

1.13 Chapters 18 and 19: Dispute Settlement and Institutional Provisions

The unique dispute settlement mechanisms, established under Chapters 18 and 19 of the FTA, continued to be used to resolve trade disputes. Chapter 18 applies to all bilateral trade issues arising under the FTA except for the review of anti-dumping and countervailing duty cases (AD/CVD), which are dealt with under Chapter 19. Disputes over financial services are dealt with in Chapter 17 and Investment Canada decisions are not subject to the dispute settlement mechanism of the FTA.

A. Chapter 18:

Since the coming into force of the FTA, bilateral consultations under Article 1804 have been held on: cable retransmission rights (request by both parties), fresh fruit and vegetable labelling (U.S. request), plywood (Canadian request), wines and spirits (U.S. request), wool (Canadian request) and lobster (Canadian request).

Two disputes have been carried through to panels for advisory decisions. The first, in 1989, involved a dispute over Canadian landing requirements for West Coast salmon and roe herring. The panel concluded that a landing requirement is a legitimate conservation measure, but suggested that the direct export of ten to twenty per cent of the catch from the grounds would not defeat this purpose. Canada subsequently announced it would adopt the panel report and accordingly developed a plan of implementation in consultation with the USA and the B.C. government and industry.

In the 1990 dispute on the application of the U.S. minimum size restrictions to Canadian lobster imports, the Panel ruled that the U.S. federal measure was an "internal" measure, not a restriction on importation as Canada had argued.

B. Chapter 19:

Fourteen panels have been requested to date. All but one were initiated by Canadian exporters contesting U.S. countervail and anti-dumping findings. Canadian challenges have been undertaken for steel rails, red raspberries, paving parts, salted codfish and pork. The U.S. initiated complaint involved dumping duties imposed by Canada on electrical induction motors imported from the USA.

The panel process has been completed in all but five of the panel requests. The first decision of a Chapter 19 panel was issued December 15, 1989 with a unanimous finding that the U.S. Department of Commerce's margin of dumping findings were defective against two of three B.C. raspberry exporters and were