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Free Trade Bulletin

Following passage of the Canada-U.S. Free Trade Agreement (FTA), International Trade Minister John C. Crosbie and Finance Minister Michael Wilson announced a slate of 25 Canadians who will serve on the binational dispute settlement panel established under Chapter 19 of the Agreement.

The panelists are:

- Albert L. Bissonnette,
- Penny S. Bonner,
- Donald J.M. Brown,
- Jean Gabriel Castel,
- James Chalker,
- Peter Clark,
- John M. Coyne,
- Glen A. Cranker,
- Ivan Feltham,
- C.J. Michael Flavell,
- Martin Freedman,
- D.M.M. Goldie,
- Rodney Grey,
- Gerald Lacoste,
- A. de Lotbinière Panet,
- David McFadden,
- James McIlroy,
- Robert Pitt,
- Simon Potter,
- Margaret Prentiss,
- John Richard,
- Pierre Sauvé,
- E. David Tavender,
- Christopher Thomas, and
- Gilbert Winham.

Ministers Crosbie and Wilson also announced the appointment of a roster of five retired judges from which members will be selected to serve on extraordinary challenge committees as established by the FTA.

They are:

- Arthur G. Cooper,
- Jules Deschenes,
- Willard Estey,
- Gregory Evans, and
- Nathaniel T. Nemetz.

The purpose of the binational dispute settlement panel is to carry out fair, rapid, effective and objective resolution of cases involving anti-dumping and countervailing duty disputes.

Under the provisions of Chapter 19, each Party reserves the right to apply its anti-dumping and countervailing duty laws, including relevant statutes, legislative history, regulations, administrative practice, and judicial precedents, to goods imported from the territory of the other Party.

If a Party is dissatisfied with a final determination on an anti-dumping or countervailing duty issue, it may request the establishment of a panel to review that determination. This panel review replaces existing judicial review in each country.

Within 30 days of the request for a panel, the government of each country will appoint two panelists from their rosters. A fifth panelist is then selected. The decision of a panel must be based on a majority vote of all its members and is binding. The panel can uphold the final determination or remand it for action not inconsistent with its decision.

Parties to the dispute are assured of a hearing before the panel as well as the opportunity to provide written submissions and rebuttal arguments, on which the panel will then base its decision.

Where one Party alleges, within a reasonable time after the panel's final decision is issued, that a panel member was guilty of a gross misconduct, bias or serious conflict of interest, or that the panel has unreasonably exceeded its powers, authority or jurisdiction, that Party can ask for a hearing before an extraordinary challenge committee.

The committee which consists of three members--one chosen from each country's five-person roster and the third chosen jointly--must convene within 15 days of the request and provide a decision within 30 days of its formation.

Decisions of the extraordinary challenge committee are binding. If the committee finds that the panel has materially violated the prescribed rules for its conduct or exceeded its powers, it can, if the panel refuses to alter its decision, request the establishment of a new panel to settle the dispute.