

BACKGROUND

Decision of the Panel

The Chapter 18 dispute settlement panel on the issue of the treatment of interest costs under the Canada-U.S. Free Trade Agreement (FTA) rules of origin has endorsed the position taken by Canada. The report states that all bona fide interest payments on debt of any form, undertaken to finance the acquisition of real property, a plant and/or equipment, are includable as eligible costs in the FTA content test.

The decision of the five-member panel was unanimous.

Background to the Issue

This issue concerns what sort of interest costs are includable as territorial content for the purposes of the territorial content requirement in the FTA rules of origin. The issue first arose in 1989, and discussions between Canadian and U.S. officials over the following year failed to resolve the question.

On May 22, 1991, the United States moved unilaterally to issue an administrative decision, ruling that only interest costs paid in connection with a mortgage on real estate used to produce goods in Canada or the United States would be considered eligible. This position was subsequently reflected in U.S. Customs regulations published on January 22, 1992.

Canada took the view that the text of the FTA contemplated, and common business practice suggested, that all interest costs that could reasonably be related to the acquisition of land, buildings or equipment used in the production of the goods are eligible.

After additional attempts to find a satisfactory resolution of the problem proved fruitless, Canada requested a dispute resolution panel on January 6, 1992.

Resolution of the Dispute

Under Chapter 18 of the FTA, the panel submits its report to the Trade Commission, which has 30 days to consider it and reach a mutually satisfactory resolution of the dispute. For Canada, a satisfactory resolution will include the withdrawal of the U.S. administrative decision on interest and appropriate revision to the U.S. Customs regulations, effective January 1, 1989.

Implications for the FTA

The panel report demonstrates that the FTA dispute settlement mechanism works and works well.