

## 6.4 JUDICIALIZATION

Whatever the final results of these specific cases, it is important to keep in mind that:

- once a review is undertaken and a decision has been made, the case can not be brought again unless the relevant legislation is changed; and
- any changes to the law are themselves subject to FTA review.

The down side of this first provision is that cases must be prosecuted correctly the first time. Vigilance must be maintained to ensure that no opportunities are missed to take action against the existing or future practices of the other side.

While this may seem to be less than co-operative, it has often been the case that factors external to specific cases have played a larger role in determining the initiation and progress of complaints than have the central concerns of an industry with specific complaints. The new Canadian provision allowing companies and individuals to bring actions directly to the CITT should reduce this tendency somewhat, but it must be noted that governments still retain the exclusive right to prosecute the final appeals.

Finally, it had been hoped that by judicializing the process, building in firm deadlines and timetables, and by placing the process in an international forum, the role of politics in the process could be reduced. As noted above in section 2.2.3 Dispute Settlement, there still is room for much political interference. An examination of the current cases between Canada and the United States indicates that the delay, consultation, and negotiation that have been a feature of the past treatment of disputes will likely remain. Once again, rather than utilizing the mechanisms as designed, bargaining and negotiation have delayed resolution and each side has resorted to unilateral action to try to have its way. The early experience with the new procedures suggest that some of the intentions of the FTA negotiators may be abrogated by those seeking protection or delay.

Similar situations exist with respect to border broadcasting provisions<sup>147</sup>, the U.S. system of classification of wool products, and a number of the Canadian practices which were listed in the U.S. Super 301 inventory of items for priority action noted above<sup>148</sup>.

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<sup>147</sup> Both countries have brought complaints in this area.

<sup>148</sup> See 2.5.2.3 Canada and Super 301.