

successfully resolved.

The Government of Canada fully agrees with the Committee that, on those rare occasions when a trade dispute does arise, it must be dealt with on its own terms, in an effort to reach a mutually satisfactory outcome within a rules-based framework, including through consultations, negotiations or recourse to formal dispute settlement.

As well, the Government of Canada agrees with the Committee on the value of developing a dispute resolution mechanism as part of Canada's free trade agreements with countries in the hemisphere. All of Canada's Free Trade Agreements in the region, including those that are currently being negotiated, include dispute resolution provisions.

In negotiating each new agreement, the Government bears in mind the importance of improving upon provisions of existing agreements, taking into consideration the experiences gained from their operation.

Recommendation 16

The Government of Canada should work with Mexico to encourage the United States to agree to improve the rules-based foundation of the general dispute settlement mechanism in Chapter 20 of NAFTA. The final reports of arbitral panels should be made automatically legally binding on the parties to the dispute. In event that such a change is not possible, the Government should strive to make maximum use of the multilateral dispute settlement mechanisms under the WTO for resolving disputes that arise under Chapter 20 of NAFTA.

In addition, the Government should work towards increasing the transparency of the dispute settlement process by releasing all documents relevant to a proceeding, without causing prejudice to companies. The Government should also work toward increasing openness of the process by enlarging participation beyond the NAFTA states to interested third parties, such as provinces, non-governmental organizations and others.

The Government's experience with the general dispute settlement mechanism in Chapter 20 has been good. At the same time, discussions on ways to improve the system could be beneficial. The Government agrees that enforcement mechanisms are central to an effective dispute settlement mechanism. NAFTA dispute settlement provisions, like those of the WTO, provide for a final report that is binding on the parties to the dispute unless there is a consensus agreement otherwise. While disagreements can occur between disputing parties as to measures taken to implement the final report, this has not been a contentious issue among the NAFTA partners.

