

Chapter Nineteen: Review and Dispute Settlement in Antidumping and Countervailing Duty Matters

Article 1901: General Provisions

1. Article 1904 applies only with respect to goods that the competent investigating authority of the importing Party, applying the importing Party's antidumping or countervailing duty law to the facts of a specific case, determines are goods of another Party.
2. For purposes of Articles 1903 and 1904, panels shall be established in accordance with the provisions of Annex 1901.2.
3. Except for Article 2203 (Entry into Force), no provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law.

Article 1902: Retention of Domestic Antidumping Law and Countervailing Duty Law

1. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of any other Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice and judicial precedents.
2. Each Party reserves the right to change or modify its antidumping law or countervailing duty law, provided that in the case of an amendment to a Party's antidumping or countervailing duty statute:
 - (a) such amendment shall apply to goods from another Party only if the amending statute specifies that it applies to goods from that Party or from the Parties to this Agreement;
 - (b) the amending Party notifies in writing the Parties to which the amendment applies of the amending statute as far in advance as possible of the date of enactment of such statute;
 - (c) following notification, the amending Party, on request of any Party to which the amendment applies, consults with that Party prior to the enactment of the amending statute; and
 - (d) such amendment, as applicable to that other Party, is not inconsistent with
 - (i) the *General Agreement on Tariffs and Trade* (GATT), the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade* (the Antidumping Code) or the *Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade* (the Subsidies Code), or any successor agreement to which all the original signatories to this Agreement are party, or
 - (ii) the object and purpose of this Agreement and this Chapter, which is to establish fair and predictable conditions for the progressive liberalization of trade between the Parties to this Agreement while maintaining effective and fair disciplines on unfair trade practices, such object

and purpose to be ascertained from the provisions of this Agreement, its preamble and objectives, and the practices of the Parties.

Article 1903: Review of Statutory Amendments

1. A Party to which an amendment of another Party's antidumping or countervailing duty statute applies may request in writing that such amendment be referred to a binational panel for a declaratory opinion as to whether:

- (a) the amendment does not conform to the provisions of Article 1902(2)(d)(i) or (ii); or
- (b) such amendment has the function and effect of overturning a prior decision of a panel made pursuant to Article 1904 and does not conform to the provisions of Article 1902(2)(d)(i) or (ii).

Such declaratory opinion shall have force or effect only as provided in this Article.

2. The panel shall conduct its review in accordance with the procedures of Annex 1903.2.

3. In the event that the panel recommends modifications to the amending statute to remedy a non-conformity that it has identified in its opinion:

(a) the two Parties shall immediately begin consultations and shall seek to achieve a mutually satisfactory solution to the matter within 90 days of the issuance of the panel's final declaratory opinion. Such solution may include seeking corrective legislation with respect to the statute of the amending Party;

(b) if corrective legislation is not enacted within nine months from the end of the 90day consultation period referred to in subparagraph (a) and no other mutually satisfactory solution has been reached, the Party that requested the panel may

(i) take comparable legislative or equivalent executive action, or

(ii) terminate this Agreement with regard to the amending Party on 60day written notice to that Party.

Article 1904: Review of Final Antidumping and Countervailing Duty Determinations

1. As provided in this Article, each Party shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review.

2. An involved Party may request that a panel review, based on the administrative record, a final antidumping or countervailing duty determination of a competent investigating authority of an importing Party to determine whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party. For this purpose, the antidumping or countervailing duty law consists of the relevant statutes, legislative history, regulations, administrative practice and judicial precedents to the extent that a court of the importing Party would rely on such materials in reviewing a final determination of the competent

investigating authority. Solely for purposes of the panel review provided for in this Article, the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated into and made a part of this Agreement.

3. The panel shall apply the standard of review set out in Annex 1911 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

4. A request for a panel shall be made in writing to the other involved Party within 30 days following the date of publication of the final determination in question in the official journal of the importing Party. In the case of final determinations that are not published in the official journal of the importing Party, the importing Party shall immediately notify the other involved Party of such final determination where it involves goods from the other involved Party, and the other involved Party may request a panel within 30 days of receipt of such notice. Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall begin to establish a panel at that time. Failure to request a panel within the time specified in this paragraph shall preclude review by a panel.

5. An involved Party on its own initiative may request review of a final determination by a panel and shall, on request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of that final determination, request such review.

6. The panel shall conduct its review in accordance with the procedures established by the Parties pursuant to paragraph 14. Where both involved Parties request a panel to review a final determination, a single panel shall review that determination.

7. The competent investigating authority that issued the final determination in question shall have the right to appear and be represented by counsel before the panel. Each Party shall provide that other persons who, pursuant to the law of the importing Party, otherwise would have had the right to appear and be represented in a domestic judicial review proceeding concerning the determination of the competent investigating authority, shall have the right to appear and be represented by counsel before the panel.

8. The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. Where the panel remands a final determination, the panel shall establish as brief a time as is reasonable for compliance with the remand, taking into account the complexity of the factual and legal issues involved and the nature of the panel's decision. In no event shall the time permitted for compliance with a remand exceed an amount of time equal to the maximum amount of time (counted from the date of the filing of a petition, complaint or application) permitted by statute for the competent investigating authority in question to make a final determination in an investigation. If review of the action taken by the competent investigating authority on remand is needed, such review shall be before the same panel, which shall normally issue a final decision within 90 days of the date on which such remand action is submitted to it.

9. The decision of a panel under this Article shall be binding on the involved Parties with respect to the particular matter between the Parties that is before the panel.

10. This Agreement shall not affect:

(a) the judicial review procedures of any Party, or

(b) cases appealed under those procedures,

with respect to determinations other than final determinations.

11. A final determination shall not be reviewed under any judicial review procedures of the importing Party if an involved Party requests a panel with respect to that determination within the time limits set out in this Article. No Party may provide in its domestic legislation for an appeal from a panel decision to its domestic courts.

12. This Article shall not apply where:

(a) neither involved Party seeks panel review of a final determination;

(b) a revised final determination is issued as a direct result of judicial review of the original final determination by a court of the importing Party in cases where neither involved Party sought panel review of that original final determination; or

(c) a final determination is issued as a direct result of judicial review that was commenced in a court of the importing Party before the date of entry into force of this Agreement.

13. Where, within a reasonable time after the panel decision is issued, an involved Party alleges that:

(a) (i) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,

(ii) the panel seriously departed from a fundamental rule of procedure, or

(iii) the panel manifestly exceeded its powers, authority or jurisdiction set out in this Article, for example by failing to apply the appropriate standard of review, and

(b) any of the actions set out in subparagraph (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process,

that Party may avail itself of the extraordinary challenge procedure set out in Annex 1904.13.

14. To implement the provisions of this Article, the Parties shall adopt rules of procedure by January 1, 1994. Such rules shall be based, where appropriate, on judicial rules of appellate procedure, and shall include rules concerning: the content and service of requests for panels; a requirement that the competent investigating authority transmit to the panel the administrative record of the proceeding; the protection of business proprietary, government classified, and

other privileged information (including sanctions against persons participating before panels for improper release of such information); participation by private persons; limitations on panel review to errors alleged by the Parties or private persons; filing and service; computation and extensions of time; the form and content of briefs and other papers; pre and posthearing conferences; motions; oral argument; requests for rehearing; and voluntary terminations of panel reviews. The rules shall be designed to result in final decisions within 315 days of the date on which a request for a panel is made, and shall allow:

- (a) 30 days for the filing of the complaint;
- (b) 30 days for designation or certification of the administrative record and its filing with the panel;
- (c) 60 days for the complainant to file its brief;
- (d) 60 days for the respondent to file its brief;
- (e) 15 days for the filing of reply briefs;
- (f) 15 to 30 days for the panel to convene and hear oral argument; and
- (g) 90 days for the panel to issue its written decision.

15. In order to achieve the objectives of this Article, the Parties shall amend their antidumping and countervailing duty statutes and regulations with respect to antidumping or countervailing duty proceedings involving goods of the other Parties, and other statutes and regulations to the extent that they apply to the operation of the antidumping and countervailing duty laws. In particular, without limiting the generality of the foregoing, each Party shall:

- (a) amend its statutes or regulations to ensure that existing procedures concerning the refund, with interest, of antidumping or countervailing duties operate to give effect to a final panel decision that a refund is due;
- (b) amend its statutes or regulations to ensure that its courts shall give full force and effect, with respect to any person within its jurisdiction, to all sanctions imposed pursuant to the laws of the other Parties to enforce provisions of any protective order or undertaking that such other Party has promulgated or accepted in order to permit access for purposes of panel review or of the extraordinary challenge procedure to confidential, personal, business proprietary or other privileged information;
- (c) amend its statutes or regulations to ensure that
 - (i) domestic procedures for judicial review of a final determination may not be commenced until the time for requesting a panel under paragraph 4 has expired, and
 - (ii) as a prerequisite to commencing domestic judicial review procedures to review a final determination, a Party or other person intending to commence such procedures shall provide notice of such intent to the Parties concerned and to other persons entitled to commence such

review procedures of the same final determination no later than 10 days prior to the latest date on which a panel may be requested; and

(d) make the further amendments set out in its Schedule to Annex 1904.15.

Article 1905: Safeguarding the Panel Review System

1. Where a Party alleges that the application of another Party's domestic law:

(a) has prevented the establishment of a panel requested by the complaining Party;

(b) has prevented a panel requested by the complaining Party from rendering a final decision;

(c) has prevented the implementation of the decision of a panel requested by the complaining Party or denied it binding force and effect with respect to the particular matter that was before the panel; or

(d) has resulted in a failure to provide opportunity for review of a final determination by a panel or court of competent jurisdiction that is independent of the competent investigating authorities, that examines the basis for the competent investigating authority's determination and whether the competent investigating authority properly applied domestic antidumping and countervailing duty law in reaching the challenged determination, and that employs the relevant standard of review identified in Article 1911,

the Party may request in writing consultations with the other Party regarding the allegations. The consultations shall begin within 15 days of the date of the request.

2. If the matter has not been resolved within 45 days of the request for consultations, or such other period as the consulting Parties may agree, the complaining Party may request the establishment of a special committee.

3. Unless otherwise agreed by the disputing Parties, the special committee shall be established within 15 days of a request and perform its functions in a manner consistent with this Chapter.

4. The roster for special committees shall be that established under Annex 1904.13.

5. The special committee shall comprise three members selected in accordance with the procedures set out in Annex 1904.13.

6. The Parties shall establish rules of procedure in accordance with the principles set out in Annex 1905.6.

7. Where the special committee makes an affirmative finding with respect to one of the grounds specified in paragraph 1, the complaining Party and the Party complained against shall begin consultations within 10 days thereafter and shall seek to achieve a mutually satisfactory solution within 60 days of the issuance of the committee's report.

8. If, within the 60day period, the Parties are unable to reach a mutually satisfactory solution to the matter, or the Party complained against has not demonstrated to the satisfaction of the special committee that it has corrected the problem or problems with respect to which the committee has made an affirmative finding, the complaining Party may suspend:

(a) the operation of Article 1904 with respect to the Party complained against; or

(b) the application to the Party complained against of such benefits under this Agreement as may be appropriate under the circumstances.

If the complaining Party decides to take action under this paragraph, it shall do so within 30 days after the end of the 60day consultation period.

9. In the event that a complaining Party suspends the operation of Article 1904 with respect to the Party complained against, the latter Party may reciprocally suspend the operation of Article 1904 within 30 days after the suspension of the operation of Article 1904 by the complaining Party. If either Party decides to suspend the operation of Article 1904, it shall provide written notice of such suspension to the other Party.

10. At the request of the Party complained against, the special committee shall reconvene to determine whether:

(a) the suspension of benefits by the complaining Party pursuant to paragraph 8(b) is manifestly excessive; or

(b) the Party complained against has corrected the problem or problems with respect to which the committee has made an affirmative finding.

The special committee shall, within 45 days of the request, present a report to both Parties containing its determination. Where the special committee determines that the Party complained against has corrected the problem or problems, any suspension effected by the complaining Party or the Party complained against, or both, pursuant to paragraph 8 or 9 shall be terminated.

11. If the special committee makes an affirmative finding with respect to one of the grounds specified in paragraph 1, then effective as of the day following the date of issuance of the special committee's report:

(a) binational panel or extraordinary challenge committee review under Article 1904 shall be stayed

(i) in the case of review of any final determination of the complaining Party requested by the Party complained against, if such review was requested after the date on which consultations were requested pursuant to paragraph 1, and in no case more than 150 days prior to an affirmative finding by the special committee, or

(ii) in the case of review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party; and

(b) the time set out in Article 1904(4) or Annex 1904.13 for requesting panel or committee review shall not run unless and until resumed in accordance with paragraph 12.

12. If either Party suspends the operation of Article 1904 pursuant to paragraph 8(a), the panel or committee review stayed under paragraph 11(a) shall be terminated and the challenge to the final determination shall be irrevocably referred to the appropriate domestic court for decision, as provided below:

(a) in the case of review of any final determination of the complaining Party requested by the Party complained against, at the request of either Party, or of a party to the panel review under Article 1904; or

(b) in the case of review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party, or of a person of the complaining Party that is a party to the panel review under Article 1904.

If either Party suspends the operation of Article 1904 pursuant to paragraph 8(a), any running of time suspended under paragraph 11(b) shall resume.

If the suspension of the operation of Article 1904 does not become effective, panel or committee review stayed under paragraph 11(a), and any running of time suspended under paragraph 11(b), shall resume.

13. If the complaining Party suspends the application to the Party complained against of such benefits under the Agreement as may be appropriate under the circumstances pursuant to paragraph 8(b), panel or committee review stayed under paragraph 11(a), and any running of time suspended under paragraph 11(b), shall resume.

14. Each Party shall provide in its domestic legislation that, in the event of an affirmative finding by the special committee, the time for requesting judicial review of a final antidumping or countervailing duty determination shall not run unless and until the Parties concerned have negotiated a mutually satisfactory solution under paragraph 7, have suspended the operation of Article 1904 or the application of other benefits under paragraph 8.

Article 1906: Prospective Application

This Chapter shall apply only prospectively to:

(a) final determinations of a competent investigating authority made after the date of entry into force of this Agreement; and

(b) with respect to declaratory opinions under Article 1903, amendments to antidumping or countervailing duty statutes enacted after the date of entry into force of this Agreement.

Article 1907: Consultations

1. The Parties shall consult annually, or on the request of any Party, to consider any problems that may arise with respect to the implementation or operation of this Chapter and recommend solutions, where appropriate. The Parties shall each designate one or more officials, including officials of the competent investigating authorities, to be responsible for ensuring that consultations occur, when required, so that the provisions of this Chapter are carried out expeditiously.

2. The Parties further agree to consult on:

(a) the potential to develop more effective rules and disciplines concerning the use of government subsidies; and

(b) the potential for reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.

3. The competent investigating authorities of the Parties shall consult annually, or on the request of any Party, and may submit reports to the Commission, where appropriate. In the context of these consultations, the Parties agree that it is desirable in the administration of antidumping and countervailing duty laws to:

(a) publish notice of initiation of investigations in the importing Party's official journal, setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the goods at issue;

(b) provide notice of the times for submissions of information and for decisions that the competent investigating authorities are expressly required by statute or regulations to make;

(c) provide explicit written notice and instructions as to the information required from interested parties and reasonable time to respond to requests for information;

(d) accord reasonable access to information, noting that in this context

(i) "reasonable access" means access during the course of the investigation, to the extent practicable, so as to permit an opportunity to present facts and arguments as set out in paragraph (e); when it is not practicable to provide access to information during the investigation in such time as to permit an opportunity to present facts and arguments, reasonable access shall mean in time to permit the adversely affected party to make an informed decision as to whether to seek judicial or panel review, and

(ii) "access to information" means access to representatives determined by the competent investigating authority to be qualified to have access to information received by that competent investigating authority, including access to confidential (business proprietary) information, but does not include information of such high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner or which is required to be kept confidential in accordance with domestic law of a Party; any privileges arising under the domestic law of the importing Party relating to communications between the competent investigating authorities and a lawyer in the employ of, or providing advice to, those authorities may be maintained;

(e) provide an opportunity for interested parties to present facts and arguments, to the extent time permits, including an opportunity to comment on the preliminary determination of dumping or of subsidization;

(f) protect confidential (business proprietary) information received by the competent investigating authority to ensure that there is no disclosure except to representatives determined by the competent investigating authority to be qualified;

(g) prepare administrative records, including recommendations of official advisory bodies that may be required to be kept, and any record of *ex parte* meetings that may be required to be kept;

(h) provide disclosure of relevant information, including an explanation of the calculation or the methodology used to determine the margin of dumping or the amount of the subsidy, on which any preliminary or final determination of dumping or of subsidization is based, within a reasonable time after a request by interested parties;

(i) provide a statement of reasons concerning the final determination of dumping or subsidization; and

(j) provide a statement of reasons for final determinations concerning material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

Inclusion of an item in subparagraphs (a) through (j) is not intended to serve as guidance to a binational panel reviewing a final antidumping or countervailing duty determination pursuant to Article 1904 in determining whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party.

Article 1908: Special Secretariat Provisions

1. Each Party shall establish a division within its section of the Secretariat established pursuant to Article 2002 to facilitate the operation of this Chapter, including the work of panels or committees that may be convened pursuant to this Chapter.

2. The Secretaries of the Secretariat shall act jointly to provide administrative assistance to all panels or committees established pursuant to this Chapter. The Secretary for the Section of the Party in which a panel or committee proceeding is held shall prepare a record thereof and shall preserve an authentic copy of the same in that Party's Section office. Such Secretary shall, on request, provide to the Secretary for the Section of any other Party a copy of such portion of the record as is requested, except that only public portions of the record shall be provided to the Secretary for the Section of any Party that is not an involved Party.

3. Each Secretary shall receive and file all requests, briefs and other papers properly presented to a panel or committee in any proceeding before it that is instituted pursuant to this Chapter and shall number in numerical order all requests for a panel or committee. The number given to a request shall be the file number for briefs and other papers relating to such request.

4. The Secretary for the Section of the Party in which a panel or committee proceeding is held shall forward to the Secretary for the Section of the other involved Party copies of all official letters, documents or other papers received or filed with that Party's Section office pertaining to any proceeding before a panel or committee, except for the administrative record, which shall be handled in accordance with paragraph 2. The Secretary for the Section of an involved Party shall provide on request to the Secretary for the Section of a Party that is not an involved Party in the proceeding a copy of such public documents as are requested.

Article 1909: Code of Conduct

The Parties shall, by the date of entry into force of this Agreement, exchange letters establishing a code of conduct for panelists and members of committees established pursuant to Articles 1903, 1904 and 1905.

Article 1910: Miscellaneous

On request of another Party, the competent investigating authority of a Party shall provide to the other Party copies of all public information submitted to it for purposes of an antidumping or countervailing duty investigation with respect to goods of that other Party.

Article 1911: Definitions

For purposes of this Chapter:

administrative record means, unless otherwise agreed by the Parties and the other persons appearing before a panel:

- (a) all documentary or other information presented to or obtained by the competent investigating authority in the course of the administrative proceeding, including any governmental memoranda pertaining to the case, and including any record of *ex parte* meetings as may be required to be kept;
- (b) a copy of the final determination of the competent investigating authority, including reasons for the determination;
- (c) all transcripts or records of conferences or hearings before the competent investigating authority; and
- (d) all notices published in the official journal of the importing Party in connection with the administrative proceeding;

antidumping statute as referred to in Articles 1902 and 1903 means "antidumping statute" of a Party as defined in Annex 1911;

competent investigating authority means "competent investigating authority" of a Party as defined in Annex 1911;

countervailing duty statute as referred to in Articles 1902 and 1903 means "countervailing duty statute" of a Party as defined in Annex 1911;

domestic law for purposes of Article 1905(1) means a Party's constitution, statutes, regulations and judicial decisions to the extent they are relevant to the antidumping and countervailing duty laws;

final determination means "final determination" of a Party as defined in Annex 1911;

foreign interests includes exporters or producers of the Party whose goods are the subject of the proceeding or, in the case of a countervailing duty proceeding, the government of the Party whose goods are the subject of the proceeding;

general legal principles includes principles such as standing, due process, rules of statutory construction, mootness and exhaustion of administrative remedies;

goods of a Party means domestic products as these are understood in the *General Agreement on Tariffs and Trade*;

importing Party means the Party that issued the final determination;

interested parties includes foreign interests;

involved Party means:

(a) the importing Party; or

(b) a Party whose goods are the subject of the final determination;

remand means a referral back for a determination not inconsistent with the panel or committee decision; and

standard of review means the "standard of review" for each Party as defined in Annex 1911.

Annex 1901.2

Establishment of Binational Panels

1. On the date of entry into force of this Agreement, the Parties shall establish and thereafter maintain a roster of individuals to serve as panelists in disputes under this Chapter. The roster shall include judges or former judges to the fullest extent practicable. The Parties shall consult in developing the roster, which shall include at least 75 candidates. Each Party shall select at least 25 candidates, and all candidates shall be citizens of Canada, Mexico or the United States. Candidates shall be of good character, high standing and repute, and shall be chosen strictly on the basis of objectivity, reliability, sound judgment and general familiarity with international trade law. Candidates shall not be affiliated with a Party, and in no event shall a candidate take instructions from a Party. The Parties shall maintain the roster, and may amend it, when necessary, after consultations.

2. A majority of the panelists on each panel shall be lawyers in good standing. Within 30 days of a request for a panel, each involved Party shall appoint two panelists, in consultation with the other involved Party. The involved Parties normally shall appoint panelists from the roster. If a panelist is not selected from the roster, the panelist shall be chosen in accordance with and be subject to the criteria of paragraph 1. Each involved Party shall have the right to exercise four peremptory challenges, to be exercised simultaneously and in confidence, disqualifying from appointment to the panel up to four candidates proposed by the other involved Party. Peremptory challenges and the selection of alternative panelists shall occur within 45 days of the request for the panel. If an involved Party fails to appoint its members to a panel within 30 days or if a panelist is struck and no alternative panelist is selected within 45 days, such panelist shall be selected by lot on the 31st or 46th day, as the case may be, from that Party's candidates on the roster.

3. Within 55 days of the request for a panel, the involved Parties shall agree on the selection of a fifth panelist. If the involved Parties are unable to agree, they shall decide by lot which of them shall select, by the 61st day, the fifth panelist from the roster, excluding candidates eliminated by peremptory challenges.

4. On appointment of the fifth panelist, the panelists shall promptly appoint a chairman from among the lawyers on the panel by majority vote of the panelists. If there is no majority vote, the chairman shall be appointed by lot from among the lawyers on the panel.

5. Decisions of the panel shall be by majority vote and based on the votes of all members of the panel. The panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of panelists.

6. Panelists shall be subject to the code of conduct established pursuant to Article 1909. If an involved Party believes that a panelist is in violation of the code of conduct, the involved 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 Annex.

7. When a panel is convened pursuant to Article 1904 each panelist shall be required to sign:

(a) an application for protective order for information supplied by the United States or its persons covering business proprietary and other privileged information;

(b) an undertaking for information supplied by Canada or its persons covering confidential, personal, business proprietary and other privileged information; or

(c) an undertaking for information supplied by Mexico or its persons covering confidential, business proprietary and other privileged information.

8. On a panelist's acceptance of the obligations and terms of an application for protective order or disclosure undertaking, the importing Party shall grant access to the information covered by such order or disclosure undertaking. Each Party shall establish appropriate sanctions for violations of protective orders or disclosure undertakings issued by or given to any Party. Each Party shall enforce such sanctions with respect to any person within its jurisdiction. Failure by a

panelist to sign an application for a protective order or disclosure undertaking shall result in disqualification of the panelist.

9. If a panelist becomes unable to fulfill panel duties or is disqualified, proceedings of the panel shall be suspended pending the selection of a substitute panelist in accordance with the procedures of this Annex.

10. Subject to the code of conduct established pursuant to Article 1909, and provided that it does not interfere with the performance of the duties of such panelist, a panelist may engage in other business during the term of the panel.

11. While acting as a panelist, a panelist may not appear as counsel before another panel.

12. With the exception of violations of protective orders or disclosure undertakings, signed pursuant to paragraph 7, panelists shall be immune from suit and legal process relating to acts performed by them in their official capacity.

Annex 1903.2

Panel Procedures Under Article 1903

1. The panel shall establish its own rules of procedure unless the Parties otherwise agree prior to the establishment of that panel. The procedures shall ensure 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, unless the two Parties otherwise agree. The panel shall base its decisions solely on the arguments and submissions of the two Parties.

2. Unless the Parties to the dispute otherwise agree, the panel shall, within 90 days after its chairman is appointed, present to the two Parties an initial written declaratory opinion containing findings of fact and its determination pursuant to Article 1903.

3. If the findings of the panel are affirmative, the panel may include in its report its recommendations as to the means by which the amending statute could be brought into conformity with the provisions of Article 1902(2)(d). In determining what, if any, recommendations are appropriate, the panel shall consider the extent to which the amending statute affects interests under this Agreement. Individual panelists may provide separate opinions on matters not unanimously agreed. The initial opinion of the panel shall become the final declaratory opinion, unless a Party to the dispute requests a reconsideration of the initial opinion pursuant to paragraph 4.

4. Within 14 days of the issuance of the initial declaratory opinion, a Party to the dispute disagreeing in whole or in part with the opinion may present a written statement of its objections and the reasons for those objections to the panel. In such event, the panel shall request the views of both Parties and shall reconsider its initial opinion. The panel shall conduct any further examination that it deems appropriate, and shall issue a final written opinion, together with dissenting or concurring views of individual panelists, within 30 days of the request for reconsideration.

5. Unless the Parties to the dispute otherwise agree, the final declaratory opinion of the panel shall be made public, along with any separate opinions of individual panelists and any written views that either Party may wish to be published.

6. Unless the Parties to the dispute otherwise agree, meetings and hearings of the panel shall take place at the office of the amending Party's Section of the Secretariat.

Annex 1904.13

Extraordinary Challenge Procedure

1. The involved Parties shall establish an extraordinary challenge committee, composed of three members, within 15 days of a request pursuant to Article 1904(13). The members shall be selected from a 15-person roster comprised of judges or former judges of a federal judicial court of the United States or a judicial court of superior jurisdiction of Canada, or a federal judicial court of Mexico. Each Party shall name five persons to this roster. Each involved Party shall select one member from this roster and the involved Parties shall decide by lot which of them shall select the third member from the roster.

2. The Parties shall establish by the date of entry into force of the Agreement rules of procedure for committees. The rules shall provide for a decision of a committee within 90 days of its establishment.

3. Committee decisions shall be binding on the Parties with respect to the particular matter between the Parties that was before the panel. After examination of the legal and factual analysis underlying the findings and conclusions of the panel's decision in order to determine whether one of the grounds set out in Article 1904(13) has been established, and on finding that one of those grounds has been established, the committee shall vacate the original panel decision or remand it to the original panel for action not inconsistent with the committee's decision; if the grounds are not established, it shall deny the challenge and, therefore, the original panel decision shall stand affirmed. If the original decision is vacated, a new panel shall be established pursuant to Annex 1901.2.

Annex 1904.15

Amendments to Domestic Laws

Schedule of Canada

1. Canada shall amend sections 56 and 58 of the *Special Import Measures Act*, as amended, to allow the United States with respect to goods of the United States or Mexico with respect to goods of Mexico or a United States or a Mexican manufacturer, producer, or exporter, without regard to payment of duties, to make a written request for a redetermination; and section 59 to require the Deputy Minister to make a ruling on a request for a redetermination within one year of a request to a designated officer or other customs officer.

2. Canada shall amend section 18.3(1) of the *Federal Court Act*, as amended, to render that section inapplicable to the United States and to Mexico; and shall provide in its statutes or regulations that persons (including producers of goods subject to an investigation) have standing to ask Canada to request a panel review where such persons would be entitled to commence domestic procedures for judicial review if the final determination were reviewable by the Federal Court pursuant to section 18.1(4).

3. Canada shall amend the *Special Import Measures Act*, as amended, and any other relevant provisions of law, to provide that the following actions of the Deputy Minister shall be deemed for the purposes of this Article to be final determinations subject to judicial review:

(a) a determination by the Deputy Minister pursuant to section 41;

(b) a redetermination by the Deputy Minister pursuant to section 59; and

(c) a review by the Deputy Minister of an undertaking pursuant to section 53(1).

4. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for binational panel review respecting goods of Mexico and the United States.

5. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for definitions related to this Chapter, as may be required.

6. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to permit the governments of Mexico and the United States to request binational panel review of final determinations respecting goods of Mexico and the United States.

7. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for the establishment of binational panels requested to review final determinations in respect of goods of Mexico and the United States.

8. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide that binational panel review of a final determination shall be conducted in accordance with this Chapter.

9. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide that an extraordinary challenge proceeding shall be requested and conducted in accordance with Article 1904 and Annex 1904.13.

10. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for a code of conduct, immunity for anything done or omitted to be done during the course of panel proceedings, the signing of and compliance with disclosure undertakings respecting confidential information, and remuneration for members of panels and committees established pursuant to this Chapter.

11. Canada shall make such amendments as are necessary to establish a Canadian Secretariat for this Agreement and generally to facilitate the operation of this Chapter and the work of the

binational panels, extraordinary challenge committees and special committees convened under this Chapter.

Schedule of Mexico

Mexico shall amend its antidumping and countervailing duty statutes and regulations, and other statutes and regulations to the extent that they apply to the operation of the antidumping and countervailing duty laws, to provide the following:

- (a) elimination of the possibility of imposing duties within the five-day period after the acceptance of a petition;
- (b) substitution of the term *Initial Resolution* ("Resolución de Inicio") for the term *Provisional Resolution* ("Resolución Provisional") and the term *Provisional Resolution* ("Resolución Provisional") for the term *Resolution Reviewing the Provisional Resolution* ("Resolución que revisa a la Resolución Provisional");
- (c) full participation in the administrative process for interested parties, as well as the right to administrative appeal and judicial review of final determinations of investigations, reviews, product coverage or other final decisions affecting them;
- (d) elimination of the possibility of imposing provisional duties before the issuance of a preliminary determination;
- (e) the right to immediate access to review of final determinations by binational panels for interested parties, without the need to exhaust first the administrative appeal;
- (f) explicit and adequate timetables for determinations of the competent investigating authority and for the submission of questionnaires, evidence and comments by interested parties, as well as an opportunity for them to present facts and arguments in support of their positions prior to any final determination, to the extent time permits, including an opportunity to be adequately informed in a timely manner of and to comment on all aspects of preliminary determinations of dumping or subsidization;
- (g) written notice to interested parties of any of the actions or resolutions rendered by the competent investigating authority, including initiation of an administrative review as well as its conclusion;
- (h) disclosure meetings with interested parties by the competent investigating authority conducting its investigations and reviews, within seven calendar days after the date of publication in the *Federal Official Journal* ("Diario Oficial de la Federación") of preliminary and final determinations, to explain the margins of dumping and the amount of subsidies calculations and to provide the interested parties with copies of sample calculations and, if used, computer programs;
- (i) timely access by eligible counsel of interested parties during the course of the proceeding (including disclosure meetings) and on appeal, either before a national tribunal or a panel, to all information contained in the administrative record of the proceeding, including confidential

information, excepting proprietary information of such a high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner as well as government classified information, subject to an undertaking for confidentiality that strictly forbids use of the information for personal benefit and its disclosure to persons who are not authorized to receive such information; and for sanctions that are specific to violations of undertakings in proceedings before national tribunals or panels;

(j) timely access by interested parties during the course of the proceeding, to all non-confidential information contained in the administrative record and access to such information by interested parties or their representatives in any proceeding after 90 days following the issuance of the final determination;

(k) a mechanism requiring that any person submitting documents to the competent investigating authority shall simultaneously serve on interested persons, including foreign interests, any submissions after the complaint;

(l) preparation of summaries of *ex parte* meetings held between the competent investigating authority and any interested party and the inclusion in the administrative record of such summaries, which shall be made available to parties to the proceeding; if such summaries contain business proprietary information, the documents must be disclosed to a party's representative under an undertaking to ensure confidentiality;

(m) maintenance by the competent investigating authority of an administrative record as defined in this Chapter and a requirement that the final determination be based solely on the administrative record;

(n) informing interested parties in writing of all data and information the administering authority requires them to submit for the investigation, review, product coverage proceeding, or other antidumping or countervailing duty proceeding;

(o) the right to an annual individual review on request by the interested parties through which they can obtain their own dumping margin or countervailing duty rate, or can change the margin or rate they received in the investigation or a previous review, reserving to the competent investigating authority the ability to initiate a review, at any time, on its own motion and requiring that the competent investigating authority issue a notice of initiation within a reasonable period of time after the request;

(p) application of determinations issued as a result of judicial, administrative, or panel review, to the extent they are relevant to interested parties in addition to the plaintiff, so that all interested parties will benefit;

(q) issuance of binding decisions by the competent investigating authority if an interested party seeks clarification outside the context of an antidumping or countervailing duty investigation or review with respect to whether a particular product is covered by an antidumping or countervailing duty order;

(r) a detailed statement of reasons and the legal basis for final determinations in a manner sufficient to permit interested parties to make an informed decision as to whether to seek

judicial or panel review, including an explanation of methodological or policy issues raised in the calculation of dumping or subsidization;

(s) written notice to interested parties and publication in the *Federal Official Journal* ("Diario Oficial de la Federación") of initiation of investigations setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the product at issue;

(t) documentation in writing of all advisory bodies' decisions or recommendations, including the basis for the decisions, and release of such written decisions to parties to the proceeding; all decisions or recommendations of any advisory body shall be placed in the administrative record and made available to parties to the proceeding; and

(u) a standard of review to be applied by binational panels as set out in subparagraph (c) of the definition of "standard of review" in Annex 1911.

Schedule of the United States

1. The United States shall amend section 301 of the *Customs Courts Act* of 1980, as amended, and any other relevant provisions of law, to eliminate the authority to issue declaratory judgments in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian or Mexican merchandise.

2. The United States shall amend section 405(a) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to provide that the interagency group established under section 242 of the *Trade Expansion Act of 1962* shall prepare a list of individuals qualified to serve as members of binational panels, extraordinary challenge committees and special committees convened under this Chapter.

3. The United States shall amend section 405(b) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to provide that panelists selected to serve on panels or committees convened pursuant to this Chapter, and individuals designated to assist such appointed individuals, shall not be considered employees of the United States.

4. The United States shall amend section 405(c) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to provide that panelists selected to serve on panels or committees convened pursuant to this Chapter, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members, except with respect to the violation of protective orders described in section 777f(d)(3) of the *Tariff Act of 1930*, as amended.

5. The United States shall amend section 405(d) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to establish a United States Secretariat to facilitate the operation of this Chapter and the work of the binational panels, extraordinary challenge committees and special committees convened under this Chapter.

6. The United States shall amend section 407 of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to provide that an extraordinary challenge committee convened pursuant to Article 1904 and Annex 1904.13 shall have authority to obtain information in the event of an allegation that a member of a binational panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct, and for the committee to summon the attendance of witnesses, order the taking of depositions and obtain the assistance of any district or territorial court of the United States in aid of the committee's investigation.

7. The United States shall amend section 408 of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to provide that, in the case of a final determination of a competent investigating authority of Mexico, as well as Canada, the filing with the United States Secretary of a request for binational panel review by a person described in Article 1904(5) shall be deemed, on receipt of the request by the Secretary, to be a request for binational panel review within the meaning of Article 1904(4).

8. The United States shall amend section 516A of the *Tariff Act of 1930*, as amended, to provide that judicial review of antidumping or countervailing duty cases regarding Mexican, as well as Canadian, merchandise shall not be commenced in the Court of International Trade if binational panel review is requested.

9. The United States shall amend section 516A(a) of the *Tariff Act of 1930*, as amended, to provide that the time limits for commencing an action in the Court of International Trade with regard to antidumping or countervailing duty proceedings involving Mexican or Canadian merchandise shall not begin to run until the 31st day after the date of publication in the *Federal Register* of notice of the final determination or the antidumping duty order.

10. The United States shall amend section 516A(g) of the *Tariff Act of 1930*, as amended, to provide, in accordance with the terms of this Chapter, for binational panel review of antidumping and countervailing duty cases involving Mexican or Canadian merchandise. Such amendment shall provide that if binational panel review is requested such review will be exclusive.

11. The United States shall amend section 516A(g) of the *Tariff Act of 1930*, as amended, to provide that the competent investigating authority shall, within the period specified by any panel formed to review a final determination regarding Mexican or Canadian merchandise, take action not inconsistent with the decision of the panel or committee.

12. The United States shall amend section 777 of the *Tariff Act of 1930*, as amended, to provide for the disclosure to authorized persons under protective order of proprietary information in the administrative record, if binational panel review of a final determination regarding Mexican or Canadian merchandise is requested.

13. The United States shall amend section 777 of the *Tariff Act of 1930*, as amended, to provide for the imposition of sanctions on any person who the competent investigating authority finds to have violated a protective order issued by the competent investigating authority of the United States or disclosure undertakings entered into with an authorized agency of Mexico or with a competent investigating authority of Canada to protect proprietary material during binational panel review.

Annex 1905.6

Special Committee Procedures

The Parties shall establish rules of procedure by the date of entry into force of this Agreement in accordance with the following principles:

- (a) the procedures shall assure a right to at least one hearing before the special committee as well as the opportunity to provide initial and rebuttal written submissions;
- (b) the procedures shall assure that the special committee shall prepare an initial report typically within 60 days of the appointment of the last member, and shall afford the Parties 14 days to comment on that report prior to issuing a final report 30 days after presentation of the initial report;
- (c) the special committee's hearings, deliberations, and initial report, and all written submissions to and communications with the special committee shall be confidential;
- (d) unless the Parties to the dispute otherwise agree, the decision of the special committee shall be published 10 days after it is transmitted to the disputing Parties, along with any separate opinions of individual members and any written views that either Party may wish to be published; and
- (e) unless the Parties to the dispute otherwise agree, meetings and hearings of the special committee shall take place at the office of the Section of the Secretariat of the Party complained against.

Annex 1911

CountrySpecific Definitions

For purposes of this Chapter:

antidumping statute means:

- (a) in the case of Canada, the relevant provisions of the *Special Import Measures Act*, as amended, and any successor statutes;
- (b) in the case of the United States, the relevant provisions of Title VII of the *Tariff Act of 1930*, as amended, and any successor statutes;
- (c) in the case of Mexico, the relevant provisions of the *Foreign Trade Act Implementing Article 131 of the Constitution of the United Mexican States* ("Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior"), as amended, and any successor statutes; and

(d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b) or (c), or indicates the standard of review to be applied to such determinations;

competent investigating authority means:

(a) in the case of Canada (i) the Canadian International Trade Tribunal, or its successor, or (ii) the Deputy Minister of National Revenue for Customs and Excise as defined in the *Special Import Measures Act*, as amended, or the Deputy Minister's successor;

(b) in the case of the United States

(i) the International Trade Administration of the United States Department of Commerce, or its successor, or

(ii) the United States International Trade Commission, or its successor; and

(c) in the case of Mexico, the designated authority within the Secretariat of Trade and Industrial Development ("Secretaría de Comercio y Fomento Industrial"), or its successor;

countervailing duty statute means:

(a) in the case of Canada, the relevant provisions of the *Special Import Measures Act*, as amended, and any successor statutes;

(b) in the case of the United States, section 303 and the relevant provisions of Title VII of the *Tariff Act of 1930*, as amended, and any successor statutes;

(c) in the case of Mexico, the relevant provisions of the *Foreign Trade Act Implementing Article 131 of the Constitution of the United Mexican States* ("Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior"), as amended, and any successor statutes; and

(d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b) or (c), or indicates the standard of review to be applied to such determinations;

final determination means:

(a) in the case of Canada,

(i) an order or finding of the Canadian International Trade Tribunal under subsection 43(1) of the *Special Import Measures Act*,

(ii) an order by the Canadian International Trade Tribunal under subsection 76(4) of the *Special Import Measures Act*, as amended, continuing an order or finding made under subsection 43(1) of the Act with or without amendment,

(iii) a determination by the Deputy Minister of National Revenue for Customs and Excise pursuant to section 41 of the *Special Import Measures Act*, as amended,

(iv) a redetermination by the Deputy Minister pursuant to section 59 of the *Special Import Measures Act*, as amended,

(v) a decision by the Canadian International Trade Tribunal pursuant to subsection 76(3) of the *Special Import Measures Act*, as amended, not to initiate a review,

(vi) a reconsideration by the Canadian International Trade Tribunal pursuant to subsection 91(3) of the *Special Import Measures Act*, as amended, and

(vii) a review by the Deputy Minister of an undertaking pursuant to subsection 53(1) of the *Special Import Measures Act*, as amended;

(b) in the case of the United States,

(i) a final affirmative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the *Tariff Act of 1930*, as amended, including any negative part of such a determination,

(ii) a final negative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the *Tariff Act of 1930*, as amended, including any affirmative part of such a determination,

(iii) a final determination, other than a determination in (iv), under section 751 of the *Tariff Act of 1930*, as amended,

(iv) a determination by the United States International Trade Commission under section 751(b) of the *Tariff Act of 1930*, as amended, not to review a determination based on changed circumstances, and

(v) a final determination by the International Trade Administration of the United States Department of Commerce as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order; and

(c) in the case of the Mexico,

(i) a final resolution regarding antidumping or countervailing duties investigations by the Secretar a de Comercio y Fomento Industrial ("Secretariat of Trade and Industrial Development"), pursuant to Article 13 of the Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior ("*Foreign Trade Act Implementing Article 131 of the Constitution of the United Mexican States*"), as amended,

(ii) a final resolution regarding an annual administrative review of antidumping or countervailing duties by the *Secretariat of Trade and Industrial Development* ("Secretaría de Comercio y Fomento Industrial"), as described in paragraph (o) of its Schedule to Annex 1904.15, and

(iii) a final resolution by the *Secretariat of Trade and Industrial Development* ("Secretaría de Comercio y Fomento Industrial"), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing antidumping or countervailing duty resolution; and

standard of review means the following standards, as may be amended from time to time by the relevant Party:

(a) in the case of Canada, the grounds set out in subsection 18.1(4) of the *Federal Court Act*, as amended, with respect to all final determinations;

(b) in the case of the United States,

(i) the standard set out in section 516A(b)(I)(B) of the *Tariff Act of 1930*, as amended, with the exception of a determination referred to in (ii), and

(ii) the standard set out in section 516A(b)(I)(A) of the *Tariff Act of 1930*, as amended, with respect to a determination by the United States International Trade Commission not to initiate a review pursuant to section 751(b) of the *Tariff Act of 1930*, as amended; and

(c) in the case of the Mexico, the standard set out in Article 238 of the *Federal Fiscal Code* ("Código Fiscal de la Federación"), or any successor statutes, based solely on the administrative record.

PART SEVEN: ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Chapter Twenty: Institutional Arrangements and Dispute Settlement Procedures

Section A - Institutions

Article 2001: The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee its further elaboration;

(c) resolve disputes that may arise regarding its interpretation or application;