



news release

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MACLAREN DETERMINED TO CONTEST U.S. EXTRAORDINARY CHALLENGE ON SOFTWOOD LUMBER

The Honourable Roy MacLaren, Minister for International Trade, has expressed the Canadian government's determination to contest a U.S. challenge of the Canada-U.S. Free Trade Agreement (FTA) binational panel on softwood lumber. The U.S. government today formally requested the establishment of an Extraordinary Challenge Committee (ECC) to review the panel decision.

The U.S. government's request for an ECC alleges that the panel did not apply the correct standard of review, and that two Canadian panelists materially breached the disclosure obligations of the Code of Conduct.

"We see absolutely no grounds for these allegations," said Mr. MacLaren. "The panel correctly found in Canada's favour because of the strength of our case, and we are confident that this will again be demonstrated in the ECC."

The subsidy panel concluded its work on March 7, 1994, with a ruling that provincial stumpage programs and British Columbia log export restrictions were not countervailable subsidies. The U.S. has now exercised its rights under the FTA rules to request an ECC within 30 days of the panel's issue of a Notice of Final Panel Action. The ECC will be established within 15 days and is expected to render its decision in the next few months.

In addition to the subsidy panel, a second FTA panel on softwood lumber is considering the issue of injury in the countervailing duty case. This panel has also ruled in Canada's favour in finding that the U.S. International Trade Commission (ITC) has not substantiated its determination that Canadian exports of softwood lumber were injuring the U.S. lumber industry. The FTA injury panel has until June 13, 1994 to review the ITC's most recent determination on injury.

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For further information, media representatives may contact:

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Backgrounder

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 of 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, 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.

Written arguments from both countries must be filed with the Committee within 21 days of the request for a committee.

Article 1904.13 of the FTA states that the decision should be rendered by the Committee typically within 30 days of the request. The Committee can extend the time limits in the interests of fairness, as was the case in the previous Extraordinary Challenge launched in June 1993.

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 notified Canada of his intention to launch the challenge, he included a statement as to why the challenge was being launched.

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