Dispute Settlement under FTAs and the WTO: Conflict or Convergence?

David A. Gantz*

1. Introduction

Diverse dispute settlement mechanisms exist under the WTO on the one hand, and NAFTA on the other. These overlapping provisions raise both choice of forum and choice of law issues. Both are considered briefly here, along with a few representative cases. The focus on the FTA side is on NAFTA, but changes in the newer U.S. – Central America – Dominican Republic FTA (very similar to those in recent U.S. FTAs with Singapore, Chile, Morocco, Bahrain, etc. are also noted, although to the best of the author's knowledge no Chapter 20 disputes have reached arbitration under the newer agreements. This talking paper reproduces key provisions of the WTO's Dispute Settlement Agreement, NAFTA and CAFTA-DR, and brief summaries of several key cases.

2. Choice of Forum

DSU, Article 1 – Coverage and Application

> The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the [covered agreements]. The rules and procedures . . . shall also apply to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the [Marrakech Agreement] and of this Understanding taken in isolation or in combination with any other covered agreement.

DSU, Article 4 - Consultations

> Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of another.

DSU, Article 11 – Function of Panels "The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the Covered Agreements." (No mention is made of deferring to dispute settlement under regional trade agreements or in other fora such as the International Court of Justice.)

DSU, Article 23 – Strengthening the Multilateral System

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* Samuel M. Fegtly Professor of Law and Director, International Trade & Business Law Program, University of Arizona, Rogers College of Law.

When Members seek the redress of a violation of the obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to and abide by, the rules and procedures of this Understanding.

NAFTA, Article 2004 - Recourse to Dispute Settlement Procedures

Except for the matters covered in Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters) and as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004.[1]

NAFTA, Article 2005:1- GATT Dispute Settlement Any dispute "regarding any matter arising under both this Agreement and the General Agreement on Tariffs and Trade, any agreement negotiated thereunder, or any successor agreement (GATT), may be settled in either forum at the discretion of the complaining Party."

There are exceptions for environmental and conservation agreements under NAFTA, Article 104, which must be considered under NAFTA if any NAFTA Party so requests. When sanitary and phytosanitary measures or standards-related measures under NAFTA Chapters 7 and 9 are first raised under NAFTA, they remain under NAFTA; under Article 2004, AD and CVD matters are excluded from Chapter 20 review, but are subject to a binational panel review process under Chapter 10. Environmental and labor matters are covered by separate "side" agreements with their own dispute settlement mechanisms.

NAFTA, Article 2005:6: "Once dispute settlement procedures have been initiated under Article 2007 or dispute settlement provisions have been initiated under the

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[1] **NAFTA, Annex 2004 - Nullification and Impairment**
1. If any Party considers that any benefit it could reasonably have expected to accrue to it under any provision of: (a) Part Two (Trade in Goods), except for those provisions of Annex 300-A (Automotive Sector) or Chapter Six (Energy) relating to investment, (b) Part Three (Technical Barriers to Trade), (c) Chapter Twelve (Cross-Border Trade in Services), or (d) Part Six (Intellectual Property), is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.
2. A Party may not invoke: (a) paragraph 1(a) or (b), to the extent that the benefit arises from any crossborder trade in services provision of Part Two, or (b) paragraph 1(c) or (d), with respect to any measure subject to an exception under Article 2101 (General Exceptions).

GATT, the forum selected shall be used to the exclusion of the other . . . ." [CAFTA-DR, Article 20:3, is virtually identical.]

CAFTA-DR, Article 20:2:

> Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply: (a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement; (b) wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or that another Party has otherwise failed to carry out its obligations under this Agreement; and (c) wherever a Party considers that an actual or proposed measure of another Party causes or would cause nullification or impairment in the sense of Annex 20.2.[2]

There is no Chapter 19 binational panel equivalent in CAFTA-DR; Article 8.8:2 provides that "Except for paragraph 1, no provision of this Agreement, including the provisions of Chapter Twenty (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty measures." Sanitary and phytosanitary matters and standards are also excluded. Since environmental and labor requirements are in the body of the agreement, disputes regarding them are covered by Chapter 20.

CAFTA-DR, Article 20:3 – Choice of Forum

> 1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which the disputing Parties are party or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
> 2. Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

The CAFTA-DR changes are relatively minor, apparently designed to make explicit what was probably implicit under NAFTA. CAFTA-DR contemplates choices not only

[2] **CAFTA-DR, Annex 20.2 - Nullification or Impairment**
1. If any Party considers that any benefit it could reasonably have expected to accrue to it under any provision of: (a) Chapters Three through Five (National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, and Customs Administration and Trade Facilitation); (b) Chapter Seven (Technical Barriers to Trade); (c) Chapter Nine (Government Procurement); (d) Chapter Eleven (Cross-Border Trade in Services); or
(e) Chapter Fifteen (Intellectual Property Rights), is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.
2. A Party may not invoke paragraph 1(d) or (e) with respect to any measure subject to an exception under Article 21.1 (General Exceptions).

between that FTA and the WTO, but under other FTAs among the Parties (or, perhaps, the eternal hope for a Free Trade Agreement of the Americas).

3. **Choice of Law and Conflicts: the Legal Texts**

DSU, Article 3:2 – General Provisions

> The Members recognize that it [the dispute settlement system of the WTO] serves to preserve the rights and obligations of the Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided to the covered agreements.[3]

DSU, Article 11 – Function of Panels

> [A] panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements.

NAFTA, Article 101: The Parties to this Agreement, consistent with Article XXIV of the *General Agreement on Tariffs and Trade*, hereby establish a free trade area.

NAFTA, Article 102:2: "The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law." [CAFTA-DR, Article 1:1:2 is identical]

NAFTA, Article 103: Relation to Other Agreements

> 1. The Parties affirm their existing rights and obligations with respect to each other under the *General Agreement on Tariffs and Trade* and other agreements to which such Parties are party.
> 2. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

CAFTA-DR, Article 1:1: "The Parties to this Agreement, consistent with Article XXIV of the *General Agreement on Tariffs and Trade 1994* and Article V of the *General Agreement on Trade in Services*, hereby establish a free trade area.

CAFTA-DR, Article 1.3 - Relation to Other Agreements

[3] The "diminish the rights and obligations" language also appears in DSU, Article 19:2.

> 1. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which such Parties are party.
> 2. For greater certainty, nothing in this Agreement shall prevent the Central American Parties from maintaining their existing legal instruments of Central American integration, adopting new legal instruments of integration, or adopting measures to strengthen and deepen these instruments, provided that such instruments and measures are not inconsistent with this Agreement.

The CAFTA-DR changes again reflect some clarifications, updates (GATS), and recognition that five of the seven likely parties of CAFTA-DR are part of Central American regional agreements dating to 1960.

GATT Incorporation by reference:

NAFTA, Article 301 - National Treatment:

> 1. Each Party shall accord national treatment of the goods of another Party in accordance with Article III of the General Agreement on Tariffs and Trade (GATT), including its interpretative notes, and to this end *Article III of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all parties are party, are incorporated into and made part of this Agreement.* (Emphasis supplied.)

NAFTA, Article 309 - Import and Export Restrictions

> 1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT, including its interpretative notes, and to this end *Article XI of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made a part of this Agreement.* (Emphasis supplied.)

NAFTA, Article 2101 - Exceptions

> 1. For purposes of:
> (a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment, and
> (b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services,

GATT Article XX and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement. (Emphasis supplied.)

CAFTA-DR, Article 3.2 - National Treatment

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the GATT 1994, including its interpretive notes, and to this end Article III of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

CAFTA-DR, Article 3.8 - Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT 1994 and its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.

CAFTA-DR, Article 21.1 - General Exceptions

1. For purposes of Chapters Three through Seven (National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

<u>GATT Mention (but not incorporation)</u>:

NAFTA, Article 802 - Emergency Action:

1. Each Party retains its rights and obligations under Article XIX of the GATT or any safeguard agreement pursuant thereto except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article . . . .

NAFTA, Article 1902:2 - Retention of Domestic Antidumping Law and Countervailing Duty Law

Each Party reserves the right to change or modify its antidumping law or countervailing duty law, provided that in the case of an amendment to a Party's antidumping or countervailing duty statute . . . d) such amendment,

> as applicable to that other Party, is not inconsistent with (i) the *General Agreement on Tariffs and Trade* (GATT), the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade* (the Antidumping Code) or the *Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade* (the Subsidies Code), or any successor agreement to which all the original signatories to this Agreement are party . . . . (Emphasis supplied.)

CAFTA-DR, Article 8:6, Global Actions:

> 1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.
> 2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the Safeguards Agreement, except that a Party taking such an action may exclude imports of an originating good of another Party if such imports are not a substantial cause of serious injury or threat thereof.
> 3. No Party may apply, with respect to the same good, at the same time: (a) a safeguard measure; and (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

4. **<u>Representative Cases</u>**

A. **Appellate Body Report, *Mexico – Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/AB/R, adopted Mar. 24, 2006**

The dispute arose between the United States and Mexico regarding Mexican taxes on soft drinks using corn syrup (HFCS) instead of cane sugar; Mexico saw the case as connected to a dispute with the U.S. over Mexican sugar exports to the United States; the U.S. did not. Mexico sought arbitration of the sugar issues under Chapter 20 of NAFTA, but reportedly the U.S. refused to cooperate in the appointment of the panel.

Mexico asked the DSB panel to refrain from exercising jurisdiction over the tax dispute, but the panel and the Appellate Body refused to do so. Both reasoned that under DSU, Article 11, despite the "should" rather than "must" language, the panel had an obligation to decide the case, and lacked the authority to decline to exercise its jurisdiction by failing to make the required "objective assessment." Further, DSU, Article 23, provides that in the event of a nullification or impairment, Members seeking recourse "shall have recourse to and abide by, the rules and procedures of this Understanding." Finally, two other DSU provisions are relevant – Articles 3:2 and 19:2. From them, said the panel

and agreed the Appellate Body, a strong inference may be drawn. Were a panel to decide not to exercise jurisdiction in a case properly before it, then that decision would diminish the rights of the complainant under the DSU and relevant WTO texts. Specifically, any act of judicial abstention would diminish the right of the complainant to seek redress for an alleged violation of obligations owed to it.

B. *U.S. Safeguard Action Taken on Broomcorn Brooms from Mexico* (NAFTA, Chapter 20), USA-97-2008-01, decided January 30, 1998[4]

The United States, after a domestic industry petition was filed under both NAFTA, Article 801 (bilateral actions) and the WTO Safeguards Agreement, and the International Trade Commission completed the required investigations, determined to apply safeguard measures (in the form of tariff rate quotas) to protect the U.S. broomcorn broom industry. The safeguards were, however, applied only under the global provisions, not under NAFTA Chapter 8.

Mexico requested the establishment of a Chapter 20 panel to examine the legality of the safeguards "in light of the relevant provisions of the North American Free Trade Agreement." The panel viewed Mexico's contention as a "single overarching legal claim" incorporating the GATT/WTO rules that control basic safeguards measures under NAFTA, Arts. 802 and 803. (The technical issue related to whether the ITC had properly defined the "domestic industry" as including only the broomcorn broom industry, rather than the larger universe of brooms-- including the much more voluminous plastic variety-- the "like product" was broom corn brooms, not all brooms.)

The U.S. argued as a preliminary matter that the NAFTA panel had no jurisdiction to adjudicate the conformity of "global safeguard measures" but only those under NAFTA. NAFTA, in Article 802, unlike Arts. 301 and 309, does not incorporate GATT/WTO law by reference, and the United States asserted that it was the intent of the NAFTA Parties that any issues related to global safeguards would have to by pursued through the DSU. Mexico, in contrast, argued that the present dispute arose under both NAFTA and GATT/WTO, and that the panel necessarily had "jurisdiction to dispose of all overlapping GATT issues involved in the dispute." Mexico also argued that GATT jurisprudence was relevant to interpreting the "like product" concept.

The panel avoided what might have been a nasty intra-NAFTA dispute by disposing of the issues under NAFTA alone, without deciding whether GATT/WTO law could or should be applied. They decided, moreover, that the rules requiring the investigating authority to publish a report setting out its findings and reasoned conclusions on all pertinent issues was the same under NAFTA Chapter 8 and the WTO Safeguards Agreement. Under those

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[4] NAFTA Chapter 20 decisions (all three of them) are available at http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=76.

circumstances, said the panel, the result was the same whether NAFTA law or WTO law was applied, and the ITC had failed to meet the applicable standard.

C. *Cross-Border Trucking Services and Investment* (NAFTA Chapter 20), USA-98-2008-01, decided February 6, 2001

Unlike *Broom Corn Brooms*, there was never any question regarding choice of forum. The WTO Agreements, including the GATS, contain no directly comparable provisions to NAFTA, Chapter 11 (investment), Chapter 12 (cross border services), and no NAFTA Annex I provisions providing for reciprocal authorization for Mexican trucks to carry international cargos into the United States and vice versa. However, it is clear that GATT law, particularly that related to Article I (MFN Treatment) and Article III (National Treatment) were critical in "informing" both the Parties (Mexico and the United States) and the members of the panel, with regard to proper interpretation of the Chapter 11 and Chapter 12 versions of national treatment and MFN treatment, as well as with regard to the Article 2101 exceptions, which incorporate GATT by reference, as noted above.

Chapter 12 provides in pertinent part:

Article 1202: National Treatment

> 1. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service providers.
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> * * *

Article 1203: Most-Favored-Nation Treatment

> Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to service providers of any other Party or of a non-Party.

Articles 1102 and 1103, relating to investment, are essentially identical.

Even though the language in GATT is significantly different from that found in NAFTA Chapters 11 and 12, both Mexico and the United States, as well as the members of the tribunal, believed that the GATT language was highly relevant to interpretation of the NAFTA provisions, including the NAFTA Chapter 21. The GATT case law, including but not limited to *Reformulated Gasoline, Shrimp* and *Periodicals*, was discussed in the memorials of both Parties, and extensively in the panel decision. Moreover, the Panel treated both

situations—the incorporation by reference of GATT (NAFTA, Article 2101) and the situation where the GATT was viewed as "informing" the interpretation of Articles 1202 and 1202 (although the Panel did not use the term "informing") in more or less the same fashion, perhaps because of the overlap of the relevant NAFTA provisions:

> The United States also suggests that Article 2101 allows the United States to refuse to accept applications from Mexican trucking service providers because of safety concerns. The Panel's view that the "in like circumstances" language [in Article 1202] , as an exception, should be interpreted narrowly, applies equally to Article 2101. Here, the GATT/WTO history, liberally cited by the Parties, and the FTA language, noted earlier, are both instructive. Although there is no explicit language in Chapter Twelve that sets out limitations on the scope of the "in like circumstances" language, the general exception in Article 2101:2 invoked by the United States closely tracks the GATT Article XX language, and is similar to the FTA proviso limiting exceptions to national treatment to situations where "the difference in treatment is no greater than necessary for ... health and safety or consumer protection reasons." (Decision, para. 260)

Similarly, where the Panel discussed U.S. efforts to justify the moratorium on Mexican trucks under the GATT-based NAFTA exceptions, the Panel observed:

> Also, if under the GATT/WTO jurisprudence a Party is "bound to use, among the measures reasonably available to it, that which entails the least degree of inconsistency with other . . . provisions," in this NAFTA case, the United States has failed to demonstrate that there are no alternative means of achieving U.S. safety goals that are more consistent with NAFTA requirements than the moratorium. In fact, the application and use of exceptions would appear to demonstrate the existence of less-restrictive alternatives. (Decision, para. 270)

The Parties also argued and the Panel cited GATT jurisprudence more generally:

> Long-established doctrine under the GATT and WTO holds that where a measure is inconsistent with a Party's obligations, it is unnecessary to demonstrate that the measure has had an impact on trade. For example, GATT Article III (requiring national treatment of goods) is interpreted to protect expectations regarding competitive opportunities between imported and domestic products and is applicable even if there have been no imports. Moreover, it is well-established that parties may challenge measures mandating action inconsistent with the GATT regardless of

whether the measures have actually taken effect. (Decision, para. 289; footnotes to pre-WTO GATT jurisprudence omitted.)

D. *Tariffs Applied by Canada to Certain U.S. – Origin Agricultural Products*, CDA-95-2008-01, Dec. 2, 1996; *Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products,* WT/DS110, 113/AB/RW2, adopted Jan. 17, 2003

During the period 1995 – 2003, a dispute between the United States and Canada regarding Canada's alleged illegal protection of its dairy products industry resulted in consecutive dispute settlement proceedings, initially under Chapter 20 of NAFTA and subsequently before the WTO's Dispute Settlement Body, the latter consisting of not only initial panel and Appellate Body reports but several Article 21.5 compliance proceedings.

In the 1995-1996 NAFTA proceeding, the United States argued that Canada had increased its tariff on dairy products, while under Article 302 of NAFTA Canada was permitted only to maintain such tariffs, and that under GATT Article XXIV NAFTA was not subsumed by the WTO Agreements. Canada countered by characterizing the tariffs as tariff rate quotas were mandated under Article 4.2 of the WTO Agreement on Agriculture as replacements for non-tariff barriers, contending *inter alia* that if there were a conflict the later WTO Agreements prevailed over NAFTA. The panel, relying on GATT, NAFTA and VCLT provisions, sided with Canada. It concluded, after giving some weight both to general principles of international law and to historical understandings, that NAFTA was sufficiently forward-looking to contemplate the Agreement on Agriculture, giving Canada authority without violating NAFTA to implement the Agreement on Agriculture.

In 1997, the United States took a different approach, accusing Canada at the WTO of violating the Agreement on Agriculture and the SCM Agreement by way of export subsidies administered through the Canadian Dairy Commission. The initial panel found export subsidies and tariff rate quotas in excess of those permitted in Canada's schedule of commitments. The AB affirmed on the first, but reversed on the second panel finding, taking its usual text-based approach. Disputes over implementation of the determination on export subsidies consumed more than three additional years, with the Appellate Body the third time around again finding that export subsidies were being provided in excess of commitment levels. Canada ultimately complied.[5]

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[5] *See* Julien Morissette, Sour Milk: US-Canada NAFTA and WTO Arbitrations on Canadian Dairy Protective Measures Compared, May 2007 (unpublished term paper prepared for a NAFTA class at the University of Arizona, Rogers College of Law).

E. The *Softwood Lumber* Dispute

A detailed analysis of the softwood lumber actions taking place on parallel tracks in the DSU and under NAFTA, Chapter 19, is beyond the scope of this brief discussion. While AD/CVD determinations such as those involving Canadian softwood lumber exports to the United States may not be challenged under Chapter 20, there is no provision of NAFTA that deals directly with potential conflicts between the DSU and Chapter 19, and no choice of forum is required. Chapter 19 provides a mechanism for private "interested parties" to challenge national administrative AD/CVD determinations under national law, with binational panels sitting essentially as surrogates for the respective federal courts of the Parties, and numerous such challenges relating to antidumping, countervailing duty, injury and administrative review administrative decisions were filed under Chapter 19. Simultaneously, a series of DSU actions was brought by the Government of Canada against the United States, involving the same administrative decisions but different parties (WTO Member states, Canada and the United States) a different body of law (GATT and the Antidumping and Subsidies Agreements which in the U.S. instance are not directly incorporated into national law). The Chapter 19 and DSU procedures also differ significantly, including but not limited to the nationality and backgrounds of the panel members, the means by which they are chosen, the availability of an appeal and the role of the secretariat.

Even though U.S. AD/CVD law is presumably designed to be consistent with WTO law, there are obviously some exceptions, as numerous WTO decisions indicate. In any event, NAFTA binational panels and WTO panels and the Appellate Body have reached different conclusions based on the same administrative determinations issued under very similar provisions. Although a gross over-simplification, in general, Canadian views prevailed before the NAFTA binational panels, and U.S. views prevailed before the DSB, although neither processes were effectively final at the time a settlement agreement was reached in October 2006. It is likely only a matter of time before such conflicts will arise again under NAFTA.

Interestingly, for the duration of the 2006 Softwood Lumber Agreement (SLA 2006) (seven years with a possible two year extension), except as provided in Article XIV of the SLA 2006, "neither Party shall initiate any litigation or dispute settlement proceedings with respect to any matter arising under the SLA 2006, including proceedings pursuant to the Marrakech Agreement Establishing the World Trade Organization or Chapter Twenty of the NAFTA." Rather, disputes regarding matters arising under the Agreement are to be referred to arbitration under the auspices of the London Court of International Arbitration under the procedures specified in Article XIV.