

inspection system of the United States, the reasons supporting the determination of the Secretary;

(D) the incidence of violations of inspection requirements by imports from NAFTA countries during the prior year—

(i) at the borders of the United States with Mexico or Canada; or

(ii) at the last point of inspection in a NAFTA country prior to shipment to the United States if the agency accepts inspection in that country;

(E) the incidence of violations of inspection requirements of imports to the United States from Mexico or Canada prior to the implementation of the Agreement;

(F) any additional cost associated with maintaining an adequate inspection system of imports as a result of the implementation of the Agreement;

(G) any incidence of transshipment of imports—

(i) that originate in a country other than a NAFTA country;

(ii) that are shipped to the United States through a NAFTA country during the prior year; and

(iii) that are incorrectly represented by the importer to qualify for preferential treatment under the Agreement;

(H) the quantity and results of any monitoring by the United States of equivalent inspection systems of imports in other NAFTA countries during the prior year;

(I) the use by other NAFTA countries of sanitary and phytosanitary measures (as defined in the Agreement) to limit exports of United States meat, poultry, other foods, animals, and plants to the countries during the prior year; and

(J) any other information the Secretary determines to be appropriate.

(4) Frequency of reports

The Secretary shall submit—

(A) the initial report required under this subsection not later than January 31, 1995; and

(B) an annual report required under this subsection not later than 1 year after the date of the submission of the initial report and the end of each 1-year period thereafter through calendar year 2004.

(5) Report to Congress

The Secretary shall prepare and submit the report required under this subsection to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Pub. L. 103-182, title III, § 361, Dec. 8, 1993, 107 Stat. 2122.)

CODIFICATION

Section is comprised of section 361 of Pub. L. 103-182. Subsecs. (a) to (f) of section 361 of Pub. L. 103-182 are classified as follows: subsec. (a) amended section 1582 of Title 7, Agriculture; subsec. (b) amended section 104 of Title 21, Food and Drugs; subsec. (c) amended section 105 of Title 21; subsec. (d) amended section 1306 of this title and section 281 of Title 7; subsec. (e) amended sec-

tion 466 of Title 21; and subsec. (f) amended section 620 of Title 21.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

SUBCHAPTER IV—DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

PART A—ORGANIZATIONAL, ADMINISTRATIVE, AND PROCEDURAL PROVISIONS REGARDING IMPLEMENTATION OF CHAPTER 19 OF AGREEMENT

§ 3431. References in part

Any reference in this part to an Annex, chapter, or article shall be considered to be a reference to the respective Annex, chapter, or article of the Agreement.

(Pub. L. 103-182, title IV, § 401, Dec. 8, 1993, 107 Stat. 2129.)

EFFECTIVE DATE

Pub. L. 103-182, title IV, § 416, Dec. 8, 1993, 107 Stat. 2148, provided that: “The provisions of this title [enacting this subchapter, amending sections 1502, 1514, 1516a, 1677, and 1677f of this title and sections 1581, 1584, 2201, and 2643 of Title 28, Judiciary and Judicial Procedure, and amending provisions set out as a note under section 2112 of this title] and the amendments made by this title take effect on the date the Agreement enters into force with respect to the United States [Jan. 1, 1994], but shall not apply—

“(1) to any final determination described in paragraph (1)(B), or (2)(B)(i), (ii), or (iii), of section 516A(a) of the Tariff Act of 1930 [19 U.S.C. 1516a(a)(1)(B), (2)(B)(i), (ii), (iii)] notice of which is published in the Federal Register before such date, or to a determination described in paragraph (2)(B)(vi) of section 516A(a) of such Act notice of which is received by the Government of Canada or Mexico before such date; or

“(2) to any binational panel review under the United States-Canada Free-Trade Agreement, or any extraordinary challenge arising out of any such review, that was commenced before such date.”

§ 3432. Organizational and administrative provisions

(a) Criteria for selection of individuals to serve on panels and committees

(1) In general

The selection of individuals under this section for—

(A) placement on lists prepared by the interagency group under subsection (c)(2)(B)(i) and (ii) of this section;

(B) placement on preliminary candidate lists under subsection (c)(3)(A) of this section;

(C) placement on final candidate lists under subsection (c)(4)(A) of this section;

(D) placement by the Trade Representative on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; and

(E) appointment by the Trade Representative for service on the panels and committees convened under chapter 19;

shall be made on the basis of the criteria provided in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 and shall be made without regard to political affiliation.

(2) Additional criteria for roster placements and appointments under paragraph 1 of Annex 1901.2

Rosters described in paragraph 1 of Annex 1901.2 shall include, to the fullest extent practicable, judges and former judges who meet the criteria referred to in paragraph (1). The Trade Representative shall, subject to subsection (b) of this section, appoint judges to binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, where such judges offer and are available to serve and such service is authorized by the chief judge of the court on which they sit.

(b) Selection of certain judges to serve on panels and committees

(1) Applicability

This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, who are judges of courts created under article III of the Constitution of the United States.

(2) Consultation with chief judges

The Trade Representative shall consult, from time to time, with the chief judges of the Federal judicial circuits regarding the interest in, and availability for, participation in binational panels, extraordinary challenge committees, and special committees, of judges within their respective circuits. If the chief judge of a Federal judicial circuit determines that it is appropriate for one or more judges within that circuit to be included on a roster described in subsection (a)(1)(D) of this section, the chief judge shall identify all such judges for the Chief Justice of the United States who may, upon his or her approval, submit the names of such judges to the Trade Representative. The Trade Representative shall include the names of such judges on the roster.

(3) Submission of lists to Congress

The Trade Representative shall submit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on Finance and the Committee on the Judiciary of the Senate a list of all judges included on a roster under paragraph (2). Such list shall be submitted at the same time as the final can-

didate lists are submitted under subsection (c)(4)(A) of this section and the final forms of amendments are submitted under subsection (c)(4)(C)(iv) of this section.

(4) Appointment of judges to panels or committees

At such time as the Trade Representative proposes to appoint a judge described in paragraph (1) to a binational panel, an extraordinary challenge committee, or a special committee, the Trade Representative shall consult with that judge in order to ascertain whether the judge is available for such appointment.

(c) Selection of other candidates

(1) Applicability

This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, other than those individuals to whom subsection (b) of this section applies.

(2) Interagency group

(A) Establishment

There is established within the interagency organization established under section 1872 of this title an interagency group which shall—

(i) be chaired by the Trade Representative; and

(ii) consist of such officers (or the designees thereof) of the United States Government as the Trade Representative considers appropriate.

(B) Functions

The interagency group established under subparagraph (A) shall, in a manner consistent with chapter 19—

(i) prepare by January 3 of each calendar year—

(I) a list of individuals who are qualified to serve as members of binational panels convened under chapter 19; and

(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under chapter 19 and special committees established under article 1905;

(ii) if the Trade Representative makes a request under paragraph (4)(C)(i) with respect to a final candidate list during any calendar year, prepare by July 1 of such calendar year a list of those individuals who are qualified to be added to that final candidate list;

(iii) exercise oversight of the administration of the United States Section that is authorized to be established under section 3315 of this title; and

(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees and special committees under chapter 19.

(3) Preliminary candidate lists

(A) In general

The Trade Representative shall select individuals from the respective lists prepared by

the interagency group under paragraph (2)(B)(i) for placement on—

- (i) a preliminary candidate list of individuals eligible to serve as members of binational panels under Annex 1901.2; and
- (ii) a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 1904.13 and special committees under article 1905.

(B) Submission of lists to Congressional Committees

(i) In general

No later than January 3 of each calendar year, the Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the “appropriate Congressional Committees”) the preliminary candidate lists of those individuals selected by the Trade Representative under subparagraph (A) to be candidates eligible to serve on panels or committees convened pursuant to chapter 19 during the 1-year period beginning on April 1 of such calendar year.

(ii) Additional information

At the time the candidate lists are submitted under clause (i), the Trade Representative shall submit for each individual on the list a statement of professional qualifications.

(C) Consultation

Upon submission of the preliminary candidate lists under subparagraph (B) to the appropriate Congressional Committees, the Trade Representative shall consult with such Committees with regard to the individuals included on the preliminary candidate lists.

(D) Revision of lists

The Trade Representative may add and delete individuals from the preliminary candidate lists submitted under subparagraph (B) after consultation with the appropriate Congressional Committees regarding the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the preliminary candidate lists, along with the information described in subparagraph (B)(ii) with respect to any proposed addition.

(4) Final candidate lists

(A) Submission of lists to Congressional Committees

No later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final candidate lists of those individuals selected by the Trade Representative to be candidates eligible to serve on panels and committees convened under chapter 19 during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final candidate list only if

such individual was included in the preliminary candidate list or if written notice of the addition of such individual to the preliminary candidate list was submitted to the appropriate Congressional Committees at least 15 days before the date on which that final candidate list is submitted to such Committees under this subparagraph.

(B) Finality of lists

Except as provided in subparagraph (C), no additions may be made to the final candidate lists after the final candidate lists are submitted to the appropriate Congressional Committees under subparagraph (A).

(C) Amendment of lists

(i) In general

If, after the Trade Representative has submitted the final candidate lists to the appropriate Congressional Committees under subparagraph (A) for a calendar year and before July 1 of such calendar year, the Trade Representative determines that additional individuals need to be added to a final candidate list, the Trade Representative shall—

(I) request the interagency group established under paragraph (2)(A) to prepare a list of individuals who are qualified to be added to such candidate list;

(II) select individuals from the list prepared by the interagency group under paragraph (2)(B)(ii) to be included in a proposed amendment to such final candidate list; and

(III) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees the proposed amendments to such final candidate list developed by the Trade Representative under subclause (II), along with the information described in paragraph (3)(B)(ii).

(ii) Consultation with Congressional Committees

Upon submission of a proposed amendment under clause (i)(III) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.

(iii) Adjustment of proposed amendment

The Trade Representative may add and delete individuals from any proposed amendment submitted under clause (i)(III) after consulting with the appropriate Congressional Committees with regard to the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the proposed amendment.

(iv) Final amendment

(I) In general

If the Trade Representative submits under clause (i)(III) in any calendar year a proposed amendment to a final can-

didate list, the Trade Representative shall, no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and, subject to subclause (II), the individuals included in the final form of such amendment shall be added to the final candidate list.

(II) Inclusion of individuals

An individual may be included in the final form of an amendment submitted under subclause (I) only if such individual was included in the proposed form of such amendment or if written notice of the addition of such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment is submitted to such Committees under subclause (I).

(III) Eligibility for service

Individuals added to a final candidate list under subclause (I) shall be eligible to serve on panels or committees convened under chapter 19 during the 6-month period beginning on October 1 of the calendar year in which such addition occurs.

(IV) Finality of amendment

No additions may be made to the final form of an amendment described in subclause (I) after the final form of such amendment is submitted to the appropriate Congressional Committees under subclause (I).

(5) Treatment of responses

For purposes of applying section 1001 of title 18, the written or oral responses of individuals to inquiries of the interagency group established under paragraph (2)(A) or of the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for the placements and appointments described in subsection (a)(1) of this section, shall be treated as matters within the jurisdiction of an agency of the United States.

(d) Selection and appointment

(1) Authority of Trade Representative

The Trade Representative is the only officer of the United States Government authorized to act on behalf of the United States Government in making any selection or appointment of an individual to—

(A) the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(B) the panels or committees convened under chapter 19;

that is to be made solely or jointly by the United States Government under the terms of the Agreement.

(2) Restrictions on selection and appointment

Except as provided in paragraph (3)—

(A) the Trade Representative may—

(i) select an individual for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during the 1-year period beginning on April 1 of any calendar year;

(ii) appoint an individual to serve as one of those members of any panel or committee convened under chapter 19 during such 1-year period who, under the terms of the Agreement, are to be appointed solely by the United States Government; or

(iii) act to make a joint appointment with the Government of a NAFTA country, under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee;

only if such individual is on the appropriate final candidate list that was submitted to the appropriate Congressional Committees under subsection (c)(4)(A) of this section during such calendar year or on such list as it may be amended under subsection (c)(4)(C)(iv)(I) of this section, or on the list submitted under subsection (b)(3) of this section to the Congressional Committees referred to in such subsection; and

(B) no individual may—

(i) be selected by the United States Government for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(ii) be appointed solely or jointly by the United States Government to serve as a member of a panel or committee convened under chapter 19;

during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the requirements of subsection (a) of this section, and of subsection (b) or (c) of this section (as the case may be).

(3) Exceptions

Notwithstanding subsection (c)(3) of this section (other than subparagraph (B)), subsection (c)(4) of this section, or paragraph (2)(A) of this subsection, individuals included on the preliminary candidate lists submitted to the appropriate Congressional Committees under subsection (c)(3)(B) of this section may—

(A) be selected by the Trade Representative for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during the 3-month period beginning on the date on which the Agreement enters into force with respect to the United States; and

(B) be appointed solely or jointly by the Trade Representative under the terms of the Agreement to serve as members of panels or committees that are convened under chapter 19 during such 3-month period.

(e) Transition

If the Agreement enters into force between the United States and a NAFTA country after January 3, 1994, the provisions of subsection (c) of this section shall be applied with respect to the

calendar year in which such entering into force occurs—

(1) by substituting “the date that is 30 days after the date on which the Agreement enters into force with respect to the United States” for “January 3 of each calendar year” in subsections (c)(2)(B)(i) and (c)(3)(B)(i) of this section; and

(2) by substituting “the date that is 3 months after the date on which the Agreement enters into force with respect to the United States” for “March 31 of each calendar year” in subsection (c)(4)(A) of this section.

(f) Immunity

With the exception of acts described in section 777(f)(3) of the Tariff Act of 1930 (19 U.S.C. 1677f(f)(3)), individuals serving on panels or committees convened pursuant to chapter 19, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.

(g) Regulations

The administering authority under title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], the International Trade Commission, and the Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapter 19. Initial regulations to carry out such functions shall be issued before the date on which the Agreement enters into force with respect to the United States.

(h) Report to Congress

At such time as the final candidate lists are submitted under subsection (c)(4)(A) of this section and the final forms of amendments are submitted under subsection (c)(4)(C)(iv) of this section, the Trade Representative shall submit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives, and to the Committee on Finance and the Committee on the Judiciary of the Senate, a report regarding the efforts made to secure the participation of judges and former judges on binational panels, extraordinary challenge committees, and special committees established under chapter 19.

(Pub. L. 103–182, title IV, § 402, Dec. 8, 1993, 107 Stat. 2129; Pub. L. 104–295, § 21(c)(1), Oct. 11, 1996, 110 Stat. 3530.)

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsec. (g), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Act is classified generally to subtitle IV (§1671 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104–295 substituted “subsection (c)(4) of this section” for “(c)(4)” in introductory provisions.

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

§ 3433. Testimony and production of papers in extraordinary challenges

(a) Authority of extraordinary challenge committee to obtain information

If an extraordinary challenge committee (hereafter in this section referred to as the “committee”) is convened under paragraph 13 of article 1904, and the allegations before the committee include a matter referred to in paragraph 13(a)(i) of article 1904, for the purposes of carrying out its functions and duties under Annex 1904.13, the committee—

(1) shall have access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration, in the possession of any individual, partnership, corporation, association, organization, or other entity;

(2) may summon witnesses, take testimony, and administer oaths;

(3) may require any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question; and

(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) Witnesses and evidence

The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) of this section may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a) of this section, the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity, issue an order requiring such individual or entity to appear before the committee, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Mandamus

Any court referred to in subsection (b) of this section shall have jurisdiction to issue writs of