

December 31, 1991

**Consolidation of the Institutional Provisions
and Dispute Settlement Chapter**

I. Issues on which Parties Generally Agree

A. Scope

Once a forum has been chosen it shall be used to the exclusion of any other.

B. The Trade Commission

Agree on its establishment, functions, and operating procedures.

C. The Secretariat

D. Consultations

E. Initiation of procedures

F. Non-Binding Arbitration

G. Panel Process

1. Panelist's profile
2. Rules of procedure
3. Deadlines

II. Issues Requiring Further Discussion

A. Scope

1. Mexico excludes certain subjects from the general dispute settlement mechanism.

2. Choice of forum

a. Canada includes other trade agreements besides NAFTA and GATT.

b. U.S. grants priority to NAFTA in the case when there are two complaining parties and they do not agree on the forum.

3. US-Canada FTA dispute settlement provisions remain in force.

B. The Trade Commission

Mexico establishes that each Party shall designate a permanent representative to the Commission.

C. Notification

Canada incorporates stricter rules in relation to the publication of measures so as to allow the Parties the opportunity to make comments before they are implemented.

D. Consultations

Both U.S. and Canada establish that the Party requesting consultations shall provide copy of its request to the third party (Mexico does not incorporate anything in this respect). However, if the third party decides to participate in the consultations, according to the U.S. proposal, the three Parties shall agree in order to have the consultations held jointly, while Canada grants without conditions this right to the third party.

E. Initiation of Procedures

The U.S. text extends the consultations period when two Parties have requested them.

F. Binding Arbitration

1. Matters subject to binding arbitration.

2. Although the U.S. contemplates two procedures for the resolution of disputes, it does not use the word "binding" when referring to the mechanism which has such characteristics. Instead, it distinguishes the mechanisms through the name of the panels (in one case arbitration panel in the other, panel of experts).

3. According to the Canadian proposal, the third Party may become party to an arbitration proceeding upon the agreement of the Parties which have agreed to have recourse to arbitration. In contrast, the U.S. proposal grants the third party with a substantial interest in a matter, the right to participate as a complaining party once the dispute has been presented to the Commission, regardless of what the Parties to the dispute consider. Mexico does not regulate the above, in part because its text presumes that all disputes will be trilateral in nature.

4. The degree of bindingness of the panel's decisions. Mexico departs from the U.S.-Canada FTA by establishing that the determination of the panel shall be deemed binding under the domestic law of each Party.

G. Non-Binding Arbitration

1. Since U.S. and Canada distinguish between bilateral and trilateral disputes, both assure that the disputing parties shall be the only ones to agree on the resolution of the dispute upon receipt of the final report. In the case of the U.S., they make it clear that the Commission shall consist, for purposes of the resolution of bilateral disputes, of representatives of the two remaining Parties. Canada refers to "disputing parties". In the other hand, Mexico establishes that the Commission shall agree on the resolution of the final report, not differentiating between bilateral and trilateral conflicts.

2. Canada imposes stricter discipline with respect to the Parties possibility of suspending equivalent benefits once the panel has emitted its decision and agreement has not been reached.

H. Panel Process

1. Composition of the panels

a. Mexico does not distinguish between bilateral and trilateral disputes. Each Party shall choose a member. The three appointed arbitrators shall appoint the fourth and fifth arbitrators.

b. In bilateral disputes, the Canadian and American proposal differ, because the latter establishes that whenever possible the fifth panelist shall be selected from the GATT roster of panelists.

c. In trilateral disputes, the Canadian and American proposal also differs.

2. Scope of the initial report and the panel's response to the disputing Parties written comments. Mexico's proposal is much more limitative than the American and Canadian one. The initial report shall only contain findings of fact and once the panel receives the comments of the Parties it shall immediately proceed to issue a final report.

J. Review and Appeal. Canadian proposal.

K. Referrals of Matters from Judicial or Administrative Proceedings. Mexico does not contemplate such article.

[Institutional Provisions and Dispute Settlement]^{MEX}

[Institutional Provisions]^{US}

[Institutional Arrangements]^{CAN}

Article 2301: Scope

1. [Except]^{MEX,US} [for the matters covered in Chapter 11 (Review of Antidumping and Countervailing Duty Amendments Determinations), Chapter 16 (Financial Services), and Chapter 21 (Investment),]^{MEX} [as otherwise provided in this Agreement]^{US} 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, including whenever a Party considers that a [an actual or proposed]^{US,CAN} 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]^{MEX} the Parties [interested in the matter]^{US} agree to use another procedure in any particular case]^{MEX,US} [otherwise nullify or impair any benefit reasonably expected to accrue to it under this Agreement.]^{CAN}

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,]^{CAN} may be settled in the forum chosen at the discretion of the complaining Party [or Parties]^{US}, according to the rules of that forum [to be exercised following consultations with the other Parties].^{MEX, 1GAA} [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.]^{US}

3. Once the dispute settlement provisions of this Agreement or the GATT [or of any other Agreement]^{CAN} have been initiated pursuant to [Article 2306]^{MEX} [this Part]^{CAN}, or the GATT [with respect to any matter]^{MEX,US} [or that other Agreement,]^{CAN} the procedure initiated shall be used to the exclusion of any other.

[4.]^{US} 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

1GAA/Further consideration of this paragraph is necessary given the trilateral nature of the Agreement.

States have initiated proceedings pursuant to Article 2306 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 2302: The [Trade]^{CAN} Commission

1. The Parties hereby establish the [Canada- Mexico-United States]^{MEX} [North American]^{US} Trade Commission (the Commission).

2. The Commission shall:

- (a) supervise the implementation of this Agreement;
- (b) oversee its further elaboration [in a manner that promotes fulfillment of its object and purpose]^{CAN};
- (c) resolve disputes that may arise over its interpretation or application; and
- (d) consider any other matter that may affect its operation.

3. 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].^{US, CAN} [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.]^{MEX}

4. The Commission shall convene at least once a year in regular session to review the [implementation and further elaboration]^{CAN} [functioning]^{MEX, US} of this Agreement. Regular sessions of the Commission shall be [held alternately in the three countries]^{MEX, US} [hosted, in alphabetical rotation, by each Party].^{CAN}

5. 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].^{MEX, US}

[6.]^{CAN} The Commission, and any committees or groups established pursuant to paragraph 5, shall seek the advice of nongovernmental individuals, business enterprises, and groups on a regular basis.

7. The Commission shall establish its rules and procedures. [All decisions of the Commission shall be taken by consensus].^{MEX,US}

Article 2303: THE SECRETARIAT

1. [The Commission]^{MEX,US} [The Parties]^{CAN} shall establish a [permanent]^{CAN} 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.]^{CAN} [to provide secretarial and technical assistance to the panels]^{MEX,US} [appointed pursuant to this Chapter and Chapter 11 (Review of Antidumping and Countervailing Duty Amendments and Determinations.)]^{MEX} [established under this Agreement, or in connection with other matters concerning the implementation of this Agreement, as the Commission may direct]^{US}.

[2.]^{CAN} The office of each Party's section shall be in the location designated by that Party in its instrument of ratification or accession.

[3.]^{CAN} Each Party shall be responsible for the operating costs of its section.

[4.]^{CAN} 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.]^{CAN} The Secretaries shall provide support for the Commission as set out in this Agreement, and as may be directed by the Commission.

[6.]^{CAN} The Secretaries of the disputing Parties shall act jointly to service all meetings of Panels established pursuant to this 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.

[7.]^{CAN} Each disputing Party Secretary shall receive and file all requests, briefs, and other papers properly presented to a panel.

[8.]^{CAN} 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: 2304: Notification

[1.]^{CAN} 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.

2. Each Party shall [to the maximum extent practicable]^{CAN} with respect to any [proposed or actual]^{US,CAN} measure that might materially affect the operation of this Agreement:

[a]^{MEX,US} provide written notice. The notice shall include, whenever appropriate, a description of the reasons for the [proposed or actual]^{US} measure.

[b] provide written notice to the other Parties as [soon]^{MEX} [far in advance]^{US,CAN} as possible [after]^{MEX} [of]^{US,CAN} 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].^{US}

[c] [promptly]^{MEX,US} provide upon request of any Party information and respond to questions pertaining to [any]^{MEX,US} [the]^{CAN} [proposed or actual]^{US} measure, [whether or not previously notified].^{US,CAN}

[d]^{CAN} 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;

[e]^{CAN} 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.

[3.]^{MEX,US} The provision of written notice shall be without prejudice as to whether the measure is consistent with this Agreement.

[4.]^{CAN} Paragraph 1 shall not apply in urgent circumstances, provided 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.

[5.]^{CAN} The provisions of this Article shall not require any Party to provide confidential information, the disclosure of which would prejudice legitimate commercial interests.

Article 2305: Consultations

1. [A]^{MEX,US} [Any]^{CAN} Party may request [in writing]^{US} consultations [with any other Party]^{US,CAN} regarding any actual or proposed measure [or any other matter]^{MEX,US} [of that other Party]^{CAN} that it considers [affects]^{MEX,US} [might materially affect]^{CAN} the operation of this Agreement, whether or not the matter has been notified in accordance with Article [2304]^{MEX}.

[2.]^{US,CAN} The Party requesting consultations [with another Party shall at the same time provide a copy of its request to the third Party.]^{US} [shall notify other Parties to this Agreement of its request]^{CAN}.

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

[3.]^{CAN} Any other Party having a substantial interest shall have the right to participate in the consultations.

4. [The]^{MEX,US} [All consulting]^{CAN} Parties shall make every attempt to arrive at a [mutually]^{US,CAN} satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement.

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 2306: Initiation of Procedures

1. If the [consulting]^{CAN} Parties fail to resolve a matter through consultations within 30 [calendar]^{MEX} days [of the delivery]^{US} of a [written]^{US} request for consultations under Article [2305]^{MEX}, [or within 45 days of such request if two Parties have requested consultations,]^{US} any [such]^{CAN} Party may request in writing [to the other parties]^{US} a meeting of the Commission.

2. The request shall [state the matter]^{MEX,CAN} [identify the measure]^{US} complained of, and shall indicate what provisions of this Agreement are considered relevant.

3. Unless otherwise agreed, the Commission shall convene within 10 [calendar]^{MEX} days and shall endeavor to resolve the dispute promptly.

[4.]^{US} 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.

5. The Commission [shall promptly investigate the dispute and]^{CAN} may call on such technical advisors [or may create such expert groups or working parties]^{CAN} as it deems necessary [or on the assistance of a mediator acceptable to [all]^{MEX} [the]^{US} Parties [to the dispute]^{US}]^{MEX,US} [or may offer such good offices, conciliation, mediation or other alternative dispute resolution procedures, as may assist the consulting Parties]^{CAN} [in an effort]^{MEX,US} to reach a [mutually]^{US,CAN} satisfactory resolution of the dispute.

[6.]^{CAN} The Commission may make recommendations to the Parties which it considers to be concerned.

[7.]^{CAN} The interests of all Parties to this Agreement shall be fully taken into account by the Commission and by the consulting Parties.

[8.]^{CAN} Where more than one Party requests the establishment of a panel on the same matter, a single panel shall be established wherever possible.

[9.]^{MEX} 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 2307: Binding Arbitration

1. If a dispute has been referred to the Commission under Article [2306]^{MEX} and has not been resolved within a period

of 30 [calendar]^{MEX} days after such referral, the Commission, [upon request of any Party]^{MEX}.

[a)]^{MEX,CAN} shall refer a dispute [under]^{MEX} [regarding actions taken pursuant to]^{CAN} Chapter 8 Safeguards-Emergency Action, [Chapter 3 (Rules of Origin), Chapter 12 (Technical Standards) and Article 505 (Technical Regulations and Standards for Agricultural, Food, Beverage and Certain Related Goods)]^{MEX} and

b) may refer any [other]^{MEX,CAN} dispute, [with the consent of the Parties to that dispute]^{CAN},

to [binding]^{MEX,CAN} arbitration [before a panel of arbitrators]^{MEX} [on such terms as the Commission may adopt]^{US,CAN}. [The panel process shall commence as of the date of such a request by a Party.]^{MEX}

[2.]^{CAN} In the event that the Working Group (Rules of Origin) 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.

[3.]^{CAN} Other Parties may become party to an arbitration proceeding upon the agreement of the Parties which have agreed to have recourse to arbitration.

4. [The]^{MEX} [unless the Commission directs otherwise, an arbitration]^{US,CAN} panel shall be established and perform its functions in a manner consistent with the provisions of [paragraphs 1, 4, 5, 8, 10]^{US} Article [2309]^{MEX}.

[5.]^{MEX,CAN} [Unless the Commission agrees otherwise,]^{CAN} the [final]^{CAN} report of the panel shall be published along with any separate opinions, and any written views that [a]^{MEX} [either]^{CAN} Party [which has participated in the proceeding]^{MEX} desires to be published.

[6.]^{MEX} The determination of the panel shall be deemed binding under the domestic law of each Party.

[6.]^{US,CAN} If a Party [to the dispute]^{US} fails to implement in a timely fashion the findings of a [binding]^{CAN} arbitration panel and the Parties are unable to agree on appropriate compensation or remedial action, then the other Party [or Parties to the dispute]^{US} shall have the right to suspend the application of equivalent benefits of this Agreement to the noncomplying Party.

Article 2308: Non-Binding Arbitration ^{2CAN}

^{2CAN} An additional paragraph should be added to provide some means of dispute settlement regarding the determination of "equivalent effect".

1. If a dispute has been referred to the Commission under Article 2306 and has not been resolved within a period of 30 [calendar]^{MEX} days after such referral, or within such other period as the Commission has agreed upon, and has not been referred to [binding]^{MEX} arbitration pursuant to Article 2307, the Commission, upon the request of any Party [transmitted in writing to the other Parties,]^{US} [to the dispute]^{CAN}, shall [refer the matter to non-binding arbitration before a]^{MEX} [establish a]^{US,CAN} panel of [arbitrators]^{MEX} [experts to consider the matter]^{US,CAN}. [The panel process shall commence as of the date of such a]^{MEX} [A panel shall be deemed to be established from the date of the]^{US,CAN} request by a Party.

[2.]^{MEX} The panel shall be established and perform its functions in a manner consistent with the provisions of Article 2309.

3. Unless the [Commission agrees]^{MEX,CAN} [parties to the dispute agree]^{US} otherwise, the final report of the panel shall be published along with any separate [or minority]^{US} opinions, [and any written views that]^{MEX,CAN} [a]^{MEX} [either]^{CAN} Party [which has participated in the proceeding]^{MEX} desires to be published]^{MEX,CAN} [five days after it is transmitted to the Parties]^{US}.

4. Upon receipt of the final report of the panel, the [Commission]^{MEX,US} [disputing parties]^{CAN} shall agree on the resolution of the dispute, which [normally]^{US,CAN} shall conform [to the greatest extent possible]^{MEX} with the [decision]^{MEX} [recommendation]^{US,CAN} of the panel.

Whenever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or [otherwise]^{CAN} causing nullification or impairment in the sense of Article 2404 or, failing such a resolution, compensation.

[5.]^{CAN} The Commission shall be notified of any agreed resolution of any dispute.

6. If the [Commission]^{MEX,US} [disputing parties]^{CAN} [has]^{MEX,US} [have]^{CAN} not reached agreement on a mutually satisfactory resolution under paragraph 4 within 30 [calendar]^{MEX} days of receiving the final report of the panel, [(or such other date as the Commission may decide)]^{US,CAN}, [and a Party to the dispute considers that its]^{US} [and to the extent that the final report of a Panel has determined that the]^{CAN} [fundamental rights (under this Agreement) or benefits (anticipated under this Agreement)]^{US,CAN} [of the complaining Party or Parties]^{CAN} [are or would be impaired by the implementation or maintenance of the measure at issue,]^{US,CAN} that]^{CAN} [the]^{MEX,US} Party [or Parties]^{CAN} shall be free to suspend the application to the [other]^{MEX} Party [whose

measure is at issue]^{US} [complained against]^{CAN} of benefits of equivalent effect until such time as the [disputing]^{CAN} [Parties have reached agreement on a resolution of]^{MEX, CAN} [Commission has resolved]^{US} the dispute.

Article 2309: Panel Process

1. The Commission shall [develop and]^{US, CAN} maintain a roster of individuals who are willing and able to serve as [arbitrators]^{MEX} [panellists]^{US, CAN}, in accordance with the following criteria:

[(a)]^{MEX, US} [Except as provided below, wherever possible, panelists]^{US} [Arbitrators normally]^{MEX} shall be [chosen]^{MEX} [appointed]^{US} from the roster.

(b) [Panelists normally shall have experience in the resolution of disputes arising under international trade agreements.]^{US} [Roster members shall have demonstrated expertise in law, international trade, or other matters covered by this agreement, and]^{CAN} [In all cases]^{MEX, US} [arbitrators]^{MEX} [panelists]^{US} shall be chosen strictly on the basis of objectivity, reliability and sound judgment.

(c) [Roster members shall be citizens of a Party to this Agreement.]^{CAN} [Arbitrators shall be independent of the Parties]^{MEX} and [Panelists]^{US} shall not [be affiliated with or]^{US, CAN} take instructions from any Party.

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

2. The Commission [and disputing Parties]^{CAN} shall, where appropriate in selecting [arbitrators]^{MEX} [panellists]^{CAN}, endeavour to ensure that the individuals selected have expertise in the particular matter under consideration.

[3.]^{CAN} Unless the Parties to a dispute involving financial services agree otherwise, panels shall be composed of a majority of members possessing financial services expertise.

4. 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]^{MEX} [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]^{CAN}.

5. Within 15 [calendar]^{MEX} days of [the commencement]^{MEX} [establishment]^{US, CAN} of the panel [process]^{MEX}, each [disputing]^{CAN} Party, [in consultation with the other Parties]^{MEX} [Party]^{US}]^{MEX, US} shall [appoint a member]^{MEX} [choose 2 members]^{US, CAN} of the panel.

6. If a Party fails to appoint [its arbitrator]^{MEX} [its panellists]^{US,CAN} within 15 [calendar]^{MEX} days, such [arbitrator]^{MEX} [panellists]^{US,CAN} shall be selected by lot from among [its citizens]^{MEX,CAN} [the persons the Party has selected to serve]^{US} on the roster described in paragraph 1.

[7.]^{MEX} 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.^{3MEX}

[8.]^{MEX} 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]

[8.]^{US,CAN} The Commission shall [endeavor to agree on]^{US} [designate]^{CAN} the fifth panelist who shall chair the panel. [Whenever possible, the fifth panelist shall be selected from the GATT roster of panelists]^{US}. If the Commission is unable to agree on a fifth panellist within 15 days of establishment of the panel, then, at the request of either Party, the four [appointed]^{CAN} panellists shall decide on the fifth panellist within 30 days of the establishment of the panel. If no agreement is possible, the fifth panellist shall be selected by lot from [among those persons on the GATT roster who are not nationals of a Party.]^{US} [the roster described in paragraph 1.]^{CAN}

[9.]^{MEX} Individuals may not serve as arbitrators for disputes in connection with which they have served as a technical advisor or mediator pursuant to paragraph 5 of article 2306.

[10]^{US} When there are two complaining Parties to a dispute, the procedures set out in paragraphs 5,6 and 8 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.

[10.]^{CAN} Where more than one Party requests the establishment of a panel on the same matter, a single panel shall be established wherever possible.

^{3MEX} This provision will alter all of the following time limits.

In such cases, the following panel selection procedures, rather than those of paragraphs 5,6, and 8 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 1.

(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.

(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 1, provided that such panel shall always include at least one citizen of the Party complained against.

11. [Panels]^{MEX} [The panel]^{US,CAN} shall [follow]^{MEX} [establish]^{US,CAN} [the]^{MEX} [its]^{US,CAN} rules of procedure [set forth in Annex _____,]^{MEX} [unless the Commission has agreed otherwise,]^{US,CAN} [which shall be]^{MEX} 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.]^{MEX,CAN} [, 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.]^{US}

(c) [The Parties shall submit such evidence as they deem appropriate and argumentes based on applicable international agreements]^{MEX} [Unless otherwise agreed by the Parties [to the dispute]^{US}]^{US,CAN} the panel shall base its decision on the arguments and submissions of the Parties.

[(d)]^{US} 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.

[(d)]^{CAN} 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)]^{MEX} Where appropriate, a panel may request that the Secretariat appoint technical experts to provide assistance in analyzing and understanding the submissions of the Parties.

[(e)]^{CAN} 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.

12. [Unless the disputing Parties otherwise agree,] ^{US, CAN} the panel shall, within [three months] ^{MEX, CAN} [90 days] ^{US} after its [chairpersons] ^{MEX} [chairman] ^{US, CAN} [are] ^{MEX} [is] ^{US, CAN} appointed, present to the Parties an initial report containing:

(a) [only] ^{MEX} findings of fact;

[(b)] ^{US, CAN} 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 2404;

[(c)] ^{US, CAN} its recommendations, if any, for resolution of the dispute; and

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

Panellists may furnish separate opinions on matters not unanimously agreed.

[13.] ^{CAN} The panel shall afford the disputing Parties the opportunity to comment on its preliminary findings of fact prior to completion of its report.

14.(a) Within [14] ^{MEX, CAN} [15] ^{US} [calendar] ^{MEX} days of issuance of the initial report [of the panel,] ^{US, CAN} a [disputing] ^{US, CAN} Party [may] ^{MEX} [disagreeing in whole or in part [with the report]] ^{US} shall] ^{US, CAN} present [written comments on that

report]^{MEX} [a written statement of objections and the reasons for those objections]^{US,CAN} to the Panel.

15. [After considering the written comments of the Parties]^{MEX,CAN}, the panel [on its own motion or at the request of any disputing Party]^{CAN} may:

[(a)]^{US,CAN} request the views of [the other Party or]^{US} [all disputing]^{CAN} Parties;

[(b)]^{US,CAN} reconsider its report;

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

(d) [shall]^{MEX} issue a final report [together with any separate opinions]^{US,CAN}, [to the Parties and the Commission]^{CAN} [together with separate opinions on matters not unanimously agreed]^{MEX},

within 30 [calendar]^{MEX} days of issuance of the initial report.

[16.]^{US} Neither the initial report nor the final report shall disclose which panelists are associated with majority or minority opinions.

[17.]^{MEX} 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 2310: ADMINISTRATION OF LAWS]^{CAN}

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

[Article 2311: REVIEW AND APPEAL]^{CAN}

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 2312: REFERRALS OF MATTERS FROM JUDICIAL OR ADMINISTRATIVE PROCEEDINGS]^{US,CAN}

1. In the event an issue of interpretation of this Agreement arises in any domestic judicial or administrative proceeding of a Party which [another]^{US} [any]^{CAN} 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]^{CAN} [the Parties concerned shall endeavor]^{US} to agree on the interpretation of the applicable provisions of this Agreement [as expeditiously as possible]^{CAN}.

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 [Parties are]^{US} [Commission is]^{CAN} unable to reach agreement on the interpretation of the provision of the Agreement at issue, [each]^{US} [any]^{CAN} Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

[4.]^{CAN} 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.

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.]