

It was asserted that the subsidy related to NHCI's exemption from payment for water should be limited to the exemption from payment of actual water consumed, not the amount of water NHCI was forecast to consume. It was argued that Norsk Hydro received no benefit from not having to pay for the water it did not use. The panel affirmed Commerce's determination that actual use was irrelevant since all companies in the industrial park concerned were normally billed for their "hypothetical/forecasted" water use rather than actual use.

On December 14, 1993, the Binational Panel affirmed in all aspects the remanded determination made by Commerce. The panel found that Commerce's use of an enterprise- rather than an industry-based "disproportionality" analysis was reasonable as Commerce had the discretion to use either type of analysis. Furthermore, the enterprise data was provided by the respondents, rendering an industry analysis unnecessary once the enterprise analysis indicated specificity.

5.3.3 Third Review

On May 16, 1997, the Quebec government filed a request for Panel Review. On May 19, 1997, a second request was filed on behalf of Norsk Hydro. Both concerned the final results of the third (1994) countervailing duty administrative review respecting pure and alloy magnesium from Canada, released on April 17, 1997. Pursuant to a motion filed by the requesters, the Panel Review was terminated on June 20, 1997.

5.4 Other Key Issues

Commerce determined that the discounted electricity rate received by NHCI constituted a subsidy because there was no evidence to suggest that similar industrial users of electricity in Quebec received such rates. Commerce rejected the respondents' argument that no subsidy existed because Hydro-Québec possessed projected surplus power and entered into a commercially sound contract with NHCI on the issue of SDI funding. Commerce determined that the funding NHCI received under Article 7 of the SDI Act should not be examined in the context of SDI funding in general. Article 7 assistance and general SDI assistance were not integrally linked programs, as evidenced by differing administration methods, government policy and funding mechanisms.