6.1 CHAPTER 18 DISPUTES

6.1.1. West Coast Fish Landing Regulations

The first test of the new Chapter 18 panel procedures began in May, 1989 when the United States requested an examination of Canada's new fish landing regulations. This bilateral dispute had begun some time earlier, in April, 1986, when the USTR initiated a Section 301 investigation into Canada's export prohibition on unprocessed salmon and herring. As part of this process a complaint was brought to the GATT, where, in March of 1988, a determination was made that these provisions were contrary to the GATT. Canada undertook to bring its rules into conformity with GATT requirements at that time.

As a result of a failure on Canada's part to implement those changes by 1989, the USTR completed the 301 investigation, confirming the GATT finding that Canada's regulations violated U.S. rights under the GATT, and proposed retaliation against a range of Canadian products. Shortly afterward, on April 26, 1989, Canada announced new fish landing requirements which it said were GATT consistent. Canada stated that while unprocessed fish still would have to be landed in Canada, this was to be required solely for management and conservation purposes.

However, the United States disputed this assertion, claiming that the landing rules were, in reality, an export prohibition designed to protect jobs in Canada.

The United States then asked for consultations under the FTAs new dispute settlement provisions. A panel was established and asked to report by September 1, 1989, a deadline later extended, at the panel's request, to September 30, 1989. The United States agreed that it would suspend further action under Section 301 until the panel completed its work.

The panel submitted its finding to the two governments at the end of September, where it remains under consideration.

The panel found that the 100 per cent landing requirement that Canada had imposed was not justified. It said: "As presently constituted, Canada's landing requirement is a restriction on *sale for export* within the meaning of GATT Article XI:1 and hence *prima facie* is incompatible with Canada's obligations under Article 407 of the Free Trade Agreement"[134].

However, rather than stopping there, as GATT panels generally would, the Binational Panel made a further recommendation a part of its findings: "that Canada could bring its landing requirement within Article XX(g) by structuring it along the lines described in Paragraph 7.40 [which says] one way that a landing requirement could be considered *primarily aimed at* conservation would be if provision were made to exempt from landing that proportion of the catch whose exportation without landing would not impede the data

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[134] *In the Matter of Canada's Landing Requirement for Pacific Coast Salmon and Herring* Final Report of the Panel October 16, 1989. Mimeo. p. 54.