

ance in support of Quebec and NHCI. This Panel Review was consolidated with the Panel Review concerning the ITC determination of injury with respect to the concurrent anti-dumping investigation.

On August 27, 1993, the panel found that the ITC's determination that pure and alloy magnesium constituted one class of merchandise was not supported by the record. Evidence of the existence of similar distribution channels and shared core production processes was considered by the panel to be an insufficient basis on which to reasonably conclude that only one like product existed.

The panel also found the ITC's alternative conclusion—that even if two separate products existed, it would have reached an affirmative material injury determination with respect to each of these industries—was not supported by adequate analysis concerning the impact of imports on the domestic industry. The determination was remanded to the ITC for separate injury determinations for pure and alloy magnesium.

On January 27, 1994, the panel upheld the ITC's injury determination on remand. The ITC determined that the U.S. industry producing pure magnesium was materially injured by reason of subsidized (and dumped) Canadian imports of pure magnesium, and that the U.S. industry producing alloy magnesium was materially injured by reason of subsidized Canadian imports of alloy magnesium. The panel found that the ITC's determination that there was an absolute increase in Canadian imports relative to consumption and a steady decline in prices for both U.S.- and Canadian-produced alloy magnesium was adequately stated and supported by substantial evidence.

With respect to the impact of Canadian imports on domestic producers, the ITC based its determination of causality on: evidence of a high degree of substitutability between imported and domestic magnesium; the relatively inelastic demand for the product; and the significant increase in Canadian imports, coinciding with a decline in market share and revenues for U.S. producers. The complainants argued that non-price factors in the market were responsible for the growth in Canadian imports and the difficulties experienced by U.S. producers. The panel conceded that there was evidence to support this position but it determined that the ITC had acted within its discretion in finding that non-price factors did not negate the significance of price in buyers' purchasing decisions.

5.3.2 Second Review

On August 10, 1992, the Government of Quebec filed a Request for a Binational Panel Review (FTA) of Commerce's affirmative final determination. NHCI also filed a request for Panel Review in this matter.

On August 16, 1993, the Binational Panel remanded in part and affirmed in part Commerce's final determination. The panel affirmed Commerce's policy of assuming that the petitioner has standing, in the absence of any expressed opposi-