
news release

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EXTRAORDINARY CHALLENGE COMMITTEE UPHOLDS CANADIAN POSITION IN PORK CASE

The Minister for Industry, Science and Technology and Minister for International Trade, Michael H. Wilson, and Agriculture Minister Bill McKnight said they were pleased with today's decision by the Extraordinary Challenge Committee, established under the Canada-U.S. Free Trade Agreement (FTA), in connection with the disposition of the long-standing dispute over pork trade.

The Committee sustained Canada's position that a binational FTA panel last year acted within its authority in ordering a re-examination of a finding by the U.S. International Trade Commission (ITC) that Canadian pork exports to the United States threatened to injure producers in that country.

The Extraordinary Challenge Committee's decision is binding. As a result, the pork countervailing duty order will be revoked, the further collection of duties stopped, and some \$20 million in duties paid to date refunded.

The Committee, in a 3-0 vote, rejected the U.S. claim that the binational panel dealing with the injury question had exceeded its jurisdiction under the FTA.

The Committee held that the panel's decision did not threaten the integrity of the binational review process, which is one of the criteria for an Extraordinary Challenge.

On page 8 of its ruling, the Committee states: "... the 'extraordinary challenge' procedure is not intended to function as a routine appeal. Rather, the decision of a binational panel may be challenged and reviewed only in 'extraordinary' circumstances." The Order further states: "The request for an extraordinary challenge is dismissed for failure to meet the standards of an extraordinary challenge set forth under FTA Article 1904.3."

Both Ministers said the Committee's ruling had confirmed the advantages offered by the FTA's binational panel review system in respect of countervailing or anti-dumping duty proceedings. They recalled that one of the key objectives of the FTA was to protect Canadian exports against arbitrary application of U.S. trade remedy laws.

"The Committee's decision is final and binding: the system has now been tested and proved," Mr. Wilson said.

"Moreover, the decision confirms the Government's position that the extraordinary challenge procedure is not an appeal procedure and is to be used only in truly extraordinary cases."

Mr. McKnight said, "The outcome is a victory that the Canadian pork industry richly deserves. All industry members are to be congratulated for their persistence in demanding -- and obtaining -- a fair and impartial hearing of their case."

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BACKGROUND INFORMATION: GATT AND FTA PANELS ON PORK

In 1989, U.S. authorities imposed countervailing duties on Canadian exports of fresh, chilled and frozen pork to the United States. There are three panel proceedings stemming from this action. One was a General Agreement on Tariffs and Trade (GATT) panel, while two were binational panels under the Canada-U.S. Free Trade Agreement (FTA). One FTA panel concerned itself with the subsidy findings by the U.S. Department of Commerce (DOC). The other FTA panel addressed the finding of a threat of injury by the U.S. International Trade Commission (ITC).

To establish and maintain a countervailing duty order, a country must show not only that an imported product has been subsidized, but also that its industry has been injured or threatened with injury.

1.0 GATT Panel

On August 3, 1990, the GATT Panel on Pork from Canada released its report to Canada and the U.S. The panel supported Canada's position and held that the U.S. acted in a manner inconsistent with its GATT obligations by applying the automatic passthrough provisions in U.S. countervailing law to imports of pork from Canada. Canada is urging the U.S. to adopt and implement the GATT panel report.

2.0 FTA Subsidy Panel

The FTA subsidy panel issued its report on September 28, 1990. The panel remanded the matter back to the DOC for reconsideration of certain issues.

On December 7, 1990, the DOC issued its remand decision pursuant to the September 28, 1990 instructions from the subsidy panel. In this decision, the DOC again found that two Canadian programs (the National Tripartite Stabilization Program and Quebec's Farm Income Stabilization Program) were countervailable, and also confirmed the arbitrary rate it had established for benefits under Alberta's Crow Benefit Offset Program.

The Canadian parties objected to the results of this remand determination and requested that it be reviewed by the FTA subsidy panel to ensure that it conformed with that panel's original instructions. The panel then conducted this review and issued its report on March 8, 1991.

In its report of March 8, 1991, the subsidy panel accepted the DOC's ruling with respect to the Tripartite Program, concluding that it was countervailable because it provided benefits to a specific group of industries. However, the panel remanded the

Quebec and Alberta programs back to the Department for reexamination.

On April 11, 1991, the DOC reported to the subsidy panel that it would comply with the panel's findings of March 8, 1991. Thus it eliminated the benefits attributed to the Quebec program from the subsidy rate, and also modified its original subsidy calculation for the Alberta program. As a result of the December and April decisions, the countervailing duty rate on imports of pork from Canada will be reduced from \$0.08/kg to \$0.03/kg.

3.0 FTA Injury Panel

On August 24, 1990, the FTA injury panel issued its report. The Canadian pork industry had challenged the ITC threat of injury determination on the grounds that the finding was largely based on faulty statistical information regarding Canadian pork production.

The injury panel, in a unanimous decision, confirmed the Canadian argument that the threat of injury finding was not supported by the evidence on the record. The panel remanded the matter back to the ITC for reconsideration of a number of its original findings. The ITC issued its remand determination on October 23, 1990. That decision was reviewed by the FTA panel, which issued its report on January 22, 1991. The panel again held that there was insufficient evidence to support the ITC's findings of a threat of injury and instructed the ITC to review its findings accordingly.

On February 12, 1991, the ITC issued a second, revised injury finding pursuant to the instructions issued on January 22 by the FTA panel reviewing the matter. In this finding, the ITC complied with the panel's instructions and held that there was no threat of injury, while making clear its disagreement with the panel.

On March 29, 1991, the U.S. Trade Representative requested the establishment of an Extraordinary Challenge Committee to review the January 22 decision of the FTA injury panel. This request was based on the allegation that the panel had seriously departed from a fundamental rule of procedure or manifestly exceeded its jurisdiction, and that these actions threatened the integrity of the FTA panel review process. The members of the Extraordinary Challenge Committee are Mr. Justice Gregory Evans and Mr. Justice Willard Estey of Canada and Judge Arlin Adams of the U.S. as Chairman.

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