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# news release

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## MINISTERS DISAPPOINTED BY U.S. DECISION TO GRANT EXTRAORDINARY CHALLENGE IN PORK COUNTERVAIL CASE

International Trade Minister John C. Crosbie and Agriculture Minister Don Mazankowski today said they were disappointed by U.S. Trade Representative Carla Hills' decision to establish an Extraordinary Challenge Committee to review the January 22 ruling by a panel established under the Canada-U.S. Free Trade Agreement (FTA) dealing with the Canada-U.S. dispute over fresh, chilled and frozen pork.

Article 1904 of the FTA allows for an extraordinary challenge to a panel ruling only upon grounds of gross misconduct, serious violations of a fundamental rule of procedure, or manifest excess of jurisdiction. In addition, the challenged action must have materially affected the panel's decision and threaten the integrity of the binational panel process.

"In Canada's view, there are no grounds for an extraordinary challenge in this case," Mr. Crosbie said. "In these circumstances, the decision by the United States to exercise its right to a challenge does not accord with the letter and spirit of the FTA. We have conveyed these views to the U.S. Administration and we will now be making the same arguments to the Extraordinary Challenge Committee."

The FTA panel unanimously ruled on January 22 that the finding by the U.S. International Trade Commission (ITC) that imports of Canadian pork threaten to injure the American industry was not supported by substantial evidence. In compliance with that panel ruling, the ITC, on February 12, reversed its threat-of-injury finding. When implemented, this would have resulted in the revocation of the countervailing duty order, a stop in the collection of further duties, and a refund of approximately \$17 million in duties already paid.

The U.S. National Pork Producers Council argued that the FTA panel had exceeded its jurisdiction, and its request for an Extraordinary Challenge Committee was today granted by the U.S. Trade Representative.

Mr. Mazankowski said, "The decision is a setback not only to the Canadian industry but to the FTA, which depends upon mutual respect for the objective decision-making process contained in the agreement."

An 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. Canada and the United States each select one member from the roster and these two then select the third; if necessary, however, the third may be selected by lot. 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 the request for its establishment.

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