affect the panelist's independence and impartiality or that might reasonably create the appearance of bias. Once appointed to a panel, members were required to make a reasonable effort to become aware of, and to disclose, any interests or relationships that could affect their ability to serve impartially. Hart explained that the disclosure obligations were not to be so severe that it would be impractical for members of the legal or business community to serve as panelists, and deprive the Parties and participants of the services of those who might be best qualified to serve as members. Panelists were therefore only required to disclose relationships or interests that could have bearing on the impartiality or integrity of the process.

Along with Justice Hart, Justice Morgan dismissed the American allegations about the conduct of the two panelists. Both members of the ECC demonstrated that Dearden and Hunter had submitted the proper disclosure statements when being considered for the panel. Moreover, the Canadian and American governments approved them when forming the binational panel in 1992. Indeed, Justice Hart held that "allegations were not raised against Dearden or Hunter until after the panel had twice decided the issue against the position of the United States although there was ample opportunity to do so." He hinted that political interference and lobbying efforts were behind the USTR's charges. Hart reprimanded the USTR for publicly bringing misconduct allegations against the two panelists without waiting for all of the facts to be disclosed or for the two governments to investigate the charges.[71]

Justices Hart and Morgan acknowledged that the firms that Dearden and Hunter worked for had represented Canadian lumber groups in the past. However, they insisted that the American allegations about conflict of interest were unfounded because neither of the two panelists had a direct link to those other groups when serving on the panel that reviewed the DOC's subsidy determination. Furthermore, Hart and Morgan felt that it was ironic that the USTR brought conflict of interest charges against Dearden when he had done legal work for the USTR itself. Dearden had earned approximately $25,000 after he provided the American government with legal advice on Chapter 19 during the FTA negotiations. They also observed that two American panelists in the softwood lumber case had also provided legal counsel to the American government. One American panelist had billed an American governmental agency $3.8 million in 1992-1993. The other had been a sitting member of the Advisory Committee on International Law for the U.S. Department of State while serving on the panel. Both Hart and Morgan questioned why those facts had not been raised by the USTR in the conflict of interest charges against Dearden - surely their activities with the U.S. government were just as informative,

[71] Justice Gordon L.S. Hart, *United States-Canada Free Trade Agreement Article 1904.13 Extraordinary Challenge Committee Proceedings in the matter of Certain Softwood Lumber Products from Canada ECC-94-1904-01 USA, 30-31.*