

FTA INJURY PANEL

On July 24, 1992, the Government of Canada, the affected provinces and the Canadian industry appealed the final determination of injury by the ITC to a binding binational review panel under Chapter 19 of the FTA. The Injury Panel reported its findings on July 26, 1993, ruling that the ITC's conclusion that imports of lumber from Canada injured the U.S. industry was not supported by substantial evidence.

In response to the panel's ruling, the ITC reconsidered the information and again concluded, on October 25, 1993, that the U.S. lumber industry was injured by imports of Canadian lumber. On January 28, 1994, the FTA Injury Panel again concluded that the ITC decision was not sustainable.

On March 7, 1994, by a vote of 3 to 2, the ITC maintained its original determination that Canadian softwood lumber exports cause material injury to the U.S. lumber industry. The ITC submitted to the panel its redetermination to that effect on March 14, 1994.

On July 6, the FTA Injury Panel reaffirmed its January 28, 1994, ruling that the ITC has failed to provide substantial evidence to support its original finding.

EXTRAORDINARY CHALLENGE PROCEDURES UNDER THE CANADA-U.S. FTA

Article 1904.13 of the FTA allows for an extraordinary challenge to a panel ruling only in cases where a panel member is guilty of bias or a serious conflict of interest, or has materially violated the code of conduct; or where the panel seriously departs from a fundamental rule of procedure or manifestly exceeds its jurisdiction. In addition, the challenged action must have materially affected the panel's decision, and must threaten the integrity of the binational panel review.

An Extraordinary Challenge Committee must be established within 15 days of a request for such a committee. The Committee comprises three members, who are selected from a 10-person roster of judges or former judges of a federal court of the United States and a court of superior jurisdiction in Canada. Each country selects one panel member, and the third is chosen by both or by lot from the roster.

Written arguments must be filed with the Committee within 21 days after the request for a Committee has been filed.

The Committee was formed on April 25, 1994 and held oral hearings on June 13 and 14, 1994.