

## Proposed Amendments to Rule 3.1

Rule 3.1 is amended as follows:

**Rule 3.1.** Actions Transferred to the Court of International Trade from a Binational Panel or Committee Pursuant to 19 U.S.C. § 1516a(g)(12)(B) or (D)

(a) Filing of Request for Transfer.

(1) A copy of the request for transfer to the court under 19 U.S.C. § 1516a(g)(12)(B) or (D) ~~[shall]~~**must** be filed with the clerk of the court simultaneously with the filing of the request for transfer with the United States Secretary (as defined in 19 U.S.C. § 1516a(f)(6)).

(2) When the filing of the request for transfer is made by mail, the mailing ~~[shall]~~**must** be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

(b) Notice to Interested Parties.

On the same day as the filing of a request for transfer, the party requesting transfer ~~[shall]~~**must** serve a copy of the request, by certified or registered mail, return receipt requested, ~~[upon]~~**on** every interested party who was a party to the panel or committee review, except if the time period for filing the Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, then service ~~[shall]~~**must** be ~~[upon]~~**on** every interested party who was a party to the administrative proceeding.

(c) Intervention of Right.

(1) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12),

any person who filed a Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 ~~[shall]~~**will** be ~~[deemed]~~**treated as** an intervenor in the action if otherwise entitled to intervene as of right under Rule 24 of these rules.

(2) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which a complaint or a Request for an Extraordinary Challenge Committee was filed under NAFTA Article 1904 Panel Rule 39 or NAFTA Extraordinary Challenge Committee Rule 5 and in which the time for filing a Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, anyone otherwise entitled to intervene under Rule 24 of these rules ~~[shall]~~**will** be permitted to intervene.

~~[A]~~**Any** motion to intervene ~~[shall]~~**must** be filed within the amount of unexpired time that remained for filing a Notice of Appearance in the panel or committee proceedings, or 10 days after the date of filing of the request for transfer, whichever is later. Any time periods in which the panel or committee proceedings were stayed ~~[shall]~~**should** not be counted in computing the time for filing a motion to intervene.

(d) Documents in an Action Transferred under 19 U.S.C. § 1516a(g)(12).

(1) Within 30 days after the date of filing of the request for transfer, the United States Secretary ~~[shall]~~**must** transfer to the clerk of the court copies of all documents filed in the binational panel review or extraordinary challenge committee review and of all orders and decisions issued by the panel or committee.

(2) If the request for transfer is filed before the Record for Review under NAFTA Article 1904 Panel Rule 41 is filed, the administering authority or the International Trade Commission ~~shall~~**must**, within 40 days after the date of filing of the request for transfer, file with the clerk of the court the items described in either subdivision (a) or (b) of Rule 73.2 of these rules.

(3) The transfer and filing of documents under paragraphs (1) and (2) of this subdivision (d) ~~shall~~**must** be in accordance with subdivision (c) of Rule 73.2 of these rules. Any documents that were filed under seal pursuant to NAFTA Article 1904 Panel Rule 56 of NAFTA Extraordinary Challenge Committee Rule 30 ~~shall~~**will** be treated in the same manner as a document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested.

(e) Pleadings.

Notwithstanding Rule 7(a) of these rules, in an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which the plaintiff has filed a complaint under NAFTA Article 1904 Panel Rule 39, the plaintiff ~~shall~~**should** not file a new complaint in the action before the court, except that:

(1) if the time for amending a complaint in the panel proceedings had not expired or was stayed prior to the filing of the request for transfer, the plaintiff may file an amended complaint within the additional time that remained for filing an amended complaint in the panel proceedings, and

(2) in all actions, the plaintiff may amend the complaint within 10 days of the date of filing of the request for transfer to allege counts or requests for relief

that could not have been alleged before the panel.

(f) Additional Provisions Governing Judgment ~~upon~~ **on** an Agency Record.

(1) Except as otherwise provided in this subdivision, the provisions of Rule 56.2 of these rules ~~shall~~ **will** govern actions transferred under 19 U.S.C. § 1516a(g)(12).

(2) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which a complaint was filed under NAFTA Article 1904 Panel Rule 39, any proposed judicial protective order ~~shall~~ **must** be filed within 21 days after the date of filing of the request for transfer. The procedure for filing the proposed judicial protective order ~~shall~~ **will** be in accordance with Rule 56.2(a) of these rules.

(3) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12), the proposed briefing schedule filed under Rule 56.2(a) of these rules ~~shall~~ **must** indicate whether briefs were filed in the panel or extraordinary challenge committee proceedings.

(A) If briefs were filed in the panel or extraordinary challenge committee proceedings, the proposed briefing schedule ~~shall~~ **must** indicate whether the parties (i) agree that those briefs should be ~~[deemed]~~ **treated as** the equivalent of the motion and briefs provided for in Rule 56.2(d) of these rules, (ii) see any reason for the filing of additional briefs, and (iii) agree to time periods for filing any additional briefs.

(B) If briefs were not filed in the panel or extraordinary challenge proceedings, or if the briefs were filed but the parties agree that new briefs

should be filed in the court, the proposed briefing schedule ~~[shall]~~**must** indicate whether the parties (i) agree to the time periods set forth in Rule 56.2(d) of these rules, (ii) agree to time periods other than the periods set forth in Rule 56.2(d) of these rules, or (iii) cannot agree ~~[upon]~~**on** a time period. If the parties agree that new briefs should be filed, the proposed briefing schedule ~~[shall]~~**must** indicate the parties' views as to whether any briefs originally submitted to the panel or extraordinary challenge committee should be stricken from the record.

In the event the parties cannot agree ~~[upon]~~**on** any of the matters covered by subparagraphs (A) and (B), the parties ~~[shall]~~**must** indicate the areas of disagreement and ~~[shall]~~ set forth the reasons for their respective positions.

(g) Applicability of Other Court Rules.~~f~~

Unless a provision of this rule or an order of the court otherwise provides, the rules of this court ~~[shall]~~ govern actions transferred under 19 U.S.C. § 1516a(g)(12).

(Added Nov. 29, 1995, eff. March 31, 1996; as amended Sept. 30, 2003, eff. Jan. 1, 2004; \_\_\_\_\_, 2008, eff. \_\_\_\_\_, 2009.)

**Advisory Committee Note**

Rule 3.1 is unique to the Court of International Trade, having no counterpart in the Fed. R. Civ. P. It has been amended to conform to the style and terminology of the restyled Fed. R. Civ. P.