

Part Seven

Administrative and Institutional Provisions

The three chapters in this part provide the basis for the administration and implementation of the complex of rules set out in the rest of the Agreement. While the rules provide the rights and obligations that ensure that the three countries will pursue their trade and economic policies on the basis of the objectives of non-discrimination and transparency announced in Chapter One, this part sets out the procedures that will ensure that these rules are implemented. Without the guaranty furnished by these provisions, business would not have the confidence to undertake the restructuring necessary for the growth and prosperity that is the ultimate goal of the Agreement. The nub of this section is found in the two chapters on the settlement of disputes. Dispute settlement in the NAFTA rests on four pillars:

1. comprehensive procedures for government-to-government dispute settlement. Building on the GATT and the FTA experience, it comprises three stages: consultations, referral to the Free Trade Commission and panel proceedings.
2. binational panel review and dispute settlement regarding antidumping and countervailing duty matters. Like the FTA, the NAFTA places binational panels in the position of domestic courts to exercise judicial oversight of domestic determinations of dumping, subsidization and injury in countervailing and antidumping duty cases.
3. a regime of mixed, or investor-state, arbitration for the enforcement of obligations under the investment chapter of the NAFTA. These build on provisions found in Canadian Foreign Investment Protection Agreements (FIPAs). Investment obligations include national treatment, and most-favoured-nation treatment as well as disciplines on performance requirements, rules against transfers and expropriation without compensation.
4. dispute avoidance achieved through "transparency" or, more simply, procedural due process. The Agreement must be administered and implemented in a "consistent, impartial and reasonable manner." The NAFTA encourages the use of private commercial arbitration and establishes a special advisory committee on arbitration.