

CONFIDENTIAL

Chapter XXX

Institutional Provisions

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.
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.
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 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.

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 for international trade, or the officer's or minister's designee.
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.
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.
5. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus.
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 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.
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.
4. The provision of written notice shall be without prejudice as to whether the measure is consistent with this Agreement.

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.

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

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 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.
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.

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.

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. If a Party to the dispute fails to implement in a timely fashion the findings of a 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.

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.
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.
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.

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

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.
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.

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.]