

**Institutional Arrangements  
and Dispute Settlement Procedures**

**INSTITUTIONS**

**Article 2301: The USA MEX[North American] Trade Commission**

1. The Parties hereby establish the USA MEX[North American] Trade Commission (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 for international trade or their designees.
3. The Commission shall:
  - a) supervise the implementation of this Agreement;
  - b) oversee its further elaboration;
  - c) resolve disputes that may arise over its interpretation or application; and
  - d) consider any other matter that may affect its operation.
4. The Commission may:
  - a) establish, and delegate responsibilities to, ad hoc or standing committees, working groups or CDA MEX[legal, scientific or other] expert groups;
  - b) seek the advice of non-governmental individuals or groups; and
  - c) take such other action in the exercise of its functions as the Parties may agree.
5. The Commission shall establish its rules and procedures. MEX USA[All decisions of the Commission shall be taken by consensus, except as the Commission may otherwise provide.]
6. The Commission shall convene at least once a year in regular session to review the implementation and further elaboration of this Agreement and to consider any other matter that may affect its operation. Regular sessions of the Commission shall be chaired successively by each Party.

**Article 2302: The Secretariat**

1. The Commission shall establish and oversee a Secretariat comprising national Sections.
2. Each Party shall:
  - a) establish a permanent office of its national Section;

- b) be responsible for the operation and costs of its Section;
  - c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration and management; and
  - d) notify the Commission of the location of its office.
3. The Secretariat shall:
- a) provide assistance to the Commission;
  - b) provide administrative assistance to the panels established under this Agreement; and
  - c) as the Commission may direct:
    - i) support the work of committees and other groups established under this Agreement; and
    - ii) otherwise facilitate the operation of this Agreement.
4. The Secretaries of the disputing Parties shall act jointly to service all meetings of panels established pursuant to this Agreement. 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.
5. Each disputing Party Secretary shall receive and file all requests, briefs, and other papers properly<sup>1</sup> presented to a panel.
6. Each disputing Party Secretary shall forward to all other disputing Party Secretaries copies of all official letters, documents, records, or<sup>2</sup> other papers received or filed with its Section pertaining to any proceeding before a panel.<sup>3 4</sup>

## DISPUTE SETTLEMENT

### CDA MEX[Article 2303: Cooperation

1. When a Party seeks the redress of a violation of obligations or other nullification or impairment of benefits under this Agreement or an impediment to the attainment of any of its objectives, it shall have recourse to, and abide by, the rules and procedures of this Chapter.
2. In such cases, the Parties shall:
- (a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of this Agreement has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Agreement, and shall make any such determination consistent with the recommendations of a Panel made

<sup>1</sup> Further consideration required as to who determines what is "proper" - the Secretariat or the Commission.

<sup>2</sup> The placement of paragraphs 4-6 needs to be reconsidered.

<sup>3</sup> We need to revisit the use of "disputing Party" in paragraphs 4-6.

<sup>4</sup> U.S. side to provide more precise draft for paragraphs 4 through 6.

pursuant to Articles 2317 and 2318, or the findings of a panel made pursuant to Article 2321;

- (b) follow the procedures of Article 2319 regarding implementation of panel reports, when applicable; and
- (c) follow the procedures of Article 2320 regarding the suspension of benefits under this Agreement in response to a failure of another Party to implement the report of a panel.]<sup>5</sup>

**Article 2304:** CDA[Dispute Settlement - Scope] MEX USA[Application]

MEX USA[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 MEX USA[, unless] MEX[all of] the Parties USA[interested in the matter] agree to use another procedure in any particular case.]<sup>6 7</sup>

**Article 2305:** [GATT Dispute Settlement]

1. 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 at the discretion of the complaining Party or Parties, according to the rules of that forum. USA[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.]<sup>8</sup>

2. Once dispute settlement proceedings have been initiated pursuant to Article 2308 of this Agreement or [under the MTO], the procedure initiated shall be used to the exclusion of MEX USA [any] CDA[the]<sup>10</sup> other.

<sup>5</sup> Earlier wording proposed by Canada, namely, "The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and to that end shall use the provisions of this Chapter for the avoidance and settlement of all disputes arising thereunder", remains a minimum requirement for the Canadian side.

<sup>6</sup> The need for reference to nullification or impairment should be reconsidered in light of reference to this issue in the paragraphs on panel procedures.

<sup>7</sup> As currently drafted, this paragraph creates some confusion between the application of this Chapter, on the one hand, and the need to permit flexibility of procedures within this Chapter, on the other hand: "another procedure" could be interpreted as referring to a procedure other than the provisions of the Chapter. Accordingly, the entire article should be revisited at the end of discussions, after verifying that sufficient flexibility in procedures is given to the Commission or the disputing/participating parties in appropriate articles that follow.

<sup>8</sup> Need to review consistency of terminology: "agreement" and "forum" as well as decide whether "Agreements under GATT" includes understandings and decisions under GATT. With this provision, the three sides do not purport to limit or waive their GATT rights.

<sup>9</sup> Reference to MTO is contingent on developments in Geneva.

<sup>10</sup> Canada wishes to ensure that this Article is not interpreted as denying to a Party any rights it may have to pursue more than one GATT forum. In its view, the intent of this Article is to make the choice between NAFTA and GATT fora exclusive. Accordingly, it prefers "the" to "any" here.

3. For the purposes of paragraph 2, proceedings under the MTO are deemed to be initiated through recourse by a Party to the following provisions:<sup>11</sup>

- (a) Article XXIII:2 of the GATT;
- (b) Article 4.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes;
- (c) Article 18.3 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade (Anti-dumping Code);
- (d) Article 14.1 of the Agreement (1991) on Technical Barriers to Trade;
- (e) Articles 4.4, 7.4 and 9.3 of the Agreement on Subsidies and Countervailing Duties;
- (f) Article 20.1 of the Agreement on Implementation of Article VII of the GATT (Customs Valuation Code)
- (g) Articles 2.21, 4.4, 5.2, 5.4, 5.6, 6.10, 6.11, 8.5, or 8.6 of the Agreement on Textiles and Clothing;
- (h) Article VII:6 of the Agreement on Government Procurement;
- (i) Article XXIII:2 of the General Agreement on Trade in Services;
- (j) Article 24.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods.

**Article 2306: [FTA Dispute Settlement]**

USA[1. 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 2312 of this Agreement or Article 1805 of the CUSFTA, the procedure initiated shall be used to the exclusion of the other.]<sup>12</sup>

MEX[1. All disputes arising under both this Agreement and the CUSFTA shall be settled under the provisions of this Agreement. Disputes arising exclusively under the CUSFTA provisions listed in Annex 2306 shall be settled pursuant to the provisions of the CUSFTA.]

CDA[1. Disputes arising under both this Agreement and the *Canada-United States Free Trade Agreement*, or arising under both this agreement and other trade agreements binding between the Parties to a dispute, may be settled in either forum at the discretion of the complaining Party, according to the rules of that forum.

2. Once the dispute settlement provisions of this Agreement or the *Canada-United States Free Trade Agreement* or that other agreement have been initiated pursuant to Article 2312, the

<sup>11</sup> All three sides wish to verify references that follow.

<sup>12</sup> See U.S. proposal for suspension of certain provisions of the CUSFTA (Article X004 of U.S. Final Provisions draft).

*Free Trade Agreement* or that other agreement, the procedure initiated shall be used to the exclusion of any other.]  
CDA[3.]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 2307: Consultations**

1. Any Party may request in writing consultations with any other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The Party requesting consultations shall at the same time provide a copy of its request to the USA MEX[third Party] CDA[other Parties] and to its national section of the Secretariat.<sup>13</sup>

USA[3. The third Party may request consultations on the matter and, if the three Parties agree, the consultations may be held jointly.]

CDA MEX[3. MEX[The third] CDA[Any other] Party that considers it has a substantial interest shall have the right to participate in the consultations.]<sup>14</sup>

CDA MEX[4. The Party to which a request is made shall, unless otherwise agreed, enter into consultations within a period of no more than thirty days from the date of delivery of the request.]

CDA MEX[5. In cases of urgency, including those that concern perishable goods, the Parties concerned shall enter into consultations within a period of no more than ten days from the date of delivery of the request. In such cases, should consultations fail to resolve the matter within a period of twenty days from the date of delivery of the request, the requesting Party may proceed directly to request in writing a meeting of the Commission pursuant to Article 2308.]

6. The 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. To this end, the consulting Parties shall:

CDA MEX[(a) to the greatest extent possible, provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement;]

USA [(a) provide sufficient information to determine whether the actual or proposed measure is in conformity with the Agreement;]<sup>15</sup>

<sup>13</sup> The manner in which Secretariat deals with this and other notifications might be best addressed explicitly in rules of procedure, whether as part of the Model Rules (for Panel Procedures) or in another set of rules for the Secretariat.

<sup>14</sup> A possible compromise, offered by Canada, is to state as follows:

[Any other] Party that considers it has a substantial interest may request the right to participate in the consultations. Such Party shall be permitted to join in the consultations, provided that the Party to which the request was addressed agrees that the claim of substantial interest is well-founded.

<sup>15</sup> This language is subject to U.S. review. It also appeared in the Article on exchange of information.

- (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and
- (c) seek to avoid any resolution that adversely affects the interests under this Agreement of CDA[any other Party] MEX USA[the third Party].

CDA MEX[7. Any settlement of the matter shall be notified to MEX[the third Party] CDA[the other Party or Parties] and the appropriate national sections of the Secretariat.]<sup>16</sup>

#### Article 2308: Initiation of Procedures - Good Offices, Conciliation, Mediation

1. If the Parties participating in consultations pursuant to Article 2307 fail to resolve a matter within 30 days of the delivery of a written request for consultations USA[or within 45 days of such request if two Parties have requested consultations,] or within such other period as they may agree, any such Party may request in writing a meeting of the Commission.<sup>17</sup>

2. The request shall state the measure or matter complained of, indicate the provisions of this Agreement that are considered relevant, and be notified to the other Parties and to the requesting Party's section of the Secretariat.<sup>18</sup>

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

USA[4. 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, 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.]

5. The Commission may call on such technical advisors or may create such expert groups or working parties as it deems necessary or may have recourse to good offices, conciliation, mediation or such other dispute resolution procedures or make such recommendations, as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute.

CDA MEX[6. 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 Article. 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.]<sup>19</sup>

#### PANEL AND ARBITRATION PROCEEDINGS

##### Article 2309: Referral to Panel

- <sup>16</sup> Again, Secretariat procedures should be addressed in rules of procedure.
- <sup>17</sup> Reference to date of delivery is relevant to other written requests in this chapter.
- <sup>18</sup> Again, Secretariat procedures to be addressed in rules.
- <sup>19</sup> Need to consider whether this paragraph is also intended to give Commission authority to seek to consolidate GATT and NAFTA cases.

If a dispute has been referred to the Commission under Article 2308 and has not been resolved within a period of 30 days after the Commission has been convened pursuant to Article 2308(3), or within such other period as the consulting Parties have agreed upon, and has not been referred to binding arbitration pursuant to Article 2321, the Commission, upon the written request of any Party transmitted to the other Parties and to its section of the Secretariat<sup>20</sup>, shall establish a panel of experts to consider the matter. A panel shall be deemed to be established from the date of the request by a Party.

#### Article 2310: Roster

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

- a) Roster members shall have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgement.
- b) Roster members shall be independent of the Parties, and not be affiliated with or take instructions from any Party.
- c) Roster members shall be citizens of a Party.
- d) The roster shall comprise 25 members from each Party.

#### Article 2311: Panel Selection

1. USA[Except as provided below,] Wherever possible, panelists shall be chosen from the roster.
2. Panelists shall meet the qualifications required of roster members, as set out in Article 2310(a) and (b).
3. Individuals may not serve as panelists for a dispute in which they have participated, pursuant to Article 2308(5).
4. MEX CDA[The Commission and CDA[disputing] MEX[participating] Parties shall, where appropriate in choosing panelists, endeavour to ensure that the individuals selected have expertise in the particular matter under consideration.]
5. CDA[Unless the Parties to a dispute involving financial services agree otherwise, panels shall be composed of a majority of members possessing financial services expertise.]
6. The panel shall be composed of five members, MEX[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] CDA[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].

CDA USA[7. USA[The following procedures shall apply when there are two Parties to the dispute:] The Commission shall endeavour to agree on the chair of the panel within 15 days of

<sup>20</sup> Yet again, Secretariat procedures to be addressed in rules.

the establishment of the panel. If the Commission is unable to agree on the chair within this period, then the disputing Party chosen by lot shall select the chair from CDA[the names of nationals of the disputing Parties on the roster described in Article 2310] USA[among those persons on the GATT Roster who are not nationals of a Party], in consultation with the other disputing Party.]

MEX[7. Within 15 days of establishment of the panel, each Party, in consultation with the other Parties, shall appoint a member of the panel.]

CDA USA[8. When the chair has been selected, each disputing Party, in consultation with the other disputing Party, shall appoint two members of the panel.]

9. If a Party fails to appoint its panelists within 15 days, such panelists shall be selected by lot from among the persons the Party has placed on the roster described in Article 2310.

MEX[10. The three appointed panelists shall appoint the fourth and fifth panelists who shall jointly chair the panel, within 30 days of the establishment of the panel. If agreement is not possible on the fourth and/or fifth panelists, they shall be selected in the following manner: [to be added]]

11. Panelists shall be subject to a code of conduct to be established by the Commission. If a CDA USA[disputing] Party believes that a panelist is in violation of the code of conduct, the CDA USA[disputing] Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with the procedures of this Chapter.

#### Article 2312: Multiple Complaints

USA[ When there are two complaining Parties to a dispute, the procedures set out in paragraphs 7, 8 and 9 of Article 2311 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.]

CDA[ Where more than one Party requests the establishment of a panel on the same matter, a single panel shall be established wherever possible. In such cases, the panel selection procedures of Article 2311 shall apply, except that, pursuant to Article 2311(8), each Party shall consult with the other disputing Parties in choosing its panelists.]<sup>21</sup>

#### Article 2313: Model Rules of Procedure

<sup>21</sup> This paragraph reflects the Canadian proposal for 7-member panels in three Party proceedings. An alternative proposal, including a permanent institution (either a tribunal or a roster along the lines of the Permanent Court of Arbitration) will be circulated shortly.

1. The Commission shall establish Model Rules of Procedure, in accordance with the following principles:<sup>22</sup>

- 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 MEX CDA[shall be confidential.] USA[, the written and oral submissions of the Parties, and the panel's initial report shall not be disclosed other than to the Parties, the Secretariat, the panel, and its assistants.]

2. Unless otherwise agreed by the disputing Parties, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. Unless the disputing Parties agree otherwise within 20 days from the establishment of the panel, the terms of reference shall provide as follows:

"To examine, in light of the relevant provisions of the NAFTA, the matter referred to the Commission (as set out in the letter requesting a Commission meeting) and to make such findings, determinations and recommendations as provided in Article 2317(2) and 2318 or such findings as provided in Article 2321.

4. If a Party wishes to argue that a matter has nullified or impaired benefits it reasonably expected to accrue to it, the terms of reference should so indicate.

#### USA[Article 2313bis: Burden of Proof

A Party asserting that a standards-related measure or other measure of another Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency.]<sup>23</sup>

#### Article 2314: Role of Experts

At the request of a Party, or at its own initiative, and subject to the terms and conditions set out in the Model Rules of Procedure established pursuant to Article 2313(1), the panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.<sup>24</sup>

#### USA[Article 2315: Scientific Review Boards

1. An arbitration panel or panel of experts convened under this Chapter may, on its own initiative or at the request of a Party to the dispute, refer to a scientific review board ("board")

<sup>22</sup> The Parties agree that this Article should be recast to more deeply define the relation between the NAFTA provisions, the model rules of procedure and the procedures to be applied in each case.

<sup>23</sup> The U.S. has yet to decide on the proper location of this proposed provision.

<sup>24</sup> This text is inspired by the FTA Model Rules of Procedure, Part V, paragraph 5. Drafting, location (e.g., in text or in rules) is to be confirmed by all three sides.

any factual issues concerning environmental or other scientific matters that it considers to be essential for resolution of the dispute.

2. The board shall consist of three members. Members shall be independent of the Parties and shall be selected from among highly qualified experts in the scientific matters in question.

3. Within 30 days of a decision by the panel to refer an issue to a board, the panel shall select two members of the board after consultation with the Parties to the dispute and the President of the National Academy of Sciences and the [Mexican and Canadian counterparts]. The third member shall be selected by the two panel-appointed members and shall serve as board chair. If the third member has not been selected within ten days of the appointment of the second member, the panel shall, within ten days thereafter, appoint the third member who shall serve as chair.

4. Within 90 days of the appointment of the board's third member, the board shall submit a written report to the panel on the scientific issues in question.

5. The panel shall take the board's report into account in the preparation of its report.

6. The panel may extend its schedule of proceedings for a period not to exceed the time required to appoint the members of the board and for the board to complete its report.

7. The Commission shall adopt rules of procedure for boards that ensure the transparency and fairness of their operation. Such rules of procedure shall include provisions to ensure the right of the Parties to:

- (a) receive advance notice of, and comment on, the issues to be referred to the board;
- (b) submit evidence to the board;
- (c) provide to the board comments on the report of the board prior to submission of the report to the panel; and
- (d) be present when the board communicates its report to the panel.]

#### **Article 2316: Third Party Rights**

USA CDA[When USA[the third Party is not a Party to the dispute] CDA[any other Party has a substantial interest in a matter before a panel, and has notified this to the Commission], it shall USA[nevertheless] be entitled to attend all hearings, to make written and oral submissions to the panel, and to receive written submissions of the disputing Parties. CDA[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.]]<sup>25</sup>

#### **Article 2317: Initial Report**

<sup>25</sup> Secretariat rules of procedure should provide for transmission to third Party of the panel documentation.

1. Unless otherwise agreed by the disputing Parties, the panel shall base its decision on the arguments and submissions of the Parties.

2. Unless the disputing Parties otherwise agree, the panel shall, within 90 days after its USA CDA[chair] MEX[chairpersons] USA CDA[is] MEX[are] appointed, present to the USA[disputing] MEX CDA[participating] 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 CDA MEX[otherwise] cause nullification or impairment in the sense of Article \_\_\_\_\_;
- (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.

3. Within 14 days of issuance of the initial report of the panel, a disputing Party may present written comments on the report to the panel.

4. In such an event, and after considering such written comments, the panel on its own motion or at the request of any disputing Party may:

- a) request the views of any participating Party;
- b) reconsider its report; and
- c) make any further examination that it deems appropriate.<sup>26</sup>

#### Article 2318: Final Report

1. The panel shall present to the USA[disputing] CDA MEX[participating] Parties a final report, including any separate opinions on matters not unanimously agreed, within 30 days of delivery of the initial report.

2. Neither the initial report nor the final report shall disclose which panelists are associated with majority or minority opinions.

3. Unless the USA[disputing] CDA MEX[participating] Parties agree otherwise, the final report of the panel, along with any written views that a USA[disputing] CDA MEX[participating] Party desires to be appended, shall be transmitted to the Commission \_\_\_ days after it is presented to the USA[disputing] CDA MEX[participating] Parties.

4. Unless the MEX CDA[Commission agrees] USA[disputing Parties agree] otherwise, the final report of the panel shall be published USA[five days after it is transmitted to the disputing Parties].

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<sup>26</sup> Access of Parties to information provided to panels at this stage should be further considered.

**Article 2319: Implementation of Final Report**

1. Upon receipt of the final report of the panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the recommendations of the panel pursuant to Articles 2317 and 2318, or the findings of the panel pursuant to Article 2321. The Commission shall be notified of any agreed resolution of any dispute.

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

CDA[3. In the event that no mutually satisfactory resolution is reached within 30 days of receipt of the final report of the panel (or such other date as the Commission may decide),

- (a) the Party complained against shall immediately notify the Commission of its intentions in respect of implementation of the final report;
- (b) the Commission shall keep under surveillance the implementation of the final report; and
- (c) the final report shall be placed on the agenda of the first Commission meeting following six months after receipt of the final report and shall remain on the Commission agenda until the dispute is resolved; and
- (d) the Party complained against shall provide the Commission with a status report in writing of its progress in the implementation of the final report.]

CDA MEX[4. Where the disputing Parties cannot agree on the existence or consistency with this Agreement of measures taken to implement the final report of the Panel, such dispute shall be decided through recourse to the dispute settlement procedures of this Chapter, and shall be referred to the original panel whenever possible. The panel shall issue its report within ninety days of referral of the matter to it, unless otherwise agreed by the disputing Parties.]

**Article 2320: Non-Implementation - Suspension of Benefits**

1. If the disputing Parties have not reached agreement on a mutually satisfactory resolution pursuant to Article 2319 within 30 days of receiving the final report of the panel (or such other date as the Commission may decide in the light of the intentions of the Party complained against in respect of implementation of the final report), USA[and a disputing Party considers that its] CDA[and to the extent that the final report of a Panel has determined that the] USA CDA[fundamental rights (under this Agreement) or benefits (anticipated under this Agreement)] CDA[of the complaining Party or Parties] USA CDA[are or would be impaired by the implementation or maintenance of the measure at issue,] CDA[that] MEX USA[the] Party CDA[or Parties] shall be free to suspend the application to the MEX[other] Party USA[whose measure is at issue] CDA[complained against] of benefits of equivalent effect until such time as the CDA[disputing] MEX CDA[Parties have reached agreement on a resolution of] USA[Commission has resolved] the dispute.

CDA MEX[2. In considering what benefits to suspend, the complaining Party or Parties shall apply the following principles and criteria:

- (a) the complaining Party or Parties should first seek to suspend benefits in the same CDA[sector or sectors] MEX[Chapter(s) of this Agreement] as that in which the panel has found a violation or other nullification or impairment by the non-complying Party;
- (b) only if that Party or Parties consider that it is not practicable or effective to suspend benefits in the same CDA[sector] MEX[Chapter(s) of this Agreement], it may seek to suspend benefits in other CDA[sectors] MEX[Chapters of the same area];

MEX(c) only if that Party or Parties consider that it is not practicable or effective to suspend benefits in the same area, and that the circumstances are serious enough, it may seek to suspend benefits in other areas; and]

- (c) that Party or Parties shall take into account:
  - (i) the trade in the CDA[sector] MEX[area] in which the panel has found a violation or other nullification or impairment, and the importance of such trade CDA[to that Party or Parties];
  - (ii) the broader economic elements related to the violation or other nullification or impairment and the broader economic consequences of the suspension of benefits.]

CDA MEX[3. For the purposes of paragraph 2, CDA["sector"] MEX["area"] means:

- (a) CDA[with respect to goods, all goods;]  
MEX[Chapters\_\_\_\_(trade in goods, including procurement of goods;]
- (b) CDA[with respect to services, a principal sector as set out in [the classification set out in Chapter 13];  
MEX[Chapters\_\_\_\_(trade in services, including procurement of services;]
- (c) MEX[Chapter\_\_\_\_(financial services;]
- (d) CDA[with respect to trade-related intellectual property rights, [to be negotiated];  
and]  
MEX[Chapters\_\_\_\_(intellectual property; and]
- (e) CDA[with respect to investment, [to be negotiated].]  
MEX[Chapters\_\_\_\_(investment).]]

CDA MEX[4. Before suspending benefits, the complaining Party or Parties shall give written notice to the Commission of the benefits it proposes to suspend. If, within fifteen days of this notice, the non-complying Party files with the Commission a written objection to the proposed level of suspension CDA[or a claim that the principles and criteria of paragraph 2 have not been followed where a complaining Party has suspended benefits], the matter shall be referred to binding arbitration in accordance with the provisions of this Chapter. In such an event, the complaining Party or Parties shall not suspend any benefits other than in accordance with the decision of the arbitration panel.]

CDA MEX[5. Such arbitration shall:

- (a) be carried out by the original panel wherever possible;

- (b) not examine the nature of the suspended benefits but rather shall determine whether the level of such suspension is equivalent to the level of CDA>nullification or impairment] MEX[benefits that would accrue to the complaining Party or Parties if the recommendation of the original panel were implemented]; and
- (c) if the matter includes a claim that the principles and procedures of paragraph 2 have not been followed, examine that claim.]

CDA MEX[6. The arbitration panel shall present its preliminary findings to the disputing Parties within forty-five days following the filing of the written objection with the Commission. The complaining Party or Parties may, within five days of receipt of the preliminary findings, submit a modified proposal for suspension of benefits. The panel shall present its final determination to the disputing Parties CDA[and the Commission] within fifteen days thereafter.]

#### Article 2321: Binding Arbitration

1. If a dispute has been referred to the Commission under Article 2308 and has not been resolved within a period of 30 days after the Commission has been convened pursuant to Article 2308(3), the Commission shall:

MEX CDA[a] refer a dispute regarding actions taken pursuant to Chapter 8 Safeguards-Emergency Action, Chapter 3 (Rules of Origin), Article 2320 (Suspension of Benefits), MEX[Chapter 12 (Technical Standards) and Article 505 (Technical Regulations and Standards for Agricultural, Food, Beverage and Certain Related Goods)] in accordance with the provisions of those chapters or Articles, and<sup>27</sup>

b)] at the request of the disputing Parties, refer any MEX CDA[other] dispute

to binding arbitration in accordance with paragraph 2. The panel shall be deemed to be established from the date of such referral.

2. Unless otherwise agreed by the MEX[Commission] CDA USA[disputing Parties], an arbitration panel shall be established and perform its functions in a manner consistent with the provisions of Articles 2311, 2312, 2313, 2314, USA[2315], USA CDA[2316], CDA MEX[2317], and 2318.

3. If a disputing Party fails to implement in a timely fashion the findings of a binding arbitration panel and the disputing Parties are unable to agree on appropriate compensation or remedial action, then the other disputing Party or Parties shall have the right to suspend the application of equivalent benefits of this Agreement to the non-complying Party, MEX CDA[in accordance with Article 2320].

#### DOMESTIC PROCEEDINGS

##### Article 2324: Referrals of Matters from Judicial or Administrative Proceedings

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<sup>27</sup> These provisions may need to be modified to accord with the provisions negotiated in these areas.

1. In the event an issue of interpretation of this Agreement arises in any domestic judicial or administrative proceeding of a Party that 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 and shall endeavour to agree on the interpretation of the applicable provisions of this Agreement as expeditiously as possible.

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.

3. 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.

N.B. Throughout the text the use of the terms "measure" and "matter" needs to be considered.