

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)

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(b) Notice to Interested Parties. On the same day as the filing of a request for transfer, the party requesting transfer must serve a copy of the request, by certified or registered mail, return receipt requested, 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~~ **the applicable Panel or Extraordinary Challenge Committee Rule** has not expired, then service must be 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~~ **the applicable Panel or Extraordinary Challenge Committee Rule** will be 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~~ **the applicable Panel or Extraordinary Challenge Committee**

Rule 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~~ **the applicable Panel or Extraordinary Challenge Committee Rule** has not expired, anyone otherwise entitled to intervene under Rule 24 of these rules will be permitted to intervene. Any motion to intervene must be filed within the amount of unexpired time that remained for filing a Notice of Appearance in the panel or committee proceedings, or 14 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 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 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~~ **the applicable Panel Rule** is filed, the administering authority or the International Trade Commission 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) must be in accordance with subdivision (c) of Rule 73.2 of these rules. Any documents that were filed under seal pursuant to **a Panel or** ~~NAFTA Article 1904 Panel Rule 56 of NAFTA Extraordinary Challenge Committee Rule 30~~

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 **the Panel Rules** ~~NAFTA Article 1904 Panel Rule 39~~, the plaintiff ~~should~~ **must** 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 14 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 on an Agency Record.

(1) Except as otherwise provided in this subdivision, the provisions of Rule 56.2 of these rules 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 ~~the NAFTA Article 1904 Panel Rules~~ **s-39**, any ~~proposed judicial protective order~~ **Form 17** must be filed within 21 days after the date of filing of the request for transfer. The procedures **related to business proprietary information** ~~for filing the proposed judicial protective order~~ will be in accordance with Rule ~~56.2(a)~~ **73.2(c)** 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) **(5)** of these rules 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 must indicate whether the parties (i) agree that those briefs should be treated as the equivalent of the motion and briefs provided for in Rule 56.2 ~~(d)~~ **(c)** 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~~ **must** be filed in the court, the proposed briefing schedule 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 on a time period. If the parties agree that new briefs ~~should~~ **must** be filed, the proposed briefing schedule must indicate the parties' views as to whether any briefs originally submitted to the panel or extraordinary challenge committee ~~should~~ **must** be stricken from the record.

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(Added Nov. 29, 1995, eff. March 31, 1996; as amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009; March 24, 2009, eff. May 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011; _____, **eff.** _____.)

Advisory Committee Note

The current version of the rule refers to the NAFTA. While some litigation under the NAFTA is still pending, the NAFTA was superseded by the United States-Mexico-Canada Agreement. Section 421 of the United States-Mexico-Canada Agreement Implementation Act (USMCA Act) replaced various references in 19 U.S.C. 1516a to “the NAFTA” with references to “the USMCA.” To avoid any future need to update the rule if there is a new trade agreement, references to “NAFTA Article 1904 Panel Rules” and “NAFTA Extraordinary Challenge Committee Rules” have been replaced by generic references to “applicable Panel and ECC Rules.” This way the rule will encompass any potential transfer from either NAFTA or USMCA panels or ECC, and will not need to be updated again if the specific USMCA rules are amended. The rule is also being revised to change the reference to “filing of the proposed judicial protection order” in accordance with Rule 56.2 be amended to reflect the current practice of filing a Form 17 to retain or obtain access to business proprietary information under an administrative protective order. The cross-reference to Rule 56.2 is changed to Rule 73.2(c), which addresses the procedures related to business proprietary information in actions under 28 U.S.C. § 1581(c) (except an action under Section 517(g) of the Tariff Act of 1930). Rule 3.1(f)(3)(A) provides that parties may agree that briefs already filed in the panel or ECC challenge can be treated as the equivalent of motions and briefs provided for in Rule 56.2(d), but Rule 56.2(c) is the correct reference because 56.2(c) contains the substantive description of briefs filed under in section 1581(c) cases. Therefore, this technical amendment is being made. Finally, the word “should” is changed to “must” where appropriate, for consistency with the Court’s preference to use the word “must.”