the Mechanism**

If one Party considers that the other has not acted in good faith in its use of this Mechanism, either with regard to an invocation of the Mechanism itself or an imposition of remedies that are excessive in light of the severity of the Denial of Rights found by the panel, that Party may have recourse to the dispute settlement mechanism under Chapter 31 (Dispute Settlement). If a dispute settlement panel finds that a Party did not act in good faith in its use of this Mechanism, within 45 days from receipt of the final panel report under Article 31.17.5 (Panel Report), the Parties shall endeavor to agree to the resolution of the dispute. If the Parties are unable to resolve the dispute, the complainant Party may elect either to prevent the responding Party from using this Mechanism for a period of two years or another remedy permitted under Chapter 31 (Dispute Settlement).

### **Article 31-A.12: Expansion of Claims**

In recognition of the importance of ensuring full compliance with the Labor Chapter; the commitment of the Parties to trade only in goods produced in compliance with such Chapter; if one of the Parties is found to have breached its obligations under Article 23.3 (Labor Rights) or Article 23.5 (Enforcement of Labor Laws) by a panel established under Article 31.6 (Establishment of a Panel), the complainant Party in that case may use this Mechanism with regard to the relevant law or laws at issue in that dispute for a period of two years or until the conclusion of the next joint review under Article 34.7 (Review and Term Extension), whichever is later.

### **Article 31-A.13: Review of Priority Sectors**

The Parties shall review the list of priority sectors on an annual basis and determine whether to add any sectors to the list.

### **Article 31-A.14: Cooperation to Promote Compliance**

Each Party shall cooperate with, and support efforts by, Covered Facilities to operate in a way to avoid a determination of a Denial of Rights.

### **Article 31-A.15: Definitions**

For the purposes of this Annex:

**Covered Facility** means a facility in the territory of a Party that:

- (i) produces a good or supplies a service traded between the Parties; or

- (ii) produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party,

and is a facility in a Priority Sector;

**Party or Parties** means Mexico and the United States singly or collectively;

**Priority Sector** means a sector that produces manufactured goods,<sup>4</sup> supplies services, or involves mining.

---

<sup>4</sup> For greater certainty, manufactured goods include, but are not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement.

## **ANNEX 31-B**

### **CANADA-MEXICO FACILITY-SPECIFIC RAPID RESPONSE LABOR MECHANISM**

#### **Article 31-B.1: Scope and Purpose**

1. Canada and Mexico are agreeing to this Annex pursuant to Article 31.5.1 (Good Offices, Conciliation, and Mediation).
2. The purpose of the Facility-Specific Rapid Response Labor Mechanism (the “Mechanism”), including the ability to impose remedies, is to ensure remediation of a Denial of Rights, as defined in Article 31-B.2, for workers at a Covered Facility, not to restrict trade. Furthermore, the Parties have designed this Mechanism to ensure that remedies are lifted immediately once a Denial of Rights is remediated.
3. The Parties shall make every attempt to cooperate and arrive at a mutually acceptable solution with respect to matters that can be raised through the Mechanism.
4. This Annex applies only as between Mexico and Canada.

#### **Article 31-B.2: Denial of Rights**

The Mechanism shall apply whenever a Party (the “complainant Party”) has a good faith basis belief that workers at a Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill the obligations of the other Party (the “respondent Party”) under this Agreement (a “Denial of Rights”).<sup>5</sup>

#### **Article 31-B.3: Lists of Rapid Response Labor Panelists**

1. The Parties shall establish and maintain three lists of Rapid Response Labor Panelists who are willing to commit to being generally available to serve as Labor Panelists for the Mechanism.
2. By the date of entry into force of this Agreement, each Party shall appoint three individuals to one list each and appoint, by consensus, three individuals to a joint list. The individuals in the joint list shall be non-nationals of either Mexico or Canada. If a Party fails to designate its

---

<sup>5</sup> With respect to Canada, a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the Canada Industrial Relations Board. With respect to Mexico, a claim can be brought only with respect to an alleged Denial of Rights under legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico).



individuals, the Parties may still request the establishment of panels under Article 31-B.5 (Requests for Establishment of Rapid Response Labor Panel). The Rules of Procedure shall provide for how to compose a panel in such circumstances. Thereafter, at most six months from the date of entry into force of this Agreement, the Parties shall expand each list to at least five individuals each.

3. The Labor Panelists shall be appointed for a minimum of four years or until the Parties constitute new lists. Labor Panelists may be reappointed.

4. Each Labor Panelist shall:

- (a) have expertise and experience in labor law and practice, and with the application of standards and rights as recognized by the International Labor Organization;
- (b) be selected on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, a Party; and
- (d) comply with the Code of Conduct established by the Commission for dispute settlement under this chapter.

5. If a list falls below five individuals within the four-year term, the relevant Party shall promptly appoint replacements. With respect to the joint list, the Parties shall appoint replacements by consensus within 30 days from the date the list has fallen below the required number.

6. At the conclusion of the first four-year term, and every four years thereafter, the Labor Panelists shall submit a report to the Parties commenting on the functioning of the Mechanism. The Parties shall make the report public.

7. The Parties shall address the compensation of Labor Panelists in the Rules of Procedure established in accordance with Article 30.2 (Functions of the Commission). The Parties shall also provide for reasonable expenses, including logistical support and personnel as appropriate, associated with verification efforts and the drafting of determinations.

#### **Article 31-B.4: Requests for Review and Remediation**

1. If a Party has a domestic process for determining whether to invoke this mechanism and that process has started regarding a Covered Facility in the other Party, that Party shall notify the other Party within five business days of initiating such process.<sup>6</sup>
2. If a complainant Party has a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, it shall first request that the respondent Party conduct its own review of whether a Denial of Rights exists and, if the respondent Party determines that there is a Denial of Rights, the latter shall attempt to remediate within 45 days of the request. The complainant Party shall provide sufficient information for the respondent Party to conduct its review. The respondent Party shall have 10 days to notify the complainant Party as to whether it intends to conduct a review. If the respondent Party does not choose to conduct a review or does not notify within the 10-day period, the complainant Party may request the formation of a Rapid Response Labor Panel (the “panel”) to conduct a separate verification and determination pursuant to Article 31-B.5.
3. Upon delivering the request to the respondent Party, the complainant Party may delay final settlement of customs accounts related to entries of goods from the Covered Facility. Settlement of such accounts must resume immediately upon an agreement by the Parties that there is no Denial of Rights or a finding by a panel that there is no Denial of Rights.<sup>7</sup>
4. If the respondent Party chooses to conduct its review, it shall report in writing the results of the review and any remediation to the complainant Party at the end of the 45-day period.
5. If the respondent Party has determined that there is no Denial of Rights, the complainant Party may agree that the issue is resolved or it may communicate in writing its reasons for disagreement with the respondent Party’s determination and immediately may request a panel verification and determination pursuant to Article 31-B.5.
6. If the respondent Party has determined there is a Denial of Rights, the Parties shall consult in good faith for a period of 10 days and shall endeavor to agree upon a course of remediation that will remediate the Denial of Rights without interrupting trade.
7. If the Parties agree on a course of remediation, the respondent Party shall undertake the remediation by the date agreed to by the Parties and no remedy may be imposed by the complainant Party until the expiration of the agreed upon period.

---

<sup>6</sup> Canada intends to establish such a domestic process under which the Canadian government will strive to complete initial reviews of complaints received by the government about a Covered Facility in the other Party in 30 days.

<sup>7</sup> For Canada, this paragraph will be applied with the necessary changes to conform with Canadian law.

8. If, after the agreed-upon date for remediation, the Parties disagree as to whether the Denial of Rights has been remediated, the complainant Party may provide written notice to the respondent Party of its intention to impose remedies at least 15 days prior to imposing remedies. The respondent Party may, within 10 days of receiving such notice, request a determination from a panel as to whether the Denial of Rights persists pursuant to Article 31-B.5. The complainant Party may not impose remedies until the Panel makes its determination.

9. If the Parties cannot agree on a course of remediation at the end of the 10-day period, the complainant Party may request a panel verification and determination pursuant to Article 31-B.5.

10. At any point during the 10-day consultation period, the complainant Party may request that the panel be established, and the panel may proceed to confirm the petition. However, the panel may not issue a request for verification until the 10-day period expires.

#### **Article 31-B.5: Requests for Establishment of Rapid Response Labor Panel**

1. If, after the conditions precedent for the establishment of a panel under Article 31-B.4 are met, the complainant Party continues to have a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, that Party may submit to the Secretariat a petition:

- (a) requesting the establishment of a panel to request that the respondent Party allow the panel an opportunity to verify the Covered Facility's compliance with the law in question and determine whether there has been a Denial of Rights; or
- (b) requesting the establishment of a panel to determine whether there has been a Denial of Rights.

2. The Secretariat shall transmit the petition to the respondent Party.

3. The Secretariat shall within three business days from the date of the request for establishment of a panel select by lot one panelist from the complainant Party list, one from the respondent Party list, and one from the Joint List. The Secretariat shall immediately transmit the petition to the selected panelists.

#### **Article 31-B.6: Confirmation of Petition**

A panel established under Article 31-B.5 shall have five business days after it is constituted to confirm that the petition:

- (a) identifies a Covered Facility;

- (b) identifies the respondent Party's laws relevant to the alleged Denial of Rights; and
- (c) states the basis for the complainant Party's good faith belief that there is a Denial of Rights.

### **Article 31-B.7: Verification**

1. Upon confirmation that the petition contains the relevant information, the panel shall issue a request for verification to the respondent Party. The panel shall formulate an appropriate request for verification, based on the circumstances and the nature of the allegations in the complainant Party's petition and any other submissions from the Parties.
2. In cases in which the respondent Party has concluded under Article 31-B.4.5 that there is no Denial of Rights by the Covered Facility but the complainant Party disagrees with the conclusions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request, a document establishing the results of the respondent Party's investigation and conclusions and any efforts it took as a result of the Request for Review and Remediation under Article 31-B.4. The complainant Party may respond to the respondent Party's submission.
3. In cases in which the timeframe granted to the Covered Facility to eliminate the Denial of Rights has elapsed and the Covered Facility has allegedly not taken the necessary measures to comply with the remediation, the panel shall request the respondent Party to submit, within 10 business days of the petition, a document establishing the results of the respondent Party's investigation and conclusions and the actions and sanctions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-B.4. The complainant Party may respond to the respondent Party's submission.
4. In cases in which the respondent Party has determined under Article 31-B.4.6 that there is a Denial of Rights by the Covered Facility, and the respondent Party alleges that the Covered Facility has taken the necessary measures to remediate the Denial of Rights, but the complainant Party disagrees with the conclusions and actions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request, a document explaining the actions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-B.4. The complainant Party may respond to the respondent Party's submission.
5. The respondent Party shall transmit a copy of the complainant Party's petition to the owner of the Covered Facility at issue.

6. The respondent Party shall reply within seven business days whether it consents to the verification request. If the respondent Party does not respond within that time it will be deemed to have refused the request.

7. If the respondent Party agrees to the verification, the panel shall conduct the verification within 30 days after receipt of the request by the respondent Party. Observers from both Parties may accompany the panel in any on-site verification if both Parties so request.

8. If the respondent Party agrees to the verification but there is interference with the verification or the panel is otherwise unable to conduct the verification in a manner that it believes is most appropriate to gather information relevant to the matter, the panel may take the Party's conduct into account in making its determination.

9. If the respondent Party refuses the request for a verification or does not respond within the period provided for in paragraph 6, the complainant Party may request that the panel make a determination as to whether there is a Denial of Rights.

10. If the complainant Party makes a petition under Article 31-B.5.1(b), the panel, at its discretion, may request a verification if it considers that a verification is necessary to assist them in making their determination and follow the procedures set out as for a verification request made under this Article.

#### **Article 31-B.8: Panel Process and Determination**

1. The panel shall make a determination, consistent with paragraphs 5, 7, and 8 of Article 31.13 (Function of Panels), as to whether there is a Denial of Rights within:

- (a) 30 days after conducting a verification; or
- (b) 30 days after it is constituted if there has not been a verification.

2. Before making its determination, the panel shall provide both Parties an opportunity to be heard.

3. In making its determination, the panel shall take the respondent Party's refusal to allow a verification into account.

4. If the respondent Party so requests, the panel shall include a recommendation on a course of remediation if the panel determines there is a Denial of Rights. The panel shall also provide its views on the severity of any denial of rights and, to the extent possible, identify the person or persons responsible for the Denial of Rights.

5. The panel's determination shall be in writing and shall be made public.

### **Article 31-B.9: Consultations and Remediation**

After receipt of a determination by a panel that there has been a Denial of Rights, the complainant Party may impose remedies after providing written notice to the respondent Party at least 5 business days in advance. A respondent Party can request that consultations be held during that 5 day period.

### **Article 31-B.10: Remedies**

1. Once the conditions precedent to the imposition of remedies have been met, the complainant Party may impose remedies that are the most appropriate to remedy the Denial of Rights. The complainant Party shall select a remedy pursuant to paragraph 2 that is proportional to the severity of the Denial of Rights and shall take the panel's views on the severity of the Denial of Rights into account when selecting such remedies.
2. Remedies may include suspension of preferential tariff treatment for goods manufactured at the Covered Facility or the imposition of penalties on goods manufactured at or services provided by the Covered Facility.
3. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination, remedies may include suspension of preferential tariff treatment for such goods; or the imposition of penalties on such goods or services.
4. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination on at least two occasions, remedies may include suspension of preferential tariff treatment for such goods; the imposition of penalties on such goods or services; or the denial of entry of such goods.
5. After the imposition of remedies, the Parties shall continue to consult on an ongoing basis in order to ensure the prompt remediation of the Denial of Rights and the removal of remedies.
6. If, as a result of those ongoing consultations, the Parties reach agreement that the Denial of Rights has been remediated, the complainant Party shall remove all remedies immediately. If the Parties are in disagreement as to whether the Denial of Rights has been remediated, the respondent Party may request an opportunity to demonstrate to the panel that it has taken action to remediate the Denial of Rights. The panel shall make a new determination within 30 days after receipt of the respondent Party's request, consistent with the procedures set out in Article 31-B.8.

The complainant Party may request a new verification consistent with the procedures set out in Article 31-B.7.

7. If the panel determines that the Denial of Rights has not been remediated, the respondent Party may not request another determination for 180 days, and any remedies shall remain in place until the Parties agree that remediation has occurred or a panel determines that the Denial of Rights has been remediated.

#### **Article 31-B.11: Good Faith Use of the Mechanism**

If one Party considers that the other has not acted in good faith in its use of this Mechanism, either with regard to an invocation of the Mechanism itself or an imposition of remedies that are excessive in light of the severity of the Denial of Rights found by the panel, that Party may have recourse to the dispute settlement mechanism under Chapter 31 (Dispute Settlement). If a dispute settlement panel finds that a Party did not act in good faith in its use of this Mechanism, within 45 days from receipt of the final panel report under Article 31.17.5 (Panel Report), the Parties shall endeavor to agree to the resolution of the dispute. If the Parties are unable to resolve the dispute, the complainant Party may elect either to prevent the responding Party from using this Mechanism for a period of two years or another remedy permitted under Chapter 31 (Dispute Settlement).

#### **Article 31-B.12: Expansion of Claims**

In recognition of the importance of ensuring full compliance with the Labor Chapter; the commitment of the Parties to trade only in goods produced in compliance with such Chapter; if one of the Parties is found to have breached its obligations under Article 23.3 (Labor Rights) or Article 23.5 (Enforcement of Labor Laws) by a panel established under Article 31.6 (Establishment of a Panel), the complainant Party in that case may use this Mechanism with regard to the relevant law or laws at issue in that dispute for a period of two years or until the conclusion of the next joint review under Article 34.7 (Review and Term Extension), whichever is later.

#### **Article 31-B.13: Review of Priority Sectors**

The Parties shall review the list of priority sectors on an annual basis and determine whether to add any sectors to the list.

#### **Article 31-B.14: Cooperation to Promote Compliance**

Each Party shall cooperate with, and support efforts by, Covered Facilities to operate in a way to avoid a determination of a Denial of Rights.

### **Article 31-B.15: Definitions**

For the purposes of this Annex:

**Covered Facility** means a facility in the territory of a Party that:

- (i) produces a good or supplies a service traded between the Parties; or
- (ii) produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party,

and is a facility in a Priority Sector;

**Party or Parties** means Mexico and Canada singly or collectively;

**Priority Sector** means a sector that produces manufactured goods,<sup>8</sup> supplies services, or involves mining.

---

<sup>8</sup> For greater certainty, manufactured goods include, but are not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement.