

Chapter Nineteen

Review and Dispute Settlement in Antidumping and Countervailing Duty Matters

Article 1901: General Provisions

1. The provisions of Article 1904 shall apply 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 the purposes of Articles 1903 and 1904, panels shall be established in accordance with the provisions of Annex 1901.2.
3. With the exception of Article 2203 (Entry into Force), no provision of any other chapter of this Agreement shall be construed as imposing obligations on the Parties with respect to the Parties' 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 the Parties to this Agreement;
 - (b) the amending Party notifies any Party to which the amendment applies in writing of the amending statute as far in advance as possible of the date of enactment of such statute;
 - (c) following notification, the amending Party, upon 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 another 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 successor agreements 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 among 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 90-day 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 upon 60-day written notice to that Party.

Article 1904: Review of Final Antidumping and Countervailing Determinations

1. As provided in this Article, the Parties 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 upon the administrative record, a final antidumping or countervailing duty determination of a competent investigating authority of a 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 this Agreement.

3. The panel shall apply the standard of review described in Article 1909 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, upon 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 forth in this Article. No Party shall

provide in its domestic legislation for an appeal from a panel decision to its domestic courts.

12. The provisions of 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 forth 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, upon 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 post-hearing 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, with respect to goods of the other Parties, amend their 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. In particular, without limiting the generality of the foregoing:

(a) each Party shall 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) each Party shall 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) each Party shall 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) Each Party shall make the further amendments set forth in Annex 1904.15(d).

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 court or panel of competent jurisdiction that is independent of the competent investigating authorities, that examines the basis for the investigating authorities' determination and whether the 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,

that 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 the provisions of this Chapter.

4. The roster for special committees shall be that established pursuant to Annex 1904.13.1.

5. The special committee shall comprise three members selected in accordance with the procedures set out in Annex 1904.13.1.

6. The Parties shall establish rules of procedure in accordance with the principles set out in Annex 1905.7.

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

8. If, within the 60-day 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:

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

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

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. If either Party decides to suspend the operation of Article 1904, it shall provide written notice of such suspension to the other Party.

10. The special committee may reconvene at any time, at the request of the Party complained against, to determine:

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

(b) whether 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 paragraphs 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 decision:

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

(i) with respect to 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 of this Article and in no case later than 150 days prior to an affirmative finding by the special committee, or

(ii) with respect to 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 for requesting panel or committee review under Article 1904 shall be tolled.

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) with respect to 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) with respect to 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 party 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 time period tolled under Paragraph 11(b) of this Article shall resume.

If such suspension does not become effective, panel or committee review stayed under paragraph 11(a), and any time period tolled under paragraph 8(b), shall resume.

Article 1906: Prospective Application

The provisions of 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, if appropriate. In the context of these consultations, the Parties agree that it is desirable in the administration of anti-dumping and countervailing duty laws to:

(a) publish notice of initiation of investigations in the importing country's official journal, setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the product 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, including foreign interests, and reasonable time to respond to requests for information;

(d) accord reasonable access to information

(i) "reasonable access" in this context 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 forth 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,

(ii) "access to information" in this context 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 legislation of a Party; any privileges arising under 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 the opportunity for interested parties, including foreign interests, 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 authorities 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 upon which any preliminary or final determination of dumping or of subsidization is based, within a reasonable time after a request by interested parties, including foreign interests. Such information shall include an explanation of the calculation or the methodology used to determine the margin of dumping or the amount of subsidy;

(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 paragraphs (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. The Parties shall establish a section within the Secretariat established pursuant to Article 2002 to facilitate the operation of this Chapter and the work of panels or committees that may be convened pursuant to this Chapter.

2. The secretaries of the Secretariat established pursuant to Article 2002 shall act jointly to service all meetings of panels or committees established pursuant to this Chapter. The secretary 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 the permanent offices. Such secretary shall upon request provide to the secretary 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 of the 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. Each secretary shall forward to the secretary of the other involved Party copies of all official letters, documents or other papers received or filed with the Secretariat office pertaining to any proceeding before a panel or committee, except for the administrative record, which shall be handled in accordance with paragraph 1. The secretary of an involved Party shall provide upon request to the secretary of the Party that is not an involved Party in the proceeding a copy of such public documents as are requested.

5. The remuneration of panelists or committee members, their travel and lodging expenses, and all general expenses of the panels or committees shall be borne equally by the involved Parties. Each panelist or committee member shall keep a record and render a final account of the person's time and expenses, and the panel or committee shall keep a record and render a final account of all general expenses. The Commission shall establish

amounts of remuneration and expenses that will be paid to the panelists and committee members.

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

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

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" 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" as defined in Annex 1911;

domestic law for the 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" 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;

importing Party means the Party that issued the final determination;

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 standards set out in Annex 1911, as may be amended from time to time by a Party.

ANNEX 1901.2

Establishment of Binational Panels

1. Prior to the date of entry into force of this Agreement, the Parties shall develop a roster of individuals to serve as panelists in disputes under this Chapter. The roster shall include sitting or retired 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, the United States or Mexico. 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. Judges shall not be considered to be affiliated with 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. Upon 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 upon 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. Upon 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 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 upon the arguments and submissions of the two Parties.

2. Unless the Parties 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 upon 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(d)

Amendments to Domestic Laws

Part A - Schedule of Canada

1. Canada shall amend sections 56 and 58 of the Special Import Measures Act, as amended, to allow the United States or 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 re-determination; 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 re-determination 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 the 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 Agreement, as may be required;

6. Canada shall amend Part II 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;
7. Canada shall amend Part II of Special Import Measures Act, as amended, to provide for the establishment of panels requested to review final determinations in respect of goods of Mexico and goods of the United States;
8. Canada shall amend Part II of Special Import Measures Act, as amended, to provide for the conduct of review of a final determination in accordance with Chapter XX of this Agreement;
9. Canada shall amend Part II of the Special Import Measures Act, as amended, to provide for request and conduct of an extraordinary challenge proceeding in accordance with Article 1904 of this Agreement;
10. Canada shall amend Part II of the Special Import Measures Act, as amended, to provide for a code of conduct, immunity, disclosure undertakings respecting confidential information and remuneration for members of panels established pursuant to this Agreement; and
11. Canada shall make such amendments as are necessary to establish a Canadian Secretariat for this Agreement and generally to facilitate the operation of Chapter 19 of this Agreement.

Part B - 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:

1. elimination of the possibility of imposing duties within the five day period after the acceptance of a petition; substitution of the term Resolución de Inicio for Resolución Provisional and the term Resolución Provisional for Resolución que revisa a la Resolución Provisional;
2. full participation in the administrative process for interested parties, including foreign interests, 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;
3. elimination of the possibility of imposing provisional duties before the issuance of a preliminary determination;
4. the right to immediate access to review of final determinations by binational panels, to interested parties, including foreign interests, without the need to exhaust first

the administrative appeal;

5. explicit and adequate timetables for determinations of the competent investigating authority and for the submission of questionnaires, evidence and comments by interested parties, including foreign interests, 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;
6. written notice to interested parties, including foreign interests, of any of the actions or resolutions rendered by the competent investigating authority, including initiation of an administrative review as well as its conclusion;
7. disclosure meetings by the competent investigating authority with interested parties, including foreign interests, in investigations and reviews, within seven calendar days after the date of publication in the Diario Oficial de la Federacion of preliminary and final determinations, to explain the margins of dumping and the amount of subsidies calculations and to provide them with copies of sample calculations and, if used, computer programs;
8. timely access by eligible counsel of interested parties, including foreign interests, 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;
9. timely access by interested parties, including foreign interests, 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;
10. 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;
11. 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, such documents must be disclosed to a party's representative under an undertaking to ensure confidentiality;

12. 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;

13. informing interested parties, including foreign interests, in writing of all data and information the administering authority requires them to submit for the investigation, review, product coverage proceeding, or other antidumping and countervailing duty proceedings;

14. the right to an annual individual review on request by the interested parties, including foreign interests, 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;

15. application of determinations issued as a result of judicial, administrative, or panel review, to the extent they are relevant to interested parties, including foreign interests, in addition to the plaintiff, so that all interested parties will benefit;

16. issuance of binding decisions by the competent investigating authority if an interested party, including a foreign interest, seeks clarification outside the context of an antidumping or countervailing duty investigation or review as to whether a particular product is covered by an antidumping or countervailing duty order;

17. a detailed statement of reasons and legal basis concerning final determinations in a manner sufficient to permit interested parties, including foreign interests, 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;

18. written notice to interested parties, including foreign interests, and publication in the Diario Oficial de la Federacion 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;

19. documentation in writing of all advisory bodies' decisions or recommendations, including the basis for the decision, and release of such written decision 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

20. a standard of review to be applied by binational panels as defined in Article 1911.

Part C - 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, 19 U.S.C. section 2112 note, 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 chapter 19 of this Agreement;

3. The United States shall amend section 405(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, 19 U.S.C. section 2112 note, to provide that panelists selected to serve on panels or committees convened pursuant to chapter XX of this Agreement, 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, 19 U.S.C. section 2112 note, to provide that panelists selected to serve on panels or committees convened pursuant to chapter XX of this Agreement, 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;

5. The United States shall amend section 405(d) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, 19 U.S.C. section 2112 note, to establish a United States Secretariat to facilitate, inter alia, the operation of chapter XX of this Agreement and the work of the binational panels, extraordinary challenge committees, and special committees convened under that chapter;

6. The United States shall amend section 407 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, 19 U.S.C. section 2112 note, to provide on that an extraordinary challenge committee convened pursuant to chapter XX of this

Agreement 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, 19 U.S.C. section 2112 note, 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 of this Agreement shall be deemed, upon receipt of the request by the Secretary, to be a request for binational panel review within the meaning of Article 1904.4 of that Agreement;

8. The United States shall amend section 516A of the Tariff Act of 1930 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 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 to provide, in accordance with the terms of this Agreement, 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 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 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; and

13. The United States shall amend section 777 of the Tariff Act of 1930 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 1905.7

Special Committee Procedures

1. 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

Country-Specific 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 Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior Implementing Article 131 of the Constitution of the United Mexican States, 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, 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 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 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, 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,

(iv) a re-determination by the Deputy Minister pursuant to section 59 of the Special Import Measures Act,

(v) a decision by the Canadian International Trade Tribunal pursuant to subsection 76(3) of the Special Import Measures Act 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, and

(vii) a review by the Deputy Minister of an undertaking pursuant to section 53(1) of the Special Import Measures Act;

(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 upon 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 anti-dumping or countervailing duties investigations by the Secretaría de Comercio y Fomento Industrial, 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, as amended,

(ii) a final resolution regarding an annual administrative review of anti-dumping or countervailing duties by the Secretaría de Comercio y Fomento Industrial, as described in Article 1904.15(q)(xiv), and

(iii) a final resolution by the Secretaria 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.

standard of review means:

(a) in the case of Canada, the grounds set forth in section 18.1(4) of the Federal Court Act with respect to all final determinations;

(b) in the case of the United States,

(i) the standard set forth in section 516A(b)(1)(B) of the Tariff Act of 1930, as amended, with the exception of a determination referred to in (ii), and

(ii) the standard set forth in section 516A(b)(1)(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 forth in Article 238 of the Código Fiscal de la Federación, or any successor statutes, based solely on the administrative record.