

**North American Market Working Group**  
*U.S. Food and Agriculture Dialogue for Trade*

**The Importance of Dispute Settlement under Chapter 20**

Inclusion of Chapter 20 dispute-settlement provisions within NAFTA provides important institutional arrangements for dispute settlement on the interpretation of the text and encourages the use of alternative and private commercial dispute-settlement procedures that are vital to international commerce. Provisions in Chapter 20 also create key government-to-government consultation tools and other mechanisms for mediating issues involving sanitary and phytosanitary regulation, government procurement, non-compliance with final investor-state awards and financial services.

*Government-to-Government Dispute Resolution*

Chapter 20 allows the governments of the U.S., Canada and Mexico to mediate disputes regarding the interpretation or application of NAFTA. In the event of a government-to-government dispute, the chapter allows for the creation of a NAFTA Free Trade Commission to resolve the dispute by agreement. If the commission is not successful, disputes can be elevated to a five-person arbitral panel. Since NAFTA entered into force in 1994, only three cases have been heard before the Commission, in part because of flaws in the panel selection process, which could be corrected using the most recently negotiated U.S. trade agreement.

In addition to government-to-government consultations under the Free Trade Commission, NAFTA also provides mechanisms for resolving technical disputes amongst the parties related to sanitary and phytosanitary regulation, government procurement, non-compliance with final investor-state awards and financial services.

*Alternative and Private Dispute Settlement*

Chapter 20 of NAFTA also includes important provisions that encourage the use of alternative procedures for the settlement of international commercial disputes between private parties. Private dispute resolution, mediation and arbitration are used frequently by commercial parties to resolve disputes that arise during the course of business, including those involving food and agricultural trade. These dispute-resolution mechanisms allow businesses to initiate and resolve commercial disputes by knowledgeable experts in an efficient, timely and cost-effective manner without resorting to domestic or international litigation and courts. Encouragement of private dispute settlement should be maintained in any renegotiation of the current NAFTA agreement, and efforts to preserve and enhance promotion and use of these dispute-settlement mechanisms by the United States, Mexico and Canada should be pursued by U.S. negotiators.

*Preserve Chapter 20 Provisions*

Mediation and resolution of disputes between the NAFTA parties in such forums increase the transparency and accountability of the agreement and create important institutional frameworks that can be utilized to address and resolve serious disagreements and facilitate efficient trade. In addition, the agreement's current endorsement of alternative dispute resolution encourages the parties to promote and facilitate the use of these proceedings. These provisions should be preserved and their use encouraged in future NAFTA negotiations.