

Stouffer Presidente
Dispute Settlement

D R A F T

CONFIDENTIAL
29 April 1992 (16:54)

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 ^{REGARDING} over its interpretation or application;
 - (d) supervise the work of all committees, working groups and expert groups established under this Agreement, as set out in Annex 2301; and
 - (e) consider any other matter that may affect the operation of this Agreement.
4. The Commission may:
 - (a) establish, and delegate responsibilities to, ad hoc or standing committees, working groups or 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 Section's office.
3. The Secretariat shall:
 - (a) provide assistance to the Commission;
 - (b) provide administrative assistance to the panels established under this Agreement, in accordance with Article 2313; 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.

Stouffer Presidente
Dispute Settlement

CONFIDENTIAL
29 April 1992 (16:54)

DISPUTE SETTLEMENT

Article 2303: Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 2304: Recourse to Dispute Settlement Procedures

~~USA MEX~~ [Subject to Articles _____ (exceptions)] [When a Party considers that it has been unable to resolve satisfactorily a matter that might affect the operation of this Agreement through informal discussions or through consultations under other provisions of this Agreement, and seeks to pursue the matter further ^{USA} [under this Agreement], it shall have recourse to the procedures of Articles 2305 to 2322.]

~~USA~~ [Except as otherwise provided in this Agreement,] the ~~DISPUTE SETTLEMENT~~ provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes ~~regarding the~~ ^{REGARDING} interpretation or application of this Agreement or whenever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement [or cause nullification or impairment in the sense of Article _____].~~X~~

Article 2305: [GATT Dispute Settlement]

1. [[Disputes arising under]¹ both this Agreement and the General Agreement on Tariffs and Trade, and agreements negotiated thereunder (GATT),² may be settled in either forum at the discretion of the complaining Party. Once a dispute settlement

¹ We need to explore further the intended meaning and scope of this phrase, including the relationship of the obligations of this Agreement and the GATT, in particular with respect to grandfathered and overlapping provisions.

² Need to review consistency of terminology: "agreement" and "forum" as well as decide whether "Agreements under GATT" includes understandings and decisions under GATT.

Stouffer Presidente
Dispute Settlement

- 4 -

CONFIDENTIAL
29 April 1992 (16:54)

proceeding has been initiated pursuant to Article 2308 of this Agreement or ~~under the MTO~~, the forum selected shall be used to the exclusion of the other.

2. ~~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.]¹

3. For the purposes of paragraph 1, proceedings under the MTO are deemed to be initiated by a Party's request for a panel, such as under Article XXIII:2 of the GATT, or for a Committee investigation, such as under Article 20.1 of the Agreement on Implementation of Article VII of the GATT (Customs Valuation Code).²

Article 2306: [FTA Dispute Settlement]³

~~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.]⁴

FORUM SELECTED

¹ U.S. will prepare language to the effect that when there are two Parties interested in pursuing a complaint on the same matter, they should consult as to the appropriate forum and should normally agree on the forum in which to pursue the complaint.

² All three sides wish to consider drafting further.

³ Canada agrees that the relationship between the FTA and NAFTA should be defined when the substantive negotiations are completed. It also recognizes that its existing text does not reflect its current thinking; it will develop new text when the substantive provisions have been negotiated.

⁴ See U.S. proposal for suspension of certain provisions of the CUSFTA (Article 2506).

^{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 *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.¹

3. If ^{USA MEX}[the third] ^{CDA}[any other] Party considers that it has a substantial interest in the matter, it shall be entitled to participate in the consultations.

¹ 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.

^{CDA MEX}[4. In cases 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.]

5. 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:

- (a) ^{CDA MEX}[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;
- (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] ^{MEX}
^{USA}[the third] Party.

**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:

- (a) 30 days of the delivery of a request for consultations;
- (b) ^{CDA MEX}[in cases that concern perishable goods, a period of 20 days of delivery of a request for consultations;]
- (c) 45 days of such request if ^{CDA}[any other] ^{MEX USA}[the third] Party has subsequently requested or has participated in consultations regarding the same matter; or
- (d) such other period as they may agree;

any such Party may request in writing a meeting of the Commission.

2. If the Party to which a request for consultations is made does not enter into consultations within a period of no more than thirty days, or a period otherwise agreed, from the date of the delivery of the request, any Party that has requested consultations may request in writing a meeting of the Commission.

3. 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.¹

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

5. Any Party that has not participated in consultations pursuant to Article 2307 and that considers that it has a substantial interest in the measure or matter complained of, upon written notification to the consulting Parties, shall be deemed to be a consulting Party for purposes of this Article.

6. The Commission may call on such technical advisors or may create such working groups or expert groups 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.

[7. The Commission shall consolidate two or more proceedings before it pursuant to this Article regarding:

- (a) the same measure, unless it decides otherwise; and
- (b) matters that it determines are appropriate to be considered together.]

PANEL AND ARBITRATION PROCEEDINGS

Article 2309: Referral to Panel

1. If the Commission has convened pursuant to Article 2308(4), and the matter has not been resolved within:

¹ Again, Secretariat procedures to be addressed in rules.

- (a) a period of 30 days thereafter;
- (b) a period of 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 2308(7); or
- (c) 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 that has participated in consultations pursuant to Article 2307 transmitted to the other Parties and to its Section of the Secretariat, shall establish a panel of experts to consider the matter or matters. [A panel shall be deemed to be established from the date of the delivery of a request by a Party.]¹

2. If ^{CDA}[any other] ^{MEX USA}[the third] Party considers that it has a substantial interest in the matter, it shall be entitled to join as a complaining Party, upon delivery to the other Parties at the earliest possible time, and in any event no later than seven days after the date of a request by a Party for the establishment of a panel, of written notice of its intention to participate.

[3. If [such other] [the third] Party does not join as a complaining Party, it normally shall refrain thereafter from challenging the measure at issue under this Agreement or under substantially equivalent provisions of the GATT in the absence of a significant change in economic or commercial circumstances.]²

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:

¹ The U.S. will review the issue of the "establishment of a panel."

² The U.S. will propose a redraft of this paragraph for purposes of clarification.

- (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 [X] members from each Party.

Article 2311: Panel Selection

1. [Subject to paragraph __,] panelists shall be chosen from the roster [wherever possible].
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. ^{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.]
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].
7. ^{CDA USA} ^{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 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 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.

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.]¹

Article 2313: Rules of Procedure

1. The Commission shall establish Model Rules of Procedure, 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 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.]
- (c) MEX USA [A Party asserting that a USA [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.]²

¹ 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.

² Canada agrees in principle but believes provision is best placed in Rules of Procedures.

2. Unless the disputing Parties agree otherwise, 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 be those set out in the Model Rules of Procedure.
4. If a complaining 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.

Article 2314: Role of Experts

At the request of a disputing 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.

^{USA} **[Article 2315: Scientific Review Boards**

1. A panel established under this Chapter may, on its own initiative or at the request of a disputing Party, request a written report of a scientific review board ("board") on any factual issues concerning environmental or other scientific matters raised.
2. The board shall consist of three members. Members shall be independent of the Parties and shall be selected by the panel, 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 disputing 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 factual 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 Rules of Procedure shall also provide rules of procedure for boards that ensure transparency and fairness in their operations. 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

1. ^{CDA}[Any other] ^{MEX USA}[The third] Party that is not a disputing Party, upon notice to [the Commission], shall be entitled to attend all hearings, to make written and oral submissions to the panel, and to receive written submissions of the disputing Parties.
2. ^{CDA}[If such Party considers that the matter that is 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.]¹

Article 2317: Initial Report

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 CDA USA [chair] MEX [chairpersons] USA CDA [is] MEX [are] appointed, present to the CDA USA [disputing] MEX [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 _____;²
- (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 or Parties of any measure found not to conform with the obligations of the Agreement, or CDA MEX [otherwise] cause nullification or impairment in the sense of Article _____;³

¹ Secretariat rules of procedure should provide for transmission to third Party of the panel documentation.

² Canada wants to revisit the drafting of this provision in light of further discussion of nullification and impairment.

³ Canada wants to revisit the drafting of this provision in light of further discussion of nullification and impairment.

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.¹

Article 2318: Final Report

1. The panel shall present to the ^{CDA USA}[disputing] ^{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 ^{CDA USA}[disputing] ^{MEX}[participating] Parties agree otherwise, the final report of the panel, along with any written views that a ^{CDA USA}[disputing] ^{MEX}[participating] Party desires to be appended, shall be transmitted to the Commission _____ days after it is presented to the ^{CDA USA}[disputing] ^{MEX}[participating] Parties.

4. Unless the Commission agrees otherwise, the final report of the panel shall be published [X] days after it is transmitted to the Commission.

¹ Access of Parties to information provided to panels at this stage should be further considered in the context of the Rules of Procedure.

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.¹

^{MEX CDA}[3. Any dispute regarding measures taken to implement the final report of a panel and constituting part of a mutually satisfactory resolution shall be referred to a panel of experts pursuant to Article 2309. In the event that the mutually satisfactory resolution includes a plan or schedule for implementation, the complaining Party or Parties may refer any dispute regarding implementation to a panel at any time during the agreed period for implementation.

4. Any dispute regarding the existence or consistency with this Agreement of any other measures taken to implement the final report of a Panel shall, whenever possible, be decided through recourse to the dispute settlement procedures of this Chapter.]

¹ Canada wants to revisit the drafting of this provision in light of further discussion of nullification and impairment.

5. Matters referred to a panel pursuant to paragraphs (3) or (4) shall be referred to the original panel whenever possible. The panel shall issue its report within sixty days of referral of the matter to it, unless otherwise agreed by the disputing Parties.^{1, 2}

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 ^{CDA} [(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~~ ^{MEX CDA} [and to the extent that the final report of a Panel has determined that the] fundamental rights (under this Agreement) or benefits (anticipated under this Agreement) ^{MEX CDA} [of the complaining Party or Parties] are or would be impaired by the implementation or maintenance of the measure at issue, that Party ^{MEX CDA} [or Parties] shall be free to suspend the application to the Party ^{USA} [whose measure is at issue] ^{MEX CDA} [complained against] of benefits of equivalent effect until such time as the disputing Parties have reached agreement on a resolution of the dispute.

¹ Mexico is willing to drop Article 2319(3) to (5) if the U.S. accepts the Canadian/Mexican version of Article 2320(1).

² Canada also believes that its earlier proposal:

^{CDA} [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].

could form the basis for addressing these issues.

2. In considering what benefits to suspend:

- (a) the complaining Party or Parties should first seek to suspend benefits in the same sector or sectors, as set out in Annex 2320, as that in which the panel has found a violation or other nullification or impairment by the non-complying Party;¹
- (b) if that Party or Parties consider that it is not practicable or effective to suspend benefits in the same sector or sectors, it may seek to suspend benefits in other sectors;

CDA [(c) that Party or Parties shall take into account:

- (i) the trade in the sector in which the panel has found a violation or other nullification or impairment, and the importance of such trade 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.]²

MEX CDA [3. If a Party objects to the level of benefits suspended by another Party pursuant to paragraph (1), it may refer the matter to binding arbitration in accordance with the provisions of this Chapter. The arbitration should be carried out by the original panel wherever possible.

4. The arbitration panel shall, within 30 days of referral of the matter to it, present its findings on whether the level of such suspension is equivalent to the level of benefits that would

¹ Subgroup will examine language for consistency.

² Canada is considering whether this paragraph is necessary.

Stouffer Presidente
Dispute Settlement

- 19 -

CONFIDENTIAL
29 April 1992 (17:00)

accrue to the complaining Party or Parties if the recommendation of the original panel were implemented.]¹

MEX [5. No action taken pursuant to this Article shall give rise to dispute settlement proceedings under the Investment Chapter.]

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, and²

(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 disputing Parties, an arbitration panel shall be established and perform its functions

¹ This proposed redraft is offered without prejudice to Canada's position that Dunkel-based language in the April 27 draft, Article 2320 paragraphs (4) through (6), should be retained.

² These provisions may need to be modified to accord with the provisions negotiated in these areas.

Stouffer Presidente
Dispute Settlement

CONFIDENTIAL
29 April 1992 (17:00)

in a manner consistent with the provisions of Articles 2311, 2312, 2313, 2314, ^{USA}[2315], 2316, 2317, 2318 and ^{MEX}[2320(5)].¹

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 paragraphs ^{CDA}[2 to 4] ^{MEX}[2 to 5] of Article 2320].

DOMESTIC PROCEEDINGS

Article 2322: 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 proceeding² 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.

¹ We will consider whether specific rules on binding arbitration should be included in the Rules of Procedure.

² The use of "administrative proceeding" needs to be examined in the context of its use in the Miscellaneous Provisions.

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D R A F T

Stouffer Presidente
Dispute Settlement

- 21 -

CONFIDENTIAL
29 April 1992 (17:00)

ANNEX 2301 -- COMMITTEES, WORKING GROUPS, EXPERT GROUPS

The Committees, working groups and expert groups established under this Agreement at the time of entry into force of this Agreement are:

[List -- name of committee or group and Article under which it is established]

D R A F T

Stouffer Presidente
Dispute Settlement

- 22 -

CONFIDENTIAL
29 April 1992 (17:00)

ANNEX 2313 -- RULES OF PROCEDURE

Part I - Model Rules of Procedure

Terms of Reference

1. 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.

Part II - Secretariat

D R A F T

Stouffer Presidente
Dispute Settlement

- 23 -

CONFIDENTIAL
29 April 1992 (17:00)

ANNEX 2320 -- DEFINITIONS OF SECTORS

[For the purposes of Article 2320, "sector" means:

- (a) with respect to goods, all goods;
- (b) with respect to services, a principal sector as set out in [the classification set out in Chapter 13];
- (c) with respect to trade-related intellectual property rights, [to be negotiated]; and
- (d) with respect to investment, [to be negotiated].]

U.S. PROPOSAL -- April 28, 1992

Article 2309: Referral to Panel

3. If [such other] [the third] Party does not ~~seek to~~ participate as a complaining Party ~~in the matter~~, it normally shall refrain thereafter from challenging the measure at issue under this Agreement or under substantially equivalent provisions of the GATT in the absence of significantly changed economic or commercial circumstances.

CHAPTER

refer see standards