

TRADE LAW

On January 1, 1989 the Canada-U.S. Free Trade Agreement (FTA) entered into force, bringing with it a number of legal issues relating to the ongoing implementation of the FTA that have occupied the Legal Bureau.

To date, two panels established under Chapter 18 of the FTA have issued their decisions. The first, released in October 1989, addressed Canada's landing requirement on salmon and herring. The panel found that a 100% landing requirement was inconsistent with the prohibition on export restrictions in the FTA, but went on to indicate that a landing requirement in the order of 80-90% would have been consistent. On the basis of the panel report, Canada and the United States were able to reach a negotiated settlement.

The second panel, which issued its decision in May 1990, addressed the consistency with the FTA of the U.S. federal law restricting imports of Canadian lobster into the U.S. that were shorter than the U.S. federal minimum size. In a split decision, the majority of the panel decided that the American measure was not a restriction on importation, but rather was an internal measure. The Panel did not rule on whether the measure was consistent with the national treatment obligations that apply to internal measures. Discussions following the panel led to a draft agreement that was ultimately not acceptable to the Canadian fishing industry. Subsequently, the U.S. has decided not to make further increases in its minimum lobster size and to explore the possibility of implementing a variety of conservation measures similar to those that Canada has had in place for a number of years.

Consultations under Chapter 18 have been held at the instigation of both Canada and the USA on several other matters, but none of these have proceeded to a panel pending continuing discussions aimed at resolving the matter in dispute.

In addition to the FTA, Canada sustains a healthy trade relationship with many countries through the multilateral discipline of the General Agreement on Tariff and Trade (the GATT) as well as a number of bilateral trade agreements. The Bureau has provided advice on the drafting of new legal instruments in the trade area, both in terms of the Uruguay Round and for the various bilateral trade agreements and Memoranda of Understanding to which Canada is a party or signatory.

In the past year, increased interest in trade with Eastern Europe and South America has led to the Legal Bureau assisting in the revision of existing, or the development of new, bilateral trade agreements or arrangements some of which establish commissions.