

1.13 Chapters 18 and 19:

A. Dispute Settlement

Dispute resolution under the Free Trade Agreement is treated under both Chapter 18 and Chapter 19. The mechanism contained in Chapter 18 applies to all bilateral trade issues arising under the Free Trade Agreement except for the review of anti-dumping and countervailing duty cases (AD/CVD), which are dealt with under Chapter 19, and financial services under Chapter 17.

Chapter 18:

Chapter 18 allows for flexibility in the management of bilateral trade issues. Identification of the facts of a trade problem through to settlement of an actual dispute is a graduated process moving from official consultations, to a formal Commission meeting and finally, if required, to formal submission to a five-person panel.

Bilateral consultations under Article 1804 of the FTA have been held on several issues including: cable retransmission rights (request by both countries); fresh fruit and vegetable labelling (U.S. request); lobsters minimum size requirements (Canadian request); plywood (Canadian request); wines and spirits (U.S. request); and wool (Canadian request).

The first panel constituted under Chapter 18 of the FTA considered a dispute involving the Canadian landing requirement for West Coast salmon and roe herring. Its final report, presented on October 16, 1989 held that a landing requirement is a legitimate conservation measure but suggested that the Canadian requirement need not apply to 100 per cent of the catch. It suggested that Canada allow 10 to 20 per cent of the catch to be exported directly from the grounds. Canada announced on November 6 that it would adopt the Report. The federal government is working towards the implementation of the Panel findings in consultation with the B.C. government, industry and the U.S. government.

Canada has recently requested the establishment of a second panel to resolve the issue of U.S. restrictions on imports of Canadian live lobsters. The panel report is expected in mid-May.

Chapter 19:

While the Chapter 18 process is quite general, Chapter 19 is much narrower in its focus and more technical in its application. It addresses only countervailing and anti-dumping cases.

Operating under domestic anti-dumping and countervail laws, administrative bodies or tribunals in each country investigate