

To begin the process, one of the parties must request a Panel Review. The request must be made within 30 days of publication of a final determination.¹⁸⁷ Only final determinations are subject to review.¹⁸⁸ A NAFTA party must seek a review if it is requested by a domestic private party that would have standing to bring a case in a domestic court. Once the decision is made to have a Chapter 19 Panel Review, the determination cannot then be subject to domestic judicial review in either country concerned.

NAFTA provisions require the establishment of a roster of panellists who serve when one country wishes to review a CVD or an AD decision of any other country to the agreement. From this roster (while a panellist need not be chosen from the roster, a panelling normally should be), five panellists are normally chosen by involved Parties to review a CVD or AD decision. Their decision is final and binding on the parties, subject to an extraordinary challenge. A panel may uphold a final determination or remand it for changes that the panel feels are necessary. In other words, the panel has no jurisdiction to overturn decisions; it can only refer the matter back to the investigating authority.¹⁸⁹

An Extraordinary Challenge proceeding is heard before a panel of three retired judges from the countries involved in the dispute. This procedure was designed to allow further appellate review for cases of gross misconduct, bias or serious conflict of interest on the part of the panel. A review can be requested only by a government. In a case of violation, the decision will either be remanded to the original panel or vacated. If the decision is vacated, a new panel will be chosen.

187 *Ibid.*, § 1904 (4).

188 *Ibid.*, § 1905.

189 *Ibid.*, § 1901.2