

(2) the ASA discriminated between commodities by providing pre-authorized, regular payments to producers of named commodities while offering unpredictable benefits to others who might apply for designation.

4.2.2 Canada-U.S. Free Trade Agreement Fourth Administrative Review

On July 8, 1991, the Canadian Pork Council (CPC), the Government of Canada and the Government of Quebec filed requests for a Binational Panel Review under Article 1904 of the FTA. Panel Review concerned the final results of the fourth administrative review covering the period from April 1, 1988, through March 31, 1989. On May 19, 1992, the panel affirmed in part and remanded in part the determinations made by Commerce during the fourth administrative review. The complainants challenged Commerce's determinations with respect to seven of the nine programs found to confer countervailable subsidies. Complainant Pryme Pork Ltd. also challenged Commerce's refusal either to exclude weanlings from the scope of the order or to establish a separate rate (or sub-class) for weanlings. Furthermore, Pryme asserted that it should have been assigned a separate company rate.

The panel remanded the determinations on the National Tripartite Stabilization Program for hogs, the Quebec Farm Income Stabilization Insurance Program (FISI), the Saskatchewan Hog Assured Returns Program (SHARP), the Alberta Crow Benefit Offset Program (ACBOP), the Feed Freight Assistance Program (FFA) and the establishment of a sub-class for weanlings for further examination and/or explanation by Commerce. Commerce's determinations regarding the B.C. Feed Program and the British Columbia Farm Income Insurance Program (FIIP), and inclusion of weanlings within the scope of the order, were upheld. Last, the panel denied Pryme's request for a separate company rate and exclusion of sows and boars from the scope of the order.

On July 20, 1992, Commerce issued its remand determination with respect to the panel report issued in May 1992. On August 10, 1992, CPC, Pryme Pork Ltd., and the governments of Quebec and Canada filed challenges of ITC's remand determination. Canada and other complainants also filed a motion for oral argument on the remand determination. This motion was granted by the panel on August 28, 1992.

On October 30, 1992, the panel majority remanded Commerce's remand determination with specific instructions. In its remand determination, Commerce once again concluded that Canada's National Tripartite Stabilization Program for hogs and Quebec's Farm Income Stabilization Insurance Program were limited *de facto* to a specific group of agricultural commodities and were therefore countervailable. The panel found that this determination was not in accordance with law because the test used to determine *de facto* specificity was inappropriate and purely mathematical. Commerce also determined that it was unable to comply with the panel's remand order with respect to weanlings, or to