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**Joint Group on Trade and Competition**

**ROUNDTABLE ON PUBLIC AND PRIVATE DISPUTE  
RESOLUTION MECHANISMS**

**-- Note by the US Delegation --**

*The attached note by the Delegation of the United States describes Dispute Settlement Procedures under the North American Free Trade Agreement. It is prepared in view of the discussion at the Roundtable to be held in the Joint Group on 26 October.*

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**DISPUTE SETTLEMENT PROCEDURES UNDER THE  
NORTH AMERICAN FREE TRADE AGREEMENT**

**Introduction**

1. The North American Free Trade Agreement (“NAFTA”) contains a number of provisions relating to dispute settlement. Chapter 11 affords investors the right to seek compensation through international arbitration for a Party’s violation of NAFTA Chapter 11 investment obligations or of certain provisions of Chapter 15 governing the behavior of government monopolies and state enterprises. Chapter 19 provides for special dispute settlement procedures applicable to the review of antidumping (“AD”) and countervailing duty (“CVD”) determinations taken by NAFTA country governments with respect to imports from another NAFTA country. Amendments to a NAFTA country’s AD and CVD statutes may

NAFTA governments.) The tribunal is directed to decide questions in accordance with the NAFTA and applicable rules of international law, and any interpretation of the NAFTA made by the “Free Trade Commission” established pursuant to NAFTA Chapter 20 (see below) is binding upon the tribunal. Under certain conditions, tribunals may seek advice from experts on environmental, health, safety or other scientific matters, and there are procedures to ensure that a NAFTA government that is not the respondent in the arbitration is apprised of relevant facts and other information and, if it wishes, to submit views to the tribunal on questions of NAFTA interpretation.

5. A tribunal may order interim protective measures to preserve existing rights of the disputants, including the preservation of evidence. A tribunal cannot, however, order attachment of assets or enjoin the government from applying any measure that is the subject of the dispute. Final awards are limited to money damages or restitution, or a combination thereof, and awards of restitution must offer the alternative of paying damages. No punitive damages, however, may be awarded. Chapter 11 makes clear that an arbitral award has no precedential effect and is binding only on the particular disputants in the matter under arbitration. Disputants must abide by and comply with the award, but may seek revision or annulment of the award before enforcement. NAFTA governments are required to provide for enforcement of awards in



Agreement or cause “nullification or impairment” of benefits that the complaining country reasonably expected to accrue to it under the Agreement. Disputes arising under both the NAFTA and the WTO generally may be settled in either forum at the discretion of the complaining government, subject to two

involved a proposed measure, will not be introduced. If that remedy cannot be agreed upon, the parties must, where possible, agree on trade compensation for the complaining party.

18. If a panel has found that a measure is inconsistent with the NAFTA and no settlement has been reached within 30 days or another agreed period, the complaining party may suspend the application to the other party of NAFTA benefits equivalent in effect to those that the complaining party considers were impaired, or may be impaired, as a result of the disputed measure. The suspension of benefits may remain in effect until the parties have resolved the dispute. Upon request of any disputing party, the Free Trade Commission will establish a panel to determine whether the level of benefits suspended is “manifestly excessive.”

19. Finally, among the other provisions of Chapter 20, the NAFTA governments agreed to seek a common interpretation of NAFTA provisions that come under scrutiny in domestic court or administrative proceedings in those instances in which a government wishes to make its views known to the court or administrative body, or where that body or court solicits a government’s views on the subject. Absent

**NOTES**

- <sup>1</sup> NAFTA Chapter 15 requires, *inter alia*, that each government impose several specific disciplines on designated monopolies. First, in exercising any governmental authority delegated to them by a NAFTA government in connection with the monopoly good or service (such as the power to grant import licenses), monopolies must act in a manner consistent with the government's NAFTA obligations. This obligation, as it applies to actions affecting investments – as well as the Chapter 15 obligation stipulating that all enterprises owned or controlled by a federal, state or provincial or local government must act in a manner consistent with the investment and financial services provisions of the NAFTA whenever they exercise any delegated governmental authority – are both to some extent enforceable through the Chapter 11 arbitration procedures described here.
- <sup>2</sup> While the NAFTA parties were permitted to retain and modify their trade remedy laws, all three were required to ensure that those laws contained certain provisions designed to ensure minimum levels of due process and transparency.
- <sup>3</sup> Chapter 19 panel review is understandably not available for proceedings involving imports from a non-NAFTA country, and is not even mandatory for a proceeding involving another NAFTA country should the interested parties in the proceeding elect standard judicial review by a domestic court of the importing country.
- <sup>4</sup> In this regard, it bears noting that NAFTA dispute settlement rules provide a number of possibilities for panels to make