

DISPUTE SETTLEMENT UNDER THE CANADA-U.S. FREE TRADE AGREEMENT (FTA) - OCTOBER 1992 TO OCTOBER 1993

Chapter 19 of the Free Trade Agreement provides for review by binational panels of final anti-dumping and countervailing duty determinations. Disputes arising from the interpretation or application of the FTA are resolved pursuant to Chapter 18.

Chapter 19 decisions

There were a number of panel decisions relating to the export to the United States of live swine from Canada. The U.S. imposed duties on Canadian live swine in 1985. Since the imposition of duties predates the entry into force of the Free Trade Agreement, Canada has not been able to seek a review of the 1985 decision. However, Canada has used Chapter 19 to challenge final determinations in administrative reviews by the U.S. Department of Commerce made after January 1989.

The fourth U.S. administrative review of imports of Canadian live swine was the subject of the decision of a binational panel in Live Swine from Canada ("Live Swine IV" (October 30, 1992). The panel ruled that Canada's National Tripartite Stabilization Scheme for Hogs did not confer a countervailable subsidy on Canadian producers of live swine. The panel decision arose from a Canadian challenge to an administrative review conducted by the U.S. Department of Commerce, which calculated a countervailing duty rate for live swine. The panel ordered the Department of Commerce, *inter alia*, to recalculate its countervailing duty rate on Canadian live swine in accordance with the panel's decision. In its determination on remand, Commerce confirmed its original decision on its countervailing duty rate. A review of the remand decision resulted in the panel remanding the second determination, in part, with instructions.

Both the original and remand decisions in Live Swine IV were challenged by the United States pursuant to the Extraordinary Challenge procedure in Article 1904.13 of the FTA. Under this procedure, either country can seek a review of a binational panel ruling by an Extraordinary Challenge Committee on the grounds, *inter alia*, that the panel manifestly exceeded its powers, authority or jurisdiction. The U.S. argued that the panel in the Live Swine IV case exceeded its