

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–113, title V, §504(k), Jan. 29, 2020, 134 Stat. 76, provided that:

“(1) IN GENERAL.—Each transfer, redesignation, and amendment made by this section [transferring sections 3431 to 3438 of this title, respectively, to and amending sections 4581 to 4588 of this title] shall take effect on the date on which the USMCA enters into force [July 1, 2020], but shall not apply—

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

“(B) to any binational panel review under NAFTA, or any extraordinary challenge arising out of any such review, that was commenced before such date.

“(2) TRANSITION FROM NAFTA.—The transfers, redesignations, and amendments made by this section shall not apply, and the provisions of title IV of the North American Free Trade Agreement Implementation Act [19 U.S.C. 3431 et seq.], as in effect on the day before the date on which the USMCA enters into force, shall continue to apply on and after that date with respect—

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

“(B) to any binational panel review under NAFTA, or any extraordinary challenge arising out of any such review, that was commenced before the date on which the USMCA enters into force.”

[For definition of “USMCA” as used in section 504(k) of Pub. L. 116–113, set out above, see section 4502 of this title.]

§ 4582. 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);

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

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

(D) placement by the Trade Representative on the rosters described in paragraph 1 of Annex 10–B.1 and paragraph 1 of Annex 10–B.3; and

(E) appointment by the Trade Representative for service on the panels and committees convened under chapter 10;

shall be made on the basis of the criteria provided in paragraph 1 of Annex 10–B.1 and paragraph 1 of Annex 10–B.3 and shall be made without regard to political affiliation.

(2) Additional criteria for roster placements and appointments

Rosters described in paragraph 1 of Annex 10–B.1 shall include, to the fullest extent prac-

ticable, judges and former judges who meet the criteria referred to in paragraph (1). The Trade Representative shall, subject to subsection (b), appoint judges to binational panels convened under chapter 10, extraordinary challenge committees convened under chapter 10, and special committees established under article 10.13, 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 10, extraordinary challenge committees convened under chapter 10, and special committees established under article 10.13, 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), 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 candidate lists are submitted under subsection (c)(4)(A) and the final forms of amendments are submitted under subsection (c)(4)(C)(iv).

(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 10, extraordinary challenge committees convened under chapter

10, and special committees established under article 10.13, other than those individuals to whom subsection (b) 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 10—

(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 10; and

(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under chapter 10 and special committees established under article 10.13;

(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 105;¹ and

(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees and special committees under chapter 10.

(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 10-B.1; and

(ii) a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 10-B.3 and special committees under article 10.13.

(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 10 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 10 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

¹ See References in Text note below.

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)(i).

(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 candidate 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 Congress-

sional 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 10 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), 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 10-B.1 and paragraph 1 of Annex 10-B.3; or

(B) the panels or committees convened under chapter 10;

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 10-B.1 and paragraph 1 of Annex 10-B.3 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 10 during such 1-year period who, under the terms of the USMCA, are to be appointed solely by the United States Government; or

(iii) act to make a joint appointment with the Government of a USMCA 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) during such calendar year or on such list as it may be amended under subsection (c)(4)(C)(iv)(I), or on the list submitted under subsection (b)(3) 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 10–B.1 and paragraph 1 of Annex 10–B.3; 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 10;

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), and of subsection (b) or (c) (as the case may be).

(3) Exceptions

Notwithstanding subsection (c)(3) (other than subparagraph (B)), subsection (c)(4), 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) may—

(A) be selected by the Trade Representative for placement on the rosters described in paragraph 1 of Annex 10–B.1 and paragraph 1 of Annex 10–B.3 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 10 during such 3-month period.

(e) Transition

If the USMCA enters into force after January 3, 2020, the provisions of subsection (c) 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); 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).

(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 10, 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 10. 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) and the final forms of amendments are submitted under subsection (c)(4)(C)(iv), 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 10.

(Pub. L. 116–113, title IV, §412, formerly 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; renumbered §412 of Pub. L. 116–113 and amended Pub. L. 116–113, title V, §504(c), Jan. 29, 2020, 134 Stat. 73.)

Editorial Notes

REFERENCES IN TEXT

Section 105, referred to in subsec. (c)(2)(B)(3), is section 105 of Pub. L. 103–182, title I, Dec. 8, 1993, 107 Stat. 2064, which was classified to section 3315 of this title prior to repeal by Pub. L. 116–113, title VI, §601, Jan. 29, 2020, 134 Stat. 78, effective on the date on which the USMCA entered into force (July 1, 2020), and which related to the United States Section of NAFTA Secretariat. See section 4515(a) of this title.

The Tariff Act of 1930, referred to in subsec. (g), is act June 17, 1930, ch. 497, 46 Stat. 590. 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.

CODIFICATION

Section was formerly classified to section 3432 of this title prior to renumbering by Pub. L. 116–113.

AMENDMENTS

2020—Subsec. (a)(1). Pub. L. 116–113, §504(c)(3)(A)(i)(III), substituted “in paragraph 1 of Annex 10–B.1 and paragraph 1 of Annex 10–B.3” for “in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13” in concluding provisions.

Subsec. (a)(1)(D). Pub. L. 116–113, §504(c)(3)(A)(i)(I), substituted “in paragraph 1 of Annex 10–B.1 and paragraph 1 of Annex 10–B.3; and” for “in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; and”.

Subsec. (a)(1)(E). Pub. L. 116–113, §504(c)(3)(A)(i)(II), substituted “chapter 10” for “chapter 19”.

Subsec. (a)(2). Pub. L. 116–113, §504(c)(3)(A)(ii), in heading, struck out “under paragraph 1 of Annex 1901.2” after “appointments” and, in text, substituted “paragraph 1 of Annex 10–B.1” for “paragraph 1 of Annex 1901.2”, “chapter 10” for “chapter 19” in two places, and “article 10.13” for “article 1905”.

Subsec. (b)(1). Pub. L. 116–113, § 504(c)(3)(B), substituted “chapter 10” for “chapter 19” in two places and substituted “article 10.13” for “article 1905”.

Subsec. (c)(1). Pub. L. 116–113, § 504(c)(3)(C)(i), substituted “chapter 10” for “chapter 19” in two places and substituted “article 10.13” for “article 1905”.

Subsec. (c)(2)(B). Pub. L. 116–113, § 504(c)(3)(C)(ii), substituted “chapter 10” for “chapter 19” wherever appearing and substituted “article 10.13” for “article 1905” in cl. (i)(II).

Subsec. (c)(3)(A)(i). Pub. L. 116–113, § 504(c)(3)(C)(iii)(I), substituted “Annex 10–B.1” for “Annex 1901.2”.

Subsec. (c)(3)(A)(ii). Pub. L. 116–113, § 504(c)(3)(C)(iii)(II), substituted “under Annex 10–B.3 and special committees under article 10.13.” for “under Annex 1904.13 and special committees under article 1905.”

Subsec. (c)(3)(B)(i). Pub. L. 116–113, § 504(c)(3)(C)(iii)(III), substituted “chapter 10” for “chapter 19”.

Subsec. (c)(4)(A). Pub. L. 116–113, § 504(c)(3)(C)(iv)(I), substituted “chapter 10” for “chapter 19”.

Subsec. (c)(4)(C)(iv)(III). Pub. L. 116–113, § 504(c)(3)(C)(iv)(II), substituted “chapter 10” for “chapter 19”.

Subsec. (d)(1)(A). Pub. L. 116–113, § 504(c)(3)(D)(i)(I), substituted “in paragraph 1 of Annex 10–B.1 and paragraph 1 of Annex 10–B.3; or” for “in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or”.

Subsec. (d)(1)(B). Pub. L. 116–113, § 504(c)(3)(D)(i)(II), substituted “chapter 10” for “chapter 19”.

Subsec. (d)(2)(A)(i). Pub. L. 116–113, § 504(c)(3)(D)(ii)(I), substituted “in paragraph 1 of Annex 10–B.1 and paragraph 1 of Annex 10–B.3 during” for “in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during”.

Subsec. (d)(2)(A)(ii). Pub. L. 116–113, § 504(c)(3)(D)(ii)(II), substituted “chapter 10” for “chapter 19” and “the USMCA” for “the Agreement”.

Subsec. (d)(2)(A)(iii). Pub. L. 116–113, § 504(c)(3)(D)(ii)(III), substituted “USMCA” for “NAFTA”.

Subsec. (d)(2)(B)(i). Pub. L. 116–113, § 504(c)(3)(D)(ii)(IV), substituted “in paragraph 1 of Annex 10–B.1 and paragraph 1 of Annex 10–B.3; or” for “in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or”.

Subsec. (d)(2)(B)(ii). Pub. L. 116–113, § 504(c)(3)(D)(ii)(V), substituted “chapter 10” for “chapter 19”.

Subsec. (d)(3)(A). Pub. L. 116–113, § 504(c)(3)(D)(iii)(I), substituted “in paragraph 1 of Annex 10–B.1 and paragraph 1 of Annex 10–B.3 during” for “in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during”.

Subsec. (d)(3)(B). Pub. L. 116–113, § 504(c)(3)(D)(iii)(II), substituted “chapter 10” for “chapter 19”.

Subsec. (e). Pub. L. 116–113, § 504(c)(3)(E), substituted “If the USMCA enters into force after January 3, 2020” for “If the Agreement enters into force between the United States and a NAFTA country after January 3, 1994” in introductory provisions.

Subsecs. (f) to (h). Pub. L. 116–113, § 504(c)(3)(F)–(H), substituted “chapter 10” for “chapter 19”.

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Transfer to and amendment of this section by Pub. L. 116–113 effective on the date on which the USMCA enters into force (July 1, 2020), but not applicable to certain determinations under section 1516a of this title or binational panel reviews under NAFTA, see section 504(k) of Pub. L. 116–113, set out as a note under section 4581 of this title.

§ 4583. 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 10.12, and the allegations before the committee include a matter referred to in paragraph 13(a)(i) of article 10.12, for the purposes of carrying out its functions and duties under Annex 10–B.3, 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) 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), 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) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.

(d) Depositions

The committee may order testimony to be taken by deposition at any stage of the com-