

BACKGROUND

Extraordinary Challenge Procedures Under the Canada-U.S. Free Trade Agreement

Under Chapter 1904 of the Canada-U.S. Free Trade Agreement, either country can request an Extraordinary Challenge Committee to review a binational panel ruling on any of the following grounds:

- a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct;
- the panel seriously departed from a fundamental rule of procedure; or
- the panel manifestly exceeded its powers, authority or jurisdiction.

It also must be determined that any one of these grounds has materially affected the panel's decision and threatens the integrity of the binational panel review process.

An Extraordinary Challenge Committee must be established within 15 days of a request for such a committee. The Committee comprises three members, who are selected from a 10-person roster of judges or former judges of a federal court of the United States or a court of superior jurisdiction in Canada. Each country selects one panel member, and the third is chosen by both or by lot from the roster.

All written arguments must be filed with the Committee within 21 days after the request for a Committee has been filed.

Annex 1904.13 of the FTA provides that the Committee must render its decision typically within 30 days of its establishment. The decision of the Committee is binding on both governments. The Committee can extend the time limits in the interests of fairness and justice, as was the case in the previous Extraordinary Challenge launched in 1991.

In rendering its decision, the Committee can affirm the decision of the binational panel, vacate the decision, or remand the decision back to the panel for further consideration, accompanied by instructions from the Committee.

When the United States Trade Representative notifies Canada of his intention to launch the challenge, he must include a statement as to why the challenge is being launched.

The Committee must be established by February 8, 1993.