

CONFIDENTIAL

December 27, 1991

**Institutional Provisions and Dispute Settlement**

**Institutional Arrangements**

**Article 2301: Application** ✓

1. Except for the matters covered in Chapter 11 (Review of Antidumping and Countervailing Duty Amendments Determinations), Chapter 16 (Financial Services), and Chapter 21 (Investment), the provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes regarding the interpretation or application of this Agreement, or whenever a Party considers that a measure of another Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Article 2404, unless all of the Parties agree to use another procedure in any particular case.

**Article XX01: Application**

1. Except as otherwise provided in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes regarding the interpretation or application of this Agreement or whenever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Article XXXX, unless the Parties interested in the matter agree to use another procedure in any particular case.

**Article 607: SCOPE**

1. The provisions of this Part shall apply with respect to the avoidance or settlement of all disputes regarding the interpretation or application of this Agreement, including whenever a Party considers that an actual or proposed measure of another Party is or would otherwise nullify or impair any benefit reasonably expected to accrue to it under this Agreement.

**Article 2301: Application** ✓

2. Disputes arising under both this Agreement and the General Agreement on Tariffs and Trade, and agreements negotiated thereunder (GATT), may be settled in either forum, according to the rules of that forum, at the discretion of the complaining Party, to be exercised following consultations with the other Parties.<sup>1</sup>

---

<sup>1</sup> Further consideration of this paragraph is necessary given the trilateral nature of the Agreement.

CONFIDENTIAL

CONFIDENTIAL

Article XX01: Application

2. Disputes arising under both this Agreement and the General Agreement on Tariffs and Trade, and agreements negotiated thereunder ("GATT"), may be settled in either forum, according to the rules of that forum, at the discretion of the complaining Party or Parties. In the event that there are two complaining Parties and they cannot agree on the forum, the dispute shall be settled exclusively under this Agreement.

Article 607: Scope

2. Disputes arising under both this Agreement and the General Agreement on Tariffs and Trade, and agreements negotiated thereunder (GATT), or arising under both this Agreement and other trade agreements binding between the Parties to a dispute, may be settled in the forum chosen at the discretion of the complaining Party, according to the rules of that forum.

Article 2301: Application ✓

3. Once the dispute settlement provisions of this Agreement or the GATT have been initiated pursuant to Article 2305 or the GATT with respect to any matter, the procedure initiated shall be used to the exclusion of any other.

Article XX01: Application

3. Once the dispute settlement provisions of this Agreement or the GATT have been initiated pursuant to Article XX05 or the GATT with respect to any matter, the procedure initiated shall be used to the exclusion of the other.
4. Disputes between Canada and the United States arising under both this Agreement and the Canada-United States Free-Trade Agreement ("CUSFTA") shall be settled under the provisions of this Agreement unless both Parties agree otherwise. For such disputes, once Canada and the United States have initiated proceedings pursuant to Article XX05 of this Agreement or Article 1805 of the CUSFTA, the procedure initiated shall be used to the exclusion of the other. The referral of a dispute for resolution under the CUSFTA shall not affect any rights that Mexico may have under this Agreement with respect to the matter, including its right to initiate dispute settlement procedures under this Chapter.

Article 607: Scope

3. Once the dispute settlement provisions of this Agreement, the GATT or of any other Agreement have been initiated pursuant to this Part, the GATT, or that other Agreement, the procedure initiated shall be used to the exclusion of any other.

CONFIDENTIAL

CONFIDENTIAL

Article 2302: The Commission ✓

1. The Parties hereby establish the Mexico-Canada-United States Trade Commission (the Commission) to supervise the implementation of this Agreement, to resolve disputes that may arise over its interpretation and application, to oversee its further elaboration, and to consider any other matter that may affect its operation.

Article XX02: The Commission

1. The Parties hereby establish the North American Trade Commission ("Commission") to supervise the implementation of this Agreement, to resolve disputes that may arise over its interpretation and application, to oversee its further elaboration, and to consider any other matter that may affect its operation.

Article 601: TRADE COMMISSION

1. The Parties hereby establish the Trade Commission (the Commission).

3. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee its further elaboration in a manner that promotes fulfilment of its object and purpose;

(c) resolve disputes that may arise over its interpretation or application; and

(d) consider any other matter that may affect its operation.

Article 2302: The Commission ✓

2. The Commission shall be composed of representatives of the Parties. The principal representative of each Party shall be the cabinet-level officer or Minister primarily responsible for international trade. In order to address matters that affect the operation of the Agreement in a prompt and effective manner, each Party shall designate a permanent representative to the Commission who shall coordinate and execute on a continuing basis the functions described in paragraph 1. Actions of the permanent representatives taken by consensus shall be deemed actions of the Commission.

Article XX02: The Commission

2. The Commission shall be composed of representatives of each Party. The principal representative of each Party shall be the cabinet-level officer or minister primarily responsible

CONFIDENTIAL

for international trade, or the officer's or minister's designee.

Article 601: TRADE COMMISSION

2. The Commission shall be composed of representatives of each Party to this Agreement. The principal representative of each Party shall be the cabinet-level officer or Minister primarily responsible for international trade, or their designees.

Article 2302: The Commission ✓

3. The Commission shall convene at least once a year in regular session to review the functioning of this Agreement. Regular sessions of the Commission shall be held alternately in the three countries.

Article XX02: The Commission

3. The Commission shall convene at least once a year in regular session to review the functioning of this Agreement. Regular sessions of the Commission shall be held alternately in the three countries.

Article 601: TRADE COMMISSION

7. The Commission shall convene at least once a year in regular session to review the implementation and further elaboration of this Agreement. Regular sessions of the Commission shall be hosted, in alphabetical rotation, by each Party.

Article 2302: The Commission ✓

4. The Commission may establish and delegate responsibilities to ad hoc or standing committees or working groups and seek the advice of non-governmental individuals or groups.

Article XX02: The Commission

4. The Commission may establish, and delegate responsibilities to, ad hoc or standing committees or working groups and seek the advice of non-governmental individuals or groups.

Article 601: TRADE COMMISSION

4. The Commission may establish, and delegate responsibilities to, ad hoc or standing committees or working groups.

5. The Commission, and any committees or groups established pursuant to paragraph 4, shall seek the advice of non-governmental individuals, business enterprises, and groups on a regular basis.

Article 2302: The Commission ✓

CONFIDENTIAL

5. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus.

Article XX02: The Commission

5. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus.

Article 601: TRADE COMMISSION

6. The Commission shall establish its rules and procedures.

Article 2302: The Commission ✓

6. The Commission shall establish a Secretariat to provide secretarial and technical assistance to the panels appointed pursuant to this Chapter and Chapter 11 (Review of Antidumping and Countervailing Duty Amendments and Determinations.)

Article XX02: The Commission

6. The Commission shall establish a Secretariat to provide secretarial and technical assistance to the panels established under this Agreement, or in connection with other matters concerning the implementation of this Agreement, as the Commission may direct.

Article 602: THE SECRETARIAT

1. The Parties shall establish a permanent Secretariat, comprising national sections, to facilitate the operation of this Agreement and the work of panels, committees and other groups established or that may be convened pursuant thereto.

2. The office of each Party's section shall be in the location designated by that Party in its instrument of ratification or accession.

3. Each Party shall be responsible for the operating costs of its section.

4. Each Party shall appoint an individual to serve as Secretary to its section of the Secretariat who shall be responsible for all administrative matters involving that section.

5. The Secretaries shall provide support for the Commission as set out in this Agreement, and as may be directed by the Commission.

Article 611: PANEL PROCEDURES

ROLE OF SECRETARIAT

13. The Secretaries of the disputing Parties shall act jointly to service all meetings of Panels established pursuant to this

CONFIDENTIAL

CONFIDENTIAL

Article. The Secretary of the Party in whose territory a panel proceeding is held shall prepare a record thereof, and each disputing Party Secretary shall preserve an authentic copy of such record in its office.

14. Each disputing Party Secretary shall receive and file all requests, briefs, and other papers properly presented to a panel.

15. Each disputing Party Secretary shall forward to all other disputing Party Secretaries copies of all official letters, documents, records, or other papers received or filed with its Section pertaining to any proceeding before a panel.

Article 2303: Notification ✓

1. Each Party shall provide written notice to the other Parties of any measure that it considers might materially affect the operation of this Agreement. The notice shall include, whenever appropriate, a description of the reasons for the measure.

2. The Party implementing the measure shall provide written notice to the other Parties as soon as possible after implementation.

Article XX03: Notification

1. Each Party shall provide written notice to the other Parties of any proposed or actual measure that it considers might materially affect the operation of this Agreement. The notice shall include, whenever appropriate, a description of the reasons for the proposed or actual measure.

2. The written notice shall be given as far in advance as possible of the implementation of the measure. If prior notice is not possible, the Party implementing the measure shall provide written notice to the other Parties as soon as possible after implementation.

Article 604: NOTIFICATION

1. Each Party shall, to the maximum extent practicable, with respect to any proposed or actual measure that might materially affect the operation of this Agreement:

(b) provide written notice to the other Parties as far in advance as possible of the implementation of the measure;

Article 2303: Notification ✓

3. Upon request of any other Party, a Party shall promptly provide information and respond to questions pertaining to any measure.

Article XX03: Notification

CONFIDENTIAL

CONFIDENTIAL

3. Upon request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not previously notified.

**Article 604: NOTIFICATION**

1...*(c)* provide upon the request of any Party information and respond to questions pertaining to the measure, whether or not previously notified; and

4. The provision of written notice shall be without prejudice as to whether the measure is consistent with this Agreement. ✓

**Article XX03: Notification**

4. The provision of written notice shall be without prejudice as to whether the measure is consistent with this Agreement.

**Article 2304: Consultations** ✓

1. A Party may request consultations regarding any actual or proposed measure or any other matter that it considers affects the operation of this Agreement, whether or not the matter has been notified in accordance with Article 2303.

**Article XX04: Consultations**

1. A Party may request in writing consultations with another Party regarding any actual or proposed measure or any other matter that it considers affects the operation of this Agreement, whether or not the matter has been the subject of a notification under Article XX03.
2. The Party requesting consultations with another Party shall at the same time provide a copy of its request to the third Party. The third Party may request consultations on the matter and, if the three Parties agree, the consultations may be held jointly.

**Article 608: CONSULTATIONS**

1. Any Party may request consultations with any other Party regarding any actual or proposed measure of that other Party that it considers might materially affect the operation of this Agreement, whether or not the matter has been notified in accordance with Article 604.

2. The Parties shall make every attempt to arrive at a satisfactory resolution of any matter through consultations under this Article or other consultative provisions in this Agreement. ✓

**Article XX04: Consultations**

3. The Parties shall make every attempt to arrive at a mutually

CONFIDENTIAL

CONFIDENTIAL

satisfactory resolution of any matter through consultations under this Article or other consultative provisions in this Agreement.

4. All consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement.

3. Each Party shall treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information. ✓

Article XX04: Consultations

4. Each Party shall treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

5. Each Party shall treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

Article 2305: Initiation of Procedures ✓

1. If the Parties fail to resolve a matter through consultations within 30 calendar days of a request for consultations under Article 2304, any Party may request in writing a meeting of the Commission. The request shall state the matter complained of, and shall indicate what provisions of this Agreement are considered relevant. Unless otherwise agreed, the Commission shall convene within 10 calendar days and shall endeavor to resolve the dispute promptly.

Article XX05: Initiation of Procedures

1. If the Parties fail to resolve a matter through consultations within 30 days of the delivery of a written request for consultations under Article XX04, or within 45 days of such request if two Parties have requested consultations, any Party may convene by written request to the other Parties a meeting of the Commission. The request shall identify the measure complained of, and shall indicate which provisions of this Agreement are considered relevant. Unless otherwise agreed, the Commission shall convene within 10 days and shall endeavor to resolve the dispute promptly.

2. If, upon receipt of a request for a Commission meeting, the third Party considers that it has a substantial interest in the matter and seeks to participate as a complaining party, it shall transmit to the other Parties within 7 days written notice of its participation. If the third Party does not

CONFIDENTIAL



CONFIDENTIAL

elect to participate:

- a) it may not thereafter initiate procedures under this Article regarding the measure in dispute or challenge the measure under any substantially equivalent provision of the GATT or the CUSFTA; and
- b) the Commission shall consist, for purposes of the resolution of the dispute, of representatives of the two remaining Parties.

**Article 609: GOOD OFFICES, CONCILIATION, MEDIATION**

1. If the consulting Parties fail to resolve a matter through consultations within 30 days of a request for consultations under Article 608, any such Party may request in writing a meeting of the Commission.

2. The request shall state the matter complained of, and shall indicate what provisions of this Agreement are considered relevant.

3. Unless otherwise agreed, the Commission shall convene within 10 days and shall endeavour to resolve the dispute promptly.

2. The Commission may call on such technical advisors as it deems necessary, or on the assistance of a mediator acceptable to all Parties, in an effort to reach a satisfactory resolution of the dispute. ✓

**Article XX05: Initiation of Procedures**

3. The Commission may call on such technical advisors as it deems necessary, or on the assistance of a mediator acceptable to the Parties to the dispute, in an effort to reach a mutually satisfactory resolution of the dispute.

4. The Commission shall promptly investigate the dispute, and may call on such technical advisors or may create such expert groups or working parties as it deems necessary, or may offer such good offices, conciliation, mediation or other alternative dispute resolution procedures, as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute.

3. At the request of any Party, the Commission shall consider and determine whether it is appropriate to consolidate two or more proceedings initiated pursuant to this Chapter. In making such a determination, the Commission shall consider, inter alia, whether the issues involved in the separate proceeding are the same or similar, and whether consolidation would cause delay prejudicial to a Party. ✓

**Article 611: PANEL PROCEDURES**

CONFIDENTIAL

PROCEDURES FOR MULTIPLE COMPLAINTS

6. Where more than one Party requests the establishment of a panel on the same matter, a single panel shall be established wherever possible.

Article 2306: Binding Arbitration ✓

1. If a dispute has been referred to the Commission under Article 2305 and has not been resolved within a period of 30 calendar days after such referral, the Commission, upon request of any Party:

a) shall refer a dispute under Chapter 3 (Rules of Origin), Chapter 8 (Safeguards-Emergency Action), Chapter 12 (Technical Standards) and Article 505 (Technical Regulations and Standards for Agricultural, Food, Beverage and Certain Related Goods) and

b) may refer any other dispute, to binding arbitration before a panel of arbitrators. The panel process shall commence as of the date of such a request by a Party.

Article XX06: Arbitration

1. If a dispute has been referred to the Commission under Article XX05 and has not been resolved within a period of 30 days after such referral, the Commission may refer any dispute to arbitration on such terms as the Commission may adopt.

Article 610: ARBITRATION

1. If a dispute has been referred to the Commission under Article 609 and has not been resolved within a period of 30 days after such referral, the Commission:

(a) shall refer a dispute regarding actions taken pursuant to Article 502 (Safeguards); and

(b) may refer any other dispute with the consent of the Parties to that dispute, to binding arbitration on such terms as the Commission may adopt.

Article 203: INTERPRETATION AND APPLICATION

RULES OF INTERPRETATION

7. In the event that the Working Group is unable to resolve, within sixty days, any matter referred to it regarding Articles 201 or 202, any Party may refer the matter to binding arbitration pursuant to Part 6.

Article 503: DISPUTE SETTLEMENT IN SAFEGUARDS MATTERS

Disputes arising between the Parties regarding actual or proposed safeguards measures shall be subject to the notification and

# CONFIDENTIAL

consultation procedures of Part 6. Should the Parties fail to reach a mutually satisfactory resolution of any dispute with respect to actual measures, the dispute may be referred to compulsory binding arbitration in accordance with Part 6.

2. The panel shall be established and perform its functions in a manner consistent with the provisions of Article 2308. ✓

## Article XX06: Arbitration

2. Unless the Commission directs otherwise, an arbitration panel shall be established and perform its functions in a manner consistent with the provisions of paragraphs 1, 3, 4 and 5 of Article XX07.

3. Unless the Commission directs otherwise, an arbitration panel shall be established and perform its functions in a manner consistent with the provisions of Article 611.

3. The report of the panel shall be published along with any separate opinions, and any written views that a Party which has participated in the proceeding desires to be published. ✓

## Article 611: PANEL PROCEDURES

12. Unless the Commission agrees otherwise, the final report of the panel shall be published along with any separate opinions, and any written views that either Party desires to be published.

4. The determination of the panel shall be deemed binding under the domestic law of each Party.

## Article XX06: Arbitration

3. If a Party to the dispute fails to implement in a timely fashion the findings of an arbitration panel and the Parties are unable to agree on appropriate compensation or remedial action, then the other Party or Parties to the dispute shall have the right to suspend the application of equivalent benefits of this Agreement to the non-complying Party.

4. If a Party fails to implement in a timely fashion the findings of a binding arbitration panel and the Parties are unable to agree on appropriate compensation or remedial action, then the other Party shall have the right to suspend the application of equivalent benefits of this Agreement to the non-complying Party.

## Article 2307: Non-Binding Arbitration

1. If a dispute has been referred to the Commission under Article ✓

CONFIDENTIAL

CONFIDENTIAL

2305 and has not been resolved within a period of 30 calendar days after such referral, or within such other period as the Commission has agreed upon, and has not been referred to binding arbitration pursuant to Article 2306, the Commission, upon request of any Party, shall refer the matter to non-binding arbitration before a panel of arbitrators. The panel process shall commence as of the date of such a request by a Party.

Article XX07: Panel Procedures

2. If a dispute has been referred to the Commission under Article XX05 and has not been resolved within a period of 30 days after such referral, or within such other period as the Commission has agreed upon, or has not been referred to arbitration pursuant to Article XX06, the Commission, upon request of a Party transmitted in writing to the other Parties, shall establish a panel of experts to consider the matter. A panel shall be deemed to be established from the date of the request of a Party.

Article 611: Panel Procedures

1. If a dispute has been referred to the Commission under Article 609 and has not been resolved within a period of 30 days after such referral, or within such other period as the Commission has agreed upon, or has not been referred to arbitration pursuant to Article 610, the Commission, upon the request of any Party to the dispute, shall establish a panel of experts to consider the matter. A panel shall be deemed to be established from the date of the request of a Party.

2. The panel shall be established and perform its functions in a manner consistent with the provisions of Article 2308.

3. Unless the Commission otherwise agrees, the final report of the panel shall be published along with any separate opinions, and any written views that a Party which has participated in the proceeding desires to be published.

Article XX07: Panel Procedures

10. Unless the parties to the dispute agree otherwise, the final report of the panel, including any minority or separate opinions, shall be published five days after it is transmitted to the Parties.

12. Unless the Commission agrees otherwise, the final report of the panel shall be published along with any separate opinions, and any written views that either Party desires to be published.

4. Upon receipt of the final report of the panel, the Commission shall agree on the resolution of the dispute, which shall conform

CONFIDENTIAL

# CONFIDENTIAL

to the greatest extent possible with the decision of the panel. Whenever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Article 2404 or, failing such a resolution, compensation.

## Article XX07: Panel Procedures

11. Upon receipt of the final report of the Panel, the Commission shall agree on the resolution of the dispute, which normally shall conform with the recommendation of the panel. Whenever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Article XXXX or, failing such a resolution, compensation.

## Article 612: ADOPTION AND IMPLEMENTATION OF PANEL REPORTS

1. Upon receipt of the final report of a Panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the recommendation of the panel.

2. Whenever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or otherwise causing nullification or impairment in the sense of Article 106 or, failing such a resolution, compensation.

5. If the Commission has not reached agreement on a mutually satisfactory resolution under paragraph 4 within 30 calendar days of receiving the final report of the panel, the Party shall be free to suspend the application to the other Party of benefits of equivalent effect until such time as the Parties have reached agreement on a resolution of the dispute. ✓

## Article XX07: Panel Procedures

12. If the Commission has not reached agreement on a mutually satisfactory resolution under paragraph 11 within 30 days of receiving the final report of the panel (or such other date as the Commission may decide), and a Party to the dispute considers that its fundamental rights (under this Agreement) or benefits (anticipated under this Agreement) are or would be impaired by the implementation or maintenance of the measure at issue, the Party shall be free to suspend the application to the Party whose measure is at issue of benefits of equivalent effect until such time as the Commission has resolved the dispute.

4. If the disputing Parties have not reached agreement on a mutually satisfactory resolution under paragraph 2 within 30 days of receiving the final report of the panel (or such other date as the Commission may decide), and to the extent that the final report of a Panel has determined that the fundamental rights (under this

CONFIDENTIAL

CONFIDENTIAL

Agreement) or benefits (anticipated under this Agreement) of the complaining Party or Parties are or would be impaired by the implementation or maintenance of the measure at issue, that Party or Parties shall be free to suspend the application to the Party complained against of benefits of equivalent effect until such time as the disputing Parties have reached agreement on a resolution of the dispute.

**Article 2308: Panel Process**

1. The Commission shall maintain a roster of individuals who are willing and able to serve as arbitrators. Arbitrators normally shall be chosen from this roster. In all cases, arbitrators shall be chosen strictly on the basis of objectivity, reliability and sound judgment and, where appropriate, have expertise in the particular matter under consideration. Arbitrators shall be independent of the Parties, and shall not take instructions from any Party.

**Article XX07: Panel Procedures**

1. The Commission shall develop and maintain a roster of individuals who are willing and able to serve as panelists. Except as provided below, wherever possible, panelists shall be appointed from the roster. Panelists normally shall have experience in the resolution of disputes arising under international trade agreements. In all cases, panelists shall be objective, reliable, and of sound judgment. Panelists shall not be affiliated with or take instructions from a Party.

**Article 611: PANEL PROCEDURES**

**COMPOSITION OF PANELS**

2. The Commission shall develop and maintain a roster of individuals who are willing and able to serve as panellists, in accordance with the following criteria:

(a) Roster members shall have demonstrated expertise in law, international trade, or other matters covered by this agreement, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment.

(b) Roster members shall be citizens of a Party to this Agreement. They shall not be affiliated with or take instructions from any Party.

(c) The roster shall include a minimum of [ ] members from each Party to this Agreement.

5. (a) The Commission and disputing Parties shall, where appropriate in selecting panellists, endeavour to ensure that the

CONFIDENTIAL

# CONFIDENTIAL

individuals selected have expertise in the particular matter under consideration.

(b) Unless the Parties to a dispute involving financial services agree otherwise, panels shall be composed of a majority of members possessing financial services expertise.

2. The panel shall be composed of five members, one of whom shall be a citizen of Mexico, one of whom shall be a citizen of Canada, and one of whom shall be a citizen of the United States. Within 15 calendar days of the commencement of the panel process, each Party, [in consultation with the other Parties,] shall appoint a member of the panel. If a Party fails to appoint its arbitrator within 15 calendar days, such arbitrator shall be selected by lot from among its citizens on the roster described in paragraph 1. Each Party shall have the right to exercise two peremptory challenges, to be exercised simultaneously and in confidence, disqualifying from appointment to the panel one candidate proposed by each of the other Parties.<sup>2</sup>

## Article XX07: Panel Procedures

3. The panel shall be composed of five members.
4. The following procedures shall apply when there are two Parties to the dispute:
  - a) Within 15 days of establishment of the panel, each Party, in consultation with the other Party, shall select two members of the panel and the Commission shall endeavor to agree on the fifth panelist who shall chair the panel. If a Party fails to select its panelists within 15 days, such panelists shall be selected by lot from among the persons the Party has selected to serve on the roster described in paragraph 1.
  - b) Whenever possible, the fifth panelist shall be selected from the GATT roster of panelists. If the Commission is unable to agree on the fifth panelist within 15 days of establishment of the panel, then, at the request of either Party, the four panelists selected shall decide on the fifth panelist within 30 days of establishment of the panel. If no agreement is possible, the fifth panelist shall be selected by lot from among those persons on the GATT roster who are not nationals of a Party.

2. The Commission shall develop and maintain a roster of individuals who are willing and able to serve as panellists, in accordance with the following criteria:

---

<sup>2</sup> This provision will alter all of the following time limits.

# CONFIDENTIAL

(b) Roster members shall be citizens of a Party to this Agreement. They shall not be affiliated with or take instructions from any Party.

3. The panel shall be composed of 5 members, at least 2 of whom shall be citizens of the complaining Party and at least 2 of whom shall be citizens of the Party complained against.

4. (a) Within 15 days of establishment of the panel, each disputing Party shall choose 2 members of the panel, and the Commission shall designate the fifth who shall chair the panel.

(b) If a Party fails to appoint its panellists within 15 days, such panellists shall be selected by lot from among its citizens on the roster described in paragraph 2.

Article XX07: Panel Procedures

5. When there are two complaining Parties to a dispute, the procedures set out in paragraph 4 shall apply, except that:

- a) in consultation with the other Parties, each complaining Party shall select one panelist, the third Party shall select two panelists, and the complaining Parties shall jointly participate in the selection of the fifth panelist; and
- b) the schedule for the selection of panelists shall be extended by 10 days and the schedule for each further stage of the dispute shall be extended by 15 days.

PROCEDURES FOR MULTIPLE COMPLAINTS

6. Where more than one Party requests the establishment of a panel on the same matter, a single panel shall be established wherever possible.

7. In such cases, the following panel selection procedures, rather than those of paragraph 3, shall apply:

- (a) Within 15 days of establishment of the panel, each disputing Party shall nominate up to two candidates for the panel.
- (b) If a Party fails to nominate its candidates within 15 days, such candidates shall be selected by lot from among its citizens on the roster described in paragraph 2.
- (c) The Commission shall designate the panellists from among the candidates nominated, and shall designate a Chairman, within 30 days of the establishment of the panel, having due regard to the interests of all disputing parties.

IN FL  
 EX RE  
 FIGADO  
 OR ME-  
 CO, LOS  
 ACISOS  
 Y 7  
 ANA -  
 ENG F -  
 ME E  
 NIAN  
 MOOS  
 LOS  
 KISS



# CONFIDENTIAL

(d) If the Commission is unable to agree on membership of a panel within such period, then, at the request of any disputing Party, the panellists shall be selected by lot from the roster described in paragraph 2, provided that such panel shall always include at least one citizen of the Party complained against.

3. The three appointed arbitrators shall appoint the fourth and fifth arbitrators, who shall jointly chair the panel, within 30 calendar days of the commencement of the panel process. If agreement is not possible on the fourth and fifth arbitrators, they shall be selected in the following manner: [to be added] ✓

## COMPOSITION OF PANELS

4. (a) Within 15 days of establishment of the panel, each disputing Party shall choose 2 members of the panel, and the Commission shall designate the fifth who shall chair the panel.

(c) If the Commission is unable to agree on a fifth panellist within such period, then, at the request of either Party, the four appointed panellists shall decide on the fifth panellist within 30 days of the establishment of the panel.

(d) If no agreement is possible, the fifth panellist shall be selected by lot from the roster described in paragraph 2.

4. Individuals may not serve as arbitrators for disputes in connection with which they have served as a technical advisor or mediator pursuant to paragraph 2 of article 2305.

5. Panels shall follow the rules of procedure set forth in Annex \_\_\_\_\_, [which assure a right to at least one hearing before the panel as well as the opportunity to provide written submissions and rebuttal arguments]. The proceedings of the panel shall be confidential. The Parties shall submit such evidence as they deem appropriate, and arguments based on applicable international agreements. The panel shall base its decision on the arguments and submissions of the Parties. Where appropriate, a panel may request that the Secretariat appoint technical experts to provide assistance in analyzing and understanding the submissions of the Parties. ✓

## Article XX07: Panel Procedures

6. The panel shall establish its rules of procedure, unless the Commission has agreed otherwise. The procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide written submissions and rebuttal arguments. The proceedings of the panel, the written and oral submissions of the Parties, and the panel's initial report shall not be disclosed other than to employees of the Parties,

CONFIDENTIAL

CONFIDENTIAL

the Secretariat, the panel, and its assistants. Unless otherwise agreed by the Parties to the dispute, the panel shall base its decision on the arguments and submissions of the Parties.

7. When the third Party is not a Party to the dispute, it shall nevertheless be entitled to attend all hearings and to make written and oral submissions to the panel. Upon request, the Panel shall promptly transmit to such third Party all substantive written communications between the Parties and the panel concerning the dispute.

#### PANEL PROCESS

8. The panel shall establish its rules of procedure, unless the Commission has agreed otherwise, in accordance with the following principles:

(a) The procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide written submissions and rebuttal arguments.

(b) The proceedings of the panel shall be confidential.

(c) Unless otherwise agreed by the Parties, the panel shall base its decision on the arguments and submissions of the Parties.

(d) Any other Party having a substantial interest in a matter before a panel, and having notified this to the Commission, shall have an opportunity to be heard by the panel, to receive the written submissions of the disputing Parties, and to provide written submissions. If such Party considers the matter before the panel nullifies or impairs benefits accruing to it under this Agreement, that Party shall have recourse to the consultation and dispute settlement procedures of this Part.

(e) The panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate, including officials designated as members of each Party's section of the Secretariat.

6. The panel shall, within three months after its chairpersons are appointed, present to the Parties an initial report containing only findings of fact. Within 14 calendar days of the issuance of the initial report, a Party may present written comments on that report to the panel.

#### Article XX07: Panel Procedures

8. Unless the Parties to the dispute otherwise agree, the panel shall, within 90 days after its chairman is appointed, present

CONFIDENTIAL

CONFIDENTIAL

to the Parties an initial report containing findings of fact, its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Article XXXX, and its recommendations, if any, for resolution of the dispute. If requested by a Party at the time of establishment of the panel, the panel shall also present findings as to the degree of adverse trade effect of any measure found not to conform with the obligations of the Agreement. Panelists may furnish separate opinions on matters not unanimously agreed.

9. Within 15 days of issuance of the initial report of the panel, a Party to the dispute disagreeing in whole or in part with the report shall present a written statement of its objections and the reasons for those objections to the panel. In such an event, the panel may request the views of the other Party or Parties, reconsider its report, make any further examination that it deems appropriate and issue a final report, together with any separate opinions, within 30 days of issuance of the initial report. Neither the initial report nor the final report shall disclose which panelists are associated with majority or minority opinions.

9. Unless the disputing Parties otherwise agree, the panel shall, within three months after its chairman is appointed, present to the Parties an initial report containing:

(a) findings of fact;

(b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or otherwise cause nullification or impairment in the sense of Article 106;

(c) its recommendations, if any, for resolution of the dispute; and

(d) if requested by any disputing Party at the time of establishment of the panel, findings as to the degree of adverse trade effect on the other Party of any measure found not to conform with the obligations of the Agreement.

Panelists may furnish separate opinions on matters not unanimously agreed.

10. The panel shall afford the disputing Parties the opportunity to comment on its preliminary findings of fact prior to completion of its report.

11.(a) Within 14 days of issuance of the initial report of the panel, a disputing Party disagreeing in whole or in part shall present a written statement of objections and the reasons for those objections to the Panel.

CONFIDENTIAL

7. After considering the written comments of the Parties, the panel may make any further examination that it deems appropriate and shall issue a final report within 30 calendar days of the issuance of the initial report. Arbitrators may furnish separate opinions on matters not unanimously agreed. ✓

Article XX07: Panel Procedures

9. . . . In such an event, the panel may request the views of the other Party or Parties, reconsider its report, make any further examination that it deems appropriate and issue a final report, together with any separate opinions, within 30 days of issuance of the initial report. Neither the initial report nor the final report shall disclose which panelists are associated with majority or minority opinions.

11. (a) Within 14 days of issuance of the initial report of the panel, a disputing Party disagreeing in whole or in part shall present a written statement of objections and the reasons for those objections to the Panel.

(b) In such an event, the panel on its own motion or at the request of any disputing Party may:

(i) request the views of all disputing Parties;

(ii) reconsider its report;

(iii) make any further examination that it deems appropriate; and

(iv) issue a final report, together with any separate opinions, to the Parties and the Commission,

within 30 days of issuance of the initial report.

8. If requested by a Party at the time of the commencement of the panel process, the panel shall present findings as to the degree of adverse trade effect on the other Parties of any measure found not to conform with the obligations of the Agreement. ✓

Article XX07: Panel Procedures

8. . . . If requested by a Party at the time of establishment of the panel, the panel shall also present findings as to the degree of adverse trade effect of any measure found not to conform with the obligations of the Agreement. . . .

9. Unless the disputing Parties otherwise agree, the panel shall, within three months after its chairman is appointed, present to the Parties an initial report containing:

(d) if requested by any disputing Party at the time of

**CONFIDENTIAL**

establishment of the panel, findings as to the degree of adverse trade effect on the other Party of any measure found not to conform with the obligations of the Agreement.

**Article XX08: Referrals of Matters from Judicial or Administrative Proceedings**

1. In the event an issue of interpretation of this Agreement arises in any domestic judicial or administrative proceeding of a Party which another Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, the Parties concerned shall endeavor to agree on the interpretation of the applicable provisions of this Agreement.

**Article 613: REFERRALS OF MATTERS FROM JUDICIAL OR ADMINISTRATIVE PROCEEDINGS**

1. In the event an issue of interpretation of this Agreement arises in any domestic judicial or administrative proceeding of a Party which any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, the Commission shall be notified.
2. The Commission shall endeavour to agree on the interpretation of the applicable provisions of this Agreement as expeditiously as possible.

**Article XX08: Referrals of Matters from Judicial or Administrative Proceedings**

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation to the court or administrative body in accordance with the rules of that forum. If the Parties are unable to reach agreement on the interpretation of the provision of this Agreement at issue, each Party may submit its own views to the court or administrative body in accordance with the rules of that forum.
3. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation to the court or administrative body in accordance with the rules of that forum.
4. If the Commission is unable to reach agreement on the interpretation of the provision of the Agreement at issue, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

**CONFIDENTIAL**

5. The Commission may establish a standing committee of experts to render opinions as may be requested by the Commission, any Party, or by any domestic judicial or administrative tribunal of any Party.

U.S. only

NOTE:

[The United States is considering the inclusion of a provision that would encourage the use of arbitration in commercial disputes between a national or company of a Party and a national or company of another Party.]

[The United States is also considering the inclusion of a provision that would allow the Parties to evaluate more effectively the scientific basis of arguments raised by the Parties to a dispute under this Agreement on grounds related to health, conservation of living resources, or environmental protection.]

Canada only

Article 603: PUBLICATION

Each Party shall ensure that any measures of general application respecting any matter covered by this Agreement shall be published promptly or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

Article 604: NOTIFICATION

1. Each Party shall, to the maximum extent practicable, with respect to any proposed or actual measure that might materially affect the operation of this Agreement:

(a) publish a notice in its official journal at an early stage in such a manner as to enable interested persons and Parties to become acquainted with the measure;

(d) allow reasonable time between publication and entry into force of the measure to permit interested persons and other Parties to make comments in writing, discuss these comments upon request of any Party, and take the comments and the results of the discussions into account.

2. Paragraph 1 shall not apply in urgent circumstances, provided

CONFIDENTIAL

that the Party:

(a) immediately notifies the other Parties of the measure, together with a brief indication of the objective and rationale of the measure, including the nature of the urgency;

(b) provides to other Parties upon request copies of the measure in its final form; and

(c) allows the other Parties to make comments in writing, discusses these comments upon request, and takes the comments and the results of the discussions into account.

3. The provisions of this Article shall not require any Party to provide confidential information, the disclosure of which would prejudice legitimate commercial interests.

#### Article 605: ADMINISTRATION OF LAWS

Each Party shall administer in a uniform, impartial and reasonable manner all laws, regulations, decisions and rulings affecting matters covered by this Agreement.

#### Article 606: REVIEW AND APPEAL

1. Each Party shall introduce and maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and correction of administrative action relating to matters covered by this Agreement, including access to at least one level of administrative review or appeal of such action.

[2. In any such tribunals or procedures, [a listing of appropriate administrative law principles common to common-law and civil law systems, e.g., right to reasoned decision-making, etc., might be included here]

3. Such tribunals or procedures shall be independent of the office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter.

4. The decisions of such tribunals or procedures shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals.

#### Article 608: CONSULTATIONS

2. The Party requesting consultations shall notify other Parties to this Agreement of its request.

3. Any other Party having a substantial interest shall have the right to participate in the consultations.

#### Article 609: GOOD OFFICES, CONCILIATION, MEDIATION

CONFIDENTIAL

CONFIDENTIAL

5. The Commission may make recommendations to the Parties which it considers to be concerned.

6. The interests of all Parties to this Agreement shall be fully taken into account by the Commission and by the consulting Parties.

Article 610: ARBITRATION

2. Other Parties may become party to an arbitration proceeding upon the agreement of the Parties which have agreed to have recourse to arbitration.

Article 612: ADOPTION AND IMPLEMENTATION OF PANEL REPORTS

3. The Commission shall be notified of any agreed resolution of any dispute.

[5. An additional paragraph should provide some means of dispute settlement regarding the determination of "equivalent effect."]

612 CANADIAN AGREEMENT JUNTO CON XX08/ESTABLISHED  
UNION

CONFIDENTIAL