

**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.
- 3.bis Each Party shall designate a contact point to facilitate communications between the Parties on matters covered by the Agreement. Upon the request of another Party, the contact point shall identify the office or official responsible for such a matter and assist, as necessary, in facilitating communications with the requesting Party.¹
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.]
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

¹ The drafting and placement of this provision should be revisited.

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 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 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 other papers received or filed with its Section pertaining to any proceeding before a panel. ^{2 3}

² The placement of paragraphs 4-6 needs to be reconsidered.

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

TRANSPARENCY

Article: 2303: Publication ^{4 5}

MEX CDA[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.]

USA[1. Each Party shall promptly publish or, where publication is not practicable, otherwise make readily available to the public all laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement.]

USA CDA[2. To the extent possible, each Party shall:

- a) publish in advance any such measure that it proposes to adopt; and
- b) provide a reasonable opportunity for comment by interested persons and Parties on such proposed measures.]

Article 2304: MEX CDA[Notification] US[Provision of Information]

1. Upon request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure that might affect the operation of this Agreement. ^U[The information provided shall be sufficient to determine whether the actual or proposed measure is in conformity with the Agreement.]

USA[2. The requesting Party shall take adequate steps to protect the confidentiality of any information that the providing Party considers to be confidential or proprietary.]

CDA[2. The provisions of the Article shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.]

USA[3. Nothing in this Article shall require a Party to:

- a) collect information not in its possession; or
- b) disclose information when such disclosure is contrary to generally applicable law or would impede law enforcement.]

⁴ Placement of this provision needs to be reconsidered.

⁵ The consistency of this provision with similar provisions in other parts of this Agreement and the Uruguay Round agreements will need to be considered.

MEX CDA[Article 2305: Administration of Laws

Each Party shall administer in a uniform, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement.]⁶

MEX CDA[Article 2306: Review and Appeal]

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

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

CDA[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.]

CDA[4. Such decisions 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.]⁷

Article XXXX: Arbitration in Commercial Disputes

1. Each Party shall encourage and facilitate the use of arbitration as a means of settling commercial disputes between its nationals or companies and nationals or companies of another Party.

2. To this end, each Party shall provide appropriate mechanisms for the enforcement of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such cases.

3. A Party shall be deemed to have satisfied the provisions of paragraph 2 if it has accepted and is in compliance with the obligations imposed under the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.⁸

⁶ Location of article remains to be decided.

⁷ General support by all three countries in having a provision along this line. Its location needs to be decided. Positions on paragraph 2 can only be finalized when text is offered. Universe of measures covered by this provision needs particular attention and, potentially, redrafting. Paragraphs 3 and 4 will be reexamined to ensure they reflect domestic practice and do not unduly interfere in domestic affairs.

⁸ The drafting of this Article may need to be revisited.

DISPUTE SETTLEMENT

CDA MEX [Article 2307: Cooperation

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.]

Article 2308: CDA [Dispute Settlement - Scope] MEX [USA] [Application] 9

MEX USA [Except] MEX [for the matters covered in Chapter 11 (Review of Antidumping and Countervailing Duty Amendments Determinations), Chapter 16 (Financial Services), and Chapter 21 (Investment),] [USA 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. 10 11

Article 2309: [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 MEX [to be exercised following consultations with the other Parties]. [IHS] the event that there are two complaining Parties and they cannot agree on the forum, the dispute shall be settled exclusively under this Agreement.] 12

2. Once the dispute settlement provisions of this Agreement or the GATT have been initiated pursuant to Article 2312 or the GATT with respect to any matter, the procedure initiated shall be used C [by the complaining Party or Parties] to the exclusion of any other. 13

Article 2310: [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

9 Entire Article to be revisited at end of discussions.

10 The need for reference to nullification or impairment should be reconsidered in light of reference to this issue in the paragraphs on panel procedures.

11 This paragraph will be redrafted to separate the application of this Chapter from the Parties' choice of procedures.

12 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.

13 Paragraph should specify when dispute settlement under the GATT is initiated.

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.]¹⁴

MEX[1. Disputes between Canada and the United States arising under both this Agreement and the CUSFTA shall be settled under this Agreement unless the dispute pertains solely to provisions of the CUSFTA not covered in this Agreement, as specified in Annex _____.]

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 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 2311: 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].

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.]

4. 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, and shall seek to avoid any resolution that adversely affects the interests under this Agreement of CDA [any other Party] MEX [the third Party].

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.

¹⁴ The U.S. is considering whether another approach might be to suspend certain provisions of the CUSFTA, where the same provisions are found in NAFTA.

Article 2312: USA MEX [Initiation of Procedures] ~~{~~ Good Offices, Conciliation,
Mediation]

1. If the consulting Parties fail to resolve a matter through consultations within 30 days of the delivery of a written request for consultations under Article 2311, [~~US~~ within 45 days of such request if two Parties have requested consultations,] any such Party may request in writing a meeting of the Commission. ¹⁵ 16

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

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 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.] ¹⁷

PANEL AND ARBITRATION PROCEEDINGS

¹⁵ Reference to date of delivery is relevant to other written requests in this chapter.

¹⁶ "Consulting parties" for Mexico and Canada includes a third party who has a substantial interest, but has not independently requested consultations. For the U.S. this is not the case.

¹⁷ Need to reconsider use of term "proceeding". Would "dispute" be more appropriate?

Article 2313: Referral to Panel

If a dispute has been referred to the Commission under Article 2312 and has not been resolved within a period of 30 days after such referral, or within such other period as the consulting Parties have agreed upon, or has not been referred to binding arbitration pursuant to Article 2323, the Commission, upon the written request of any Party transmitted 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 by a Party.¹⁸

Article 2314: 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, the resolution of disputes arising under international trade agreements, international trade, or other matters covered by this Agreement,] 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 CDA a minimum of] USA MEX members from each Party.

Article 2315: 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 2314(a) and (b).
3. Individuals may not serve as panelists for a dispute in which they have participated, pursuant to Article 2312(5).
4. MEX CDA [The Commission and disputing 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.]

¹⁸ Term "referral to the Commission" should be clarified to specify whether it refers to the date of the request for a Commission meeting or the date the Commission convened.

¹⁹ All three countries want to reconsider this language.

6. 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] ~~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].~~

7. USA [The following procedures shall apply when there are two Parties to the dispute:] Within 15 days of establishment of the panel, each USA [disputing] Party, in consultation with the other CDA U [disputing Party] ~~MEX~~ [disputing Parties] shall appoint MEX [a member] USA CD [two members] of the panel.

8. 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 2314.

9. Panelists shall be subject to a code of conduct to be established by the Commission. If a disputing Party believes that a panelist is in violation of the code of conduct, the 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.

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 fifth panelists, they shall be selected in the following manner: [to be added]]

USA CDA [10. The Commission shall endeavor to agree on the fifth panelist who shall chair the panel. USA [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 disputing Party, the four panelists shall decide on the fifth panelist within 30 days of the establishment of the panel. If no agreement is possible, the fifth panelist shall be selected by lot from USA [among those persons on the GATT roster who are not nationals of a Party.] [the CDA roster described in Article 2314.]]

Article 2316: Multiple Complaints

USA [1. When there are two complaining Parties to a dispute, the procedures set out in paragraphs 7, 8 and 10 of Article 2315 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 [1. 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 following panel selection procedures, rather than those of paragraphs 7, 8, and 10 of Article 2315 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 Article 2314.
- c) The Commission shall designate the panelists from among the candidates nominated, and shall designate a Chairperson, 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 panelists shall be selected by lot from the roster described in Article 2314, provided that such panel shall always include at least one citizen of the Party complained against.]

MEX[1. 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 2317: Model Rules of Procedure

1. The Commission shall establish Model Rules of Procedure, in accordance with the following principles:²⁰

- 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} 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.]
- c) ^{MEX} [The Parties shall submit such evidence as they deem appropriate and arguments based on applicable international agreements.]²¹

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

²⁰ 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.

²¹ This provision should be taken into account in the model rules of procedure.

CDA MEX[3. The request to refer a matter to a panel shall include proposed terms of reference which shall normally 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 recommendations as will assist the disputing Parties in reaching a mutually satisfactory resolution of the dispute."

CDA MEX[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.]

CDA[5. Unless the disputing Parties agree otherwise within 20 days from the establishment of the panel, the terms of reference proposed by the Party requesting a panel shall apply.]

Article 2318: Role of Experts

MEX CDA[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.]^{22 23}

Article 2319: Third Party Rights

USA[1. 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 Secretariat shall promptly transmit to such third Party all substantive written communications between the Parties and the panel concerning the dispute.]

CDA[2. 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.]

Article 2320: Initial Report

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

²² Relation between this Article and Article 2320 (1) needs to be considered.

²³ Canada will provide text with respect to ability to take judicial notice and consult the GATT Secretariat.

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.

2. Unless the disputing Parties otherwise agree, the panel shall, within 90 days after its USA CDA[chair] MEX[chairpersons] USA CDA[] MEX[] appointed, present to the USA[disputing] MEX CDA[participating] Parties an initial report containing:

- a) MEX[only] findings of fact;
- USA CDA[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 _____;]
- USA CDA[c) its recommendations, if any, for resolution of the dispute; and]
- USA CDA[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.

Article 2321: 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.

MEX[3. 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.]

4. 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.

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

Article 2322: 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 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 ____ or, failing such a resolution, compensation.
3. The Commission shall be notified of any agreed resolution of any dispute.
4. If the disputing Parties have not reached agreement on a mutually satisfactory resolution under paragraph 1 within 30 days of receiving the final report of the panel (or such other date as the Commission may decide), ~~and~~ a disputing Party considers that its] ^{CDA} [and to the extent that the final report of a Panel has determined that the] ^{USA} [fundamental rights (under this Agreement) or benefits (anticipated under this Agreement)] ^{CDA} [of the complaining Party or Parties] ^{USA} [are or would be impaired by the implementation or maintenance of the measure at issue,] ~~that~~ ^{MEX USA} [the] Party ^{CDA} [or Parties] shall be free to suspend the application to the ~~other~~ ^{MEX} Party ^{USA} [whose measure is at issue] ~~complained against~~ of benefits of equivalent effect until such time as the ~~disputing~~ ^{MEX CDA} Parties have reached agreement on a resolution of] ^{USA} [Commission has resolved] the dispute.
5. ^{CDA MEX} [An additional paragraph should provide some means of dispute settlement regarding the meaning of equivalent effect.]

Article 2323: Binding Arbitration

1. If a dispute has been referred to the Commission under Article 2312 and has not been resolved within a period of 30 days after such referral, the Commission shall:
 - ^{MEX CDA} a) refer a dispute regarding actions taken pursuant to Chapter 8 Safeguards-Emergency Action, Chapter 3 (Rules of Origin), ~~Chapter~~ ^{MEX} 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, and ²⁴
 - b)] at the request of the disputing Parties, refer any ^{MEX CDA} [other] dispute to binding arbitration on such terms as the Commission may adopt. The panel shall be deemed to be established from the date of such referral.
- ^{CDA} 2. Other Parties may become party to an arbitration proceeding, upon the agreement of the Parties that have agreed to have recourse to arbitration.] ²⁵

²⁴ These provisions may need to be modified to accord with the provisions negotiated in these areas.

²⁵ Further thought needs to be given to this provision.

3. Unless the Commission directs otherwise, an arbitration panel shall be established and perform its functions in a manner consistent with the provisions of USA[Article 2315 (1)(6)(7)(8) and (10) and Article 2316 (1)] MEX CD[Articles 2315, 2316, 2317, 2318, 2319, 2320 and 2321].

MEX CDA[4. Unless the Commission agrees otherwise, the final report of the panel shall be published along with any separate opinions, and any written views that a Party that has participated in the proceeding desires to be published.]

5. 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.

6. CDA MEX[An additional paragraph should provide some means of dispute settlement regarding the meaning of equivalent effect.]

DOMESTIC PROCEEDINGS

Article 2324: 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 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.