

On October 7, 2003, Canada hosted this year's meeting of the NAFTA Commission. At this meeting, ministers approved a series of practical steps to promote further trade and instructed officials to continue to review opportunities for further trilateral work. On market access, ministers asked officials to pursue further liberalization of the NAFTA rules of origin and to study the three countries' most-favoured-nation tariffs, in order to determine ways to reduce transaction costs. The necessary consultations with domestic industries to identify which products could be covered by this exercise were launched on December 20, 2003.

The October 7 Commission meeting also produced further improvements to the transparency and efficiency of the Chapter 11 (Investment) dispute settlement process. The three ministers approved guidelines for submissions from non-disputing parties, as well as a standardized form for notice of intent to submit a claim. These important steps build upon the Notes of Interpretation issued in July 2001. In addition, ministers directed officials to continue seeking ways to improve implementation of the investment chapter. In a further step to enhance the transparency of the Chapter 11 dispute settlement process, Canada and the United States affirmed that they will consent to open public hearings in all Chapter 11 arbitrations to which either is a party, and that they will request the consent of disputing investors to such open hearings. Canada and the United States will continue to work with Mexico on this matter.

The ministers also welcomed the establishment of the North American Steel Trade Committee, which, among other objectives, will promote continued cooperation among the three governments on international steel policy matters and work to reduce remaining distortions in the North American steel market.

Settling Disputes under NAFTA

NAFTA provides a dispute settlement process to resolve the disputes that arise in such a large trade and economic relationship. When the parties cannot resolve their differences through informal discussion in the relevant committees and working groups, or through other consultations, NAFTA provides for expeditious and effective dispute settlement procedures.

Chapter 20 of NAFTA includes provisions relating to the avoidance or settlement of disputes over the interpretation or application of NAFTA, except for trade remedy matters covered under Chapter 19. Chapter 19 provides a unique system of binational panel review as an alternative to judicial review for domestic decisions on anti-dumping and countervailing duty matters. There are also separate dispute settlement provisions for matters under Chapters 11 (Investment) and 14 (Financial Services).

From November 1, 2002, to November 1, 2003, two Chapter 19 panels reviewing decisions made by Canadian agencies involving U.S. products were active. These decisions centred on dumping and injury determinations relating to iodinated radiographic contrast media. During the same period, the panel proceeding regarding the injury determination was completed. Four decisions, including decisions on remand, were issued in relation to these reviews.

In addition, seven requests for Chapter 19 panel review of decisions made by U.S. agencies regarding Canadian products were filed during the same period, involving steel wire rod, alloy magnesium, durum wheat and hard red spring wheat. There were also requests for reviews related to anti-dumping and countervail determinations for both of these wheat products and injury for hard red spring wheat. During this time, 12 reviews of decisions made by U.S. agencies regarding Canadian products were active. The reviews involved products such as magnesium, carbon steel, softwood lumber, steel wire rod, durum wheat and hard red spring wheat. Also during that period, four panel decisions were issued involving magnesium and softwood lumber, while one review involving magnesium was completed and another two involving dumping determinations on durum wheat and hard red spring wheat were withdrawn.

One Extraordinary Challenge Committee (ECC) proceeding involving the United States and Canada, which relates to pure magnesium from Canada, was requested and is still active. Another ECC proceeding involving the United States and Mexico, which relates to grey Portland cement and clinker from Mexico, was completed.