

PART SIX: INSTITUTIONAL PROVISIONS

Chapter 18: Institutional Provisions

Chapter 19: Binational Panel Dispute Settlement in Antidumping and Countervailing Cases

Article 1904: Final Antidumping and Countervailing Duty Determinations

The Elements of the Agreement refer to "final orders" arising from determinations issued by the Department of Commerce and the International Trade Commission. The text defines "final orders" as including both positive and negative final determinations.

To maintain the integrity of the panel process, 1904.13 creates an "extraordinary challenge procedure" to allow a Party to challenge a decision where a member of the panel may be biased or where the panel has departed from a fundamental rule of procedure, or has manifestly exceeded its powers. This procedure is an extraordinary one and is not intended to allow for a review of the merits of the panel decision. By establishing such a procedure, there will be no need for domestic review where there are allegations of bias or excess of jurisdiction.

1904.5 provides for maintaining the rights of individuals to judicial review in anti-dumping and countervailing duty cases. Canada, upon the request of an individual, will request the establishment of a Panel if that individual would otherwise have had such rights under the domestic laws of Canada. The situation will be similar in the United States.

Article 1911: Definitions: Final Determinations

To permit importers and exporters of both Canada and the United States a balanced opportunity in antidumping and countervailing duty cases, the Special Import Measures Act and the Federal Court Act will be amended to permit review by the panel of certain final determinations of the Deputy Minister of National Revenue. This ensures that these final determinations will be subject to review in both countries.

Annex 1901.2: Membership of Panels

A majority of the five-member panel including the chairman will be lawyers, given that the panel replaces judicial review. However, in light of the breadth of the Trade Agreement, non-lawyers with familiarity with international trade law are also eligible to serve as panelists.