

6.0 DISPUTE RESOLUTION: NEW MECHANISMS FOR OLD PROBLEMS

It is contended by supporters of the FTA that the provision of a new dispute settlement mechanism is one of the major accomplishments of the Agreement. Indeed, the inclusion of mandatory action, potentially binding decisions, and firm timetables directly address the most central concerns expressed about the adequacy of existing GATT mechanisms to solve disputes.

The mere inclusion of procedures guarantees neither their use nor their use in any particular way. Much room remains for both countries to continue past practices of delay, to bargain outside the rules, and to bring harassing actions under existing rules. Monitoring how current disputes are dealt with under the new rules, as well as the attitudes of the two governments to their use, are paramount in determining the value of the new procedures.

Canada has stated its intention to honour its commitments and urged the establishment of binding dispute settlement provisions during the negotiations precisely for the purpose of ensuring that both sides do so. Chapter 18 and 19 do not go as far as Canada had hoped and the limits imposed by the bilateral arbitrations, agreements or settlements that do emerge may be narrower than many groups or industries anticipated.

The first two Chapter 18 panels, and a Chapter 18 dispute which is before a select working group, are discussed below. Other potential Chapter 18 disputes are listed in Section 2.2.3 above. A number of Chapter 19 cases are also discussed below. A full list of disputes being considered by panels under Chapter 19 is attached as Annex I.