

April 3, aa

Article 2301: Application

1. Except for the matters covered in Chapter 11 (Review of Antidumping and Countervailing Duty Amendments Determinations), Chapter 16 (Financial Services), and Chapter 21 (Investment), the provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes regarding the interpretation or application of this Agreement, or whenever a Party considers that a 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 the Parties agree to use another procedure in any particular case.
2. Disputes arising under both this Agreement and the General Agreement on Tariffs and Trade, and agreements negotiated thereunder (GATT), may be settled in either forum, according to the rules of that forum, at the discretion of the complaining Party, to be exercised following consultations with the other Parties.¹
3. Once the dispute settlement provisions of this Agreement or the GATT have been initiated pursuant to Article 2305 or the GATT with respect to any matter, the procedure initiated shall be used to the exclusion of any other.

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Article 2302: The Commission

1. The Parties hereby establish the Mexico-Canada-United States Trade Commission (the Commission) to supervise the implementation of this Agreement, to resolve disputes that may arise over its interpretation and application, to oversee its further elaboration, and to consider any other matter that may affect its operation.
2. The Commission shall be composed of representatives of the Parties. The principal representative of each Party shall be the cabinet-level officer or Minister primarily responsible for

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

international trade. 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.

3. The Commission shall convene at least once a year in regular session to review the functioning of this Agreement. Regular sessions of the Commission shall be held alternately in the three countries.

4. The Commission may establish and delegate responsibilities to ad hoc or standing committees or working groups and seek the advice of non-governmental individuals or groups.

5. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus.

6. The Commission shall establish a Secretariat to provide secretarial and technical assistance to the panels appointed pursuant to this Chapter and Chapter 11 (Review of Antidumping and Countervailing Duty Amendments and Determinations.)

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Article 2303: Notification

1. Each Party shall provide written notice to the other Parties of any measure that it considers might materially affect the operation of this Agreement. The notice shall include, whenever appropriate, a description of the reasons for the measure.

2. The Party implementing the measure shall provide written notice to the other Parties as soon as possible after implementation.

3. Upon request of any other Party, a Party shall promptly provide information and respond to questions pertaining to any measure.

4. The provision of written notice shall be without prejudice as to whether the measure is consistent with this Agreement.

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Article 2304: Consultations

1. A Party may request consultations regarding any actual or proposed measure or any other matter that it considers affects the operation of this Agreement, whether or not the matter has been notified in accordance with Article 2303.
2. The Parties shall make every attempt to arrive at a satisfactory resolution of any matter through consultations under this Article or other consultative provisions in this Agreement.
3. 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.

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Article 2305: Initiation of Procedures

1. If the Parties fail to resolve a matter through consultations within 30 calendar days of a request for consultations under Article 2304, any Party may request in writing a meeting of the Commission. The request shall state the matter complained of, and shall indicate what provisions of this Agreement are considered relevant. Unless otherwise agreed, the Commission shall convene within 10 calendar days and shall endeavor to resolve the dispute promptly.
2. The Commission may call on such technical advisors as it deems necessary, or on the assistance of a mediator acceptable to all Parties, in an effort to reach a satisfactory resolution of the dispute.
3. 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.

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Article 2306: Binding Arbitration

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1. If a dispute has been referred to the Commission under Article 2305 and has not been resolved within a period of 30 calendar days after such referral, the Commission, upon request of any Party:

- a) shall refer a dispute under Chapter 3 (Rules of Origin), Chapter 8 (Safeguards-Emergency Action), Chapter 12 (Technical Standards) and Article 505 (Technical Regulations and Standards for Agricultural, Food, Beverage and Certain Related Goods) and

- b) may refer any other dispute,

to binding arbitration before a panel of arbitrators. The panel process shall commence as of the date of such a request by a Party.

2. The panel shall be established and perform its functions in a manner consistent with the provisions of Article 2308.

3. The report of the panel shall be published along with any separate opinions, and any written views that a Party which has participated in the proceeding desires to be published.

4. The determination of the panel shall be deemed binding under the domestic law of each Party.

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Article 2307: Non-Binding Arbitration

1. If a dispute has been referred to the Commission under Article 2305 and has not been resolved within a period of 30 calendar days after such referral, or within such other period as the Commission has agreed upon, and has not been referred to binding arbitration pursuant to Article 2306, the Commission, upon request of any Party, shall refer the matter to non-binding arbitration before a panel of arbitrators. The panel process shall commence as of the date of such a request by a Party.

2. The panel shall be established and perform its functions in a manner consistent with the provisions of Article 2308.

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

4. Upon receipt of the final report of the panel, the Commission shall agree on the resolution of the dispute, which shall conform to the greatest extent possible with the decision of the panel. Whenever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Article 2404 or, failing such a resolution, compensation.

5. If the Commission has not reached agreement on a mutually satisfactory resolution under paragraph 4 within 30 calendar days of receiving the final report of the panel, the Party shall be free to suspend the application to the other Party of benefits of equivalent effect until such time as the Parties have reached agreement on a resolution of the dispute.

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Article 2308: Panel Process

1. The Commission shall maintain a roster of individuals who are willing and able to serve as arbitrators. Arbitrators normally shall be chosen from this roster. In all cases, arbitrators shall be chosen strictly on the basis of objectivity, reliability and sound judgment and, where appropriate, have expertise in the particular matter under consideration. Arbitrators shall be independent of the Parties, and shall not take instructions from any Party.

2. 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. Within 15 calendar days of the commencement of the panel process, each Party, [in consultation with the other Parties,] shall appoint a member of the panel. If a Party fails to appoint its arbitrator within 15 calendar days, such arbitrator shall be selected by lot from among its citizens on the roster described in paragraph 1. Each Party shall have the right to exercise two preemptory challenges, to be exercised simultaneously and in confidence, disqualifying from appointment to the panel one candidate proposed by each of the other Parties.²

²

. This provision will alter all of the following time limits.

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3. 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]

4. Individuals may not serve as arbitrators for disputes in connection with which they have served as a technical advisor or mediator pursuant to paragraph 2 of article 2305.

5. Panels shall follow the rules of procedure set forth in Annex _____, [which assure a right to at least one hearing before the panel as well as the opportunity to provide written submissions and rebuttal arguments]. The proceedings of the panel shall be confidential. The Parties shall submit such evidence as they deem appropriate, and arguments based on applicable international agreements. The panel shall base its decision on the arguments and submissions of the Parties. Where appropriate, a panel may request that the Secretariat appoint technical experts to provide assistance in analyzing and understanding the submissions of the Parties.

6. The panel shall, within three months after its chairpersons are appointed, present to the Parties an initial report containing only findings of fact. Within 14 calendar days of the issuance of the initial report, a Party may present written comments on that report to the panel.

7. After considering the written comments of the Parties, the panel may make any further examination that it deems appropriate and shall issue a final report within 30 calendar days of the issuance of the initial report. Arbitrators may furnish separate opinions on matters not unanimously agreed.

8. 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.