

Panels must be acceptable to both governments involved in the dispute. Annex 1901.2 spells out the procedures for establishing binational panels. Each government will choose two panellists and jointly choose the fifth; if they cannot agree, the fifth panellist will be chosen by lot. Each government will be able to exercise four peremptory challenges of panellists chosen by the other side.

Decisions will continue to be rendered quickly based on the strict time limits (unchanged for the binational panels) built into the procedures. Revisions to the extraordinary challenge procedure time limits (from 30 days to 90 days) were made to accommodate the length of time required (62 days) to conclude the pork case in 1991, the first extraordinary challenge.

These limits are sufficiently generous to allow each party an opportunity to develop arguments and to challenge the arguments of the other side. While only the federal governments can seek the establishment of an Extraordinary Challenge Committee panel, many of the issues will involve private parties, and these will be allowed to make representations before the panel. Governments are obliged to invoke the panel procedure if petitioned by private parties.

To ensure the fairness and integrity of the process, either government can invoke an extraordinary challenge procedure involving a panel of three former judges (annex 1904.13) who will determine whether the grounds for such a review have been met (for example, an impropriety or gross-panel error has occurred) and whether or not a new panel will be required to review the issues.

A new innovation (article 1905) allows for review by a panel of retired judges (established under procedures outlined in annex 1904.13) should it appear that the operation of a government's domestic law has interfered with the full and effective application of the panel-review process. Failure to remedy the situation could lead to either a suspension of the application of the chapter or some other offsetting suspension of benefits as may be determined by the review panel.

A Secretariat (established in article 2002) will administer these review procedures and give aggrieved parties ready access to information. In addition, they will make available the detailed rules of procedures for panels, as well as a code of conduct for panellists.

Changes to existing antidumping and countervailing duty legislation will only apply to NAFTA members following consultation and if specifically provided for in the new legislation. Moreover, any government may seek a bilateral panel review of such changes in light of the object and purpose of the Agreement, its rights and obligations under the GATT Antidumping and Subsidies Codes and previous panel decisions. Should a panel recommend modifications, the countries will consult to agree on such modifications. Failure to reach agreement gives the other member country the right to take comparable legislative or equivalent executive action or suspend equivalent concessions.