



news release

Date **January 22, 1993**

No. 13

For release

MINISTERS DISAPPOINTED BY U.S. DECISION TO REQUEST EXTRAORDINARY CHALLENGE ON LIVE SWINE

The Honourable Michael Wilson, Minister of Industry, Science and Technology and Minister for International Trade, and the Honourable Charles Mayer, Minister of Agriculture, today said they were very disappointed by the United States' decision to request an Extraordinary Challenge Committee to review the October 30, 1992 ruling by a panel established under the Canada-U.S. Free Trade Agreement (FTA), dealing with the dispute over live swine.

"We are very disappointed at this action," said Mr. Wilson. "Article 1904 of the FTA allows for an extraordinary challenge under strictly prescribed circumstances. In Canada's view, there are no grounds for an extraordinary challenge in this case. Together with the Canadian Pork Council and the provinces, we presented a strong case to the panel, and we are confident that Canada's position will be upheld."

By a vote of four to one, the FTA panel last October ruled that Canada's National Tripartite Stabilization Program did not confer countervailable benefits to Canadian producers of live swine during the period from April 1, 1988 to March 31, 1989. In a dissenting opinion, however, the panel chairman argued that the majority decision distorted and misapplied U.S. law.

As a result of the ruling, the U.S. Department of Commerce (DOC) was ordered to recalculate its countervailing duty rate on imports of live swine from Canada. Canadian producers were entitled to receive refunds of duties already paid. The total financial benefit to the Canadian industry is expected to amount to close to \$8 million.

"This process works," said Mr. Mayer. "I am hopeful we will be just as successful in this proceeding as we were in the previous extraordinary challenge launched by the United States in connection with imports of Canadian pork."

The Ministers noted that in the only previous extraordinary challenge, on June 14, 1991, the Extraordinary Challenge Committee upheld Canada's position and dismissed a U.S. challenge concerning imports of Canadian pork. The United States complied with a final and binding decision, which ensured that \$20 million in duties were refunded to Canadian exporters. It was stressed at that time that the role of the Extraordinary Challenge Committee was to review binational panel decisions in exceptional circumstances only.

"We will be working closely with the provinces and producers to develop and present a strong Canadian response to the Committee," Mr. Mayer said.

The Extraordinary Challenge Committee comprises three members selected from a roster of five retired Canadian judges and five retired U.S. judges previously designated by the two governments. Decisions of an Extraordinary Challenge Committee are binding. The Committee may affirm the original panel decision, vacate it, or remand it to the original panel for action not inconsistent with the Committee's decision. The Committee's decision should typically be rendered within 30 days of its establishment.

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BACKGROUND

Extraordinary Challenge Procedures Under the Canada-U.S. Free Trade Agreement

Under Chapter 1904 of the Canada-U.S. Free Trade Agreement, either country can request an Extraordinary Challenge Committee to review a binational panel ruling on any of the following grounds:

- a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct;
- the panel seriously departed from a fundamental rule of procedure; or
- the panel manifestly exceeded its powers, authority or jurisdiction.

It also must be determined that any one of these grounds has materially affected the panel's decision and threatens the integrity of the binational panel review process.

An Extraordinary Challenge Committee must be established within 15 days of a request for such a committee. The Committee comprises three members, who are selected from a 10-person roster of judges or former judges of a federal court of the United States or a court of superior jurisdiction in Canada. Each country selects one panel member, and the third is chosen by both or by lot from the roster.

All written arguments must be filed with the Committee within 21 days after the request for a Committee has been filed.

Annex 1904.13 of the FTA provides that the Committee must render its decision typically within 30 days of its establishment. The decision of the Committee is binding on both governments. The Committee can extend the time limits in the interests of fairness and justice, as was the case in the previous Extraordinary Challenge launched in 1991.

In rendering its decision, the Committee can affirm the decision of the binational panel, vacate the decision, or remand the decision back to the panel for further consideration, accompanied by instructions from the Committee.

When the United States Trade Representative notifies Canada of his intention to launch the challenge, he must include a statement as to why the challenge is being launched.

The Committee must be established by February 8, 1993.