pressure, the U.S. government demanded an Extraordinary Challenge Committee. In the end, this committee upheld the conclusions of the panel and rejected the appeal, emphasizing that the U.S. government's claim that the panel had failed to apply American law correctly did not meet the conditions required to invoke the extraordinary challenge procedure.[24]

Insofar as the softwood lumber dispute was concerned, the most important in terms of trade volumes and procedures, the American authorities claimed in particular that the stumpage fees charged by provincial governments constituted a subsidy. The Canadian government maintained that this was a general public policy which had nothing to do with trade or subsidization. In 1991, Canada terminated the 1986 memorandum of understanding under which it had levied a 15% export tax on the value of softwood lumber headed for the United States, prompting the American authorities to take steps leading to the imposition of countervailing duties. Canada then demanded two trade panels to review the American investigations which had concluded that subsidies existed and injury had been done. The panel on injury has found so far on three occasions that there was insufficient evidence for the U.S. International Trade Commission's finding that injury had been done. The other trade panel concluded in December 1993, after one remand to the American investigating authorities, that there was no subsidization. In March 1994, the American government again requested an Extraordinary Challenge Committee to review this finding, alleging that the panel had exceeded its authority and that there was an apparent conflict of interest because two of the three Canadian members of the panel worked for legal firms that had represented Canadian softwood lumber companies in other matters.

This leads us to conclude that an important problem with the current provisions is that disputes can drag on for a long time. The softwood lumber dispute, in particular, has lasted for more than ten years, partly because several panel reviews are often needed after successive remands to the American authorities so that they can revise their decisions or spell out more reasons for them. Finally and most importantly, these problems and disputes are likely to be dragged out because, even though the outcome may be favourable to Canadian interests after review by a binational panel, all that is needed to launch another investigation process is the submission of a new complaint to the American authorities.

Under these conditions, a substitute system of regulating trade is not only necessary but urgent. Some people are eager to point out that barely two percent of

[24] For a summary of the pork dispute see Gary N. Horlick and F. Amanda DeBusk, "The Functioning of FTA Dispute Resolution Panels," in Leonard Waverman (ed.), *Negotiating and Implementing a North American Free Trade Agreement* (Vancouver/Toronto: The Fraser Institute/Centre for International Studies, 1992), pp. 15-21.