determination of whether a concentration of dumped imports existed in the market was an issue within its jurisdiction. Consequently, the panel decided that the "correctness" standard of review should be used. The panel justified its decision because the regional nature of the market was a determination that the CITT had to make before it could exercise jurisdiction to decide the issue of material injury.[50]

The *Certain Beer* panel may have erred when deciding to employ the "correctness" standard. As explained above, Canadian courts had only used the "patently unreasonable" standard when examining the CITT because of its privative clause. The panel may have misapplied the test by improperly assessing the relevant legislative provisions and the nature of the CITT's expertise in dealing with the issues at hand. The panel felt that the CITT should be allowed to develop new tests (e.g., distribution tests, ratio tests, density tests) to determine if there was a concentration of dumped imports in a regionally concentrated market. By stating that the CITT had to be allowed to develop new tests of concentration, the panel effectively held that the determination of whether a concentration of dumped imports in the B.C. market was a jurisdictional issue.[51] Consequently, the panel should have perhaps employed the "patently unreasonable" test when considering an issue within an agency's jurisdiction as Canadian courts had always done in the past .

Michael Greenberg, Chairman of the *Certain Beer* panel, gave credence to this argument when he dissented with the majority's use of the standard of review. He felt that the panel should have applied the "patently unreasonable" test for jurisdictional issues. Greenberg stated:

> In my view, this difference [between the "correctness test" and the "patently unreasonable" test] is fundamental. It affects the credibility of the binational panel review process, which should include a proper curial deference to the expertise of the administrative agencies entrusted with the task of interpreting and applying the national antidumping and countervailing duty laws. As an ad hoc panel, we should be particulary sensitive to act with the judicial restrain called for by the Supreme Court in mandating the "patently reasonable" standard of review

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[50] *Binational Panel Review in the matter of Certain Beer Originating in or exported from the United States of America by G. Heileman Brewing Company, Inc., Pabst Brewing Company and the Stroh Brewery Company for use or consumption in the Province of British Columbia,* CDA-91-1904-02, 16.

[51] Joel Robichaud, "Chapter 19 of the FTA and NAFTA: The First Seven Years of Judicial Review in Canada," (Ottawa: Unpublished, 1995), 17-19.