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S. 1584

To provide for review in the Court of International Trade of certain determinations of binational panels under the North American Free Trade Agreement.

IN THE SENATE OF THE UNITED STATES

OCTOBER 25, 2001

Mr. CRAIG (for himself, Mr. BAUCUS, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To provide for review in the Court of International Trade of certain determinations of binational panels under the North American Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Integrity of the United States Courts Act of 2001''.

SEC. 2. JUDICIAL REVIEW OF BINATIONAL PANEL DECISIONS.

(a) IN GENERAL.—Subtitle A of title IV of the North American Free Trade Agreement Implementation Act (19

U.S.C. 3431 et seq.) is amended by inserting after section 404 the following new section:

"SEC. 404A. REVIEW OF BINATIONAL PANEL DETERMINATIONS.

"(a) BASIS FOR REVIEW IN COURT OF INTERNATIONAL TRADE.—

"(1) IN GENERAL.—If, within 30 days after publication in the Federal Register of notice that a binational panel has issued a determination following a review under article 1904 of a decision of a competent investigating authority in the United States, a party or person within the meaning of paragraph 5 of article 1904 alleges that—

"(A)(i) the determination of the panel was based on a misinterpretation of United States law;

"(ii) a member of a panel was guilty of a gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,

"(iii) the panel seriously departed from a fundamental rule of procedure, or

"(iv) the panel manifestly exceeded its powers, authority, or jurisdiction set out in arti-

cle 1904, as in failing to apply the appropriate standard of review, and

''(B) any of the actions described in subparagraph (A) has materially affected the panel's decision and threatens the integrity of the binational panel review process,

then such party or person may file an appeal with the United States Court of International Trade, seeking review of the binational panel determination, pursuant to section 516A of the Tariff Act of 1930.

''(2) REVIEW IN COURT OF INTERNATIONAL TRADE WHERE BINATIONAL PANEL DOES NOT ACT.—If a request for a panel review has been made under article 1904 and a panel is not convened within 315 days of the request, the Party requesting the panel review or person within the meaning of paragraph 5 of article 1904 may file an appeal of the antidumping or countervailing duty determination with respect to which the request was filed with the United States Court of International Trade.

''(b) DECISIONS OF THE COURT.—

''(1) IN GENERAL.—In any appeal filed under subsection (a)(1) for review of a binational panel determination, the Court of International Trade shall, after examining the legal and factual analysis under-

lying the findings and conclusions of the panel's decision, determine whether any of the actions described in subsection (a)(1)(A) has been established. If the court finds that any of those actions has been established, the court shall vacate the original panel decision and enter judgment accordingly. If the actions are not established, the court shall affirm the original binational panel decision. Decisions of the Court of International Trade under this section shall be binding on the parties with respect to the matters between the parties that were before the panel.

''(2) DECISIONS WHERE PANEL NOT CONVENED.—In the case of an appeal filed under subsection (a)(2) for review of a determination of a competent investigating authority, the Court of International Trade shall, after examining the legal and factual analysis underlying the findings and conclusions of the investigating authority's determination, determine whether the determination was made in accordance with article 1904. If the court finds that the determination was not in accordance with article 1904 or is not supported by the legal and factual analysis, the court shall vacate the investigating authority's determination and enter judgment accordingly. If the court finds that the deter-

mination was in accordance with article 1904 and is supported by the legal and factual analysis, the court shall affirm the investigating authority's determination. Decisions of the Court of International Trade under this section shall be binding on the parties with respect to the matters between the parties that would have been before a panel had the panel been convened.

''(c) EXCLUSIVE JURISDICTION.—If a party or person within the meaning of paragraph 5 of article 1904 timely files a notice of appeal to the Court of International Trade pursuant to this section, then jurisdiction exclusively resides with the United States Court of International Trade, and such determinations are not subject to review by an extraordinary challenge committee under paragraph 13 of article 1904.

''(d) APPLICABILITY.—Subsections (a)(1), (b)(1), and (c) apply to all goods from NAFTA countries which were subject to an antidumping duty or countervailing duty determination of a competent investigating authority in the United States.''.

(b) CONFORMING AMENDMENT.—The table of contents of the North American Free Trade Implementation Act is amended by inserting after the item relating to section 404 the following:

''Sec. 404A. Review of binational panel determinations.''.

SEC. 3. JURISDICTION OF THE COURT OF INTERNATIONAL TRADE.

Section 516A of the Tariff Act of 1930 (19 U.S.C. 1516a) is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (A)(i)(I), by striking ''or (viii)'' and inserting ''(viii), (ix), or (x)''; and

(B) in subparagraph (B), by adding at the end the following:

''(ix) A final determination of a binational panel convened pursuant to article 1904 of the NAFTA.

''(x) A final determination of an investigating authority described in section 404A(a)(2) of the North American Free Trade Agreement Implementation Act.'';

(2) in subsection (a)(5), in the matter preceding subparagraph (A), by inserting ''(other than a determination described in subsection (g)(3)(A)(vii))'' after ''apply''; and

(3) in subsection (g)(3)(A)—

(A) in clause (v), by striking ''or'' at the end;

(B) in clause (vi), by striking the period and inserting '', or''; and

(C) by adding at the end the following:

''(vii) a determination of which either a party or person within the meaning of paragraph 5 of article 1904 of the NAFTA has requested review pursuant to section 404A of the North American Free Trade Agreement Implementation Act.''.

SEC. 4. APPLICATION TO CANADA AND MEXICO.

Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act, the amendments made by this Act shall apply with respect to goods from Canada and Mexico.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to any final determination of a binational panel convened pursuant to article 1904 of the North American Free Trade Agreement or to a final determination of a competent investigating authority with respect to which section 404A(a)(2) of the North American Free Trade Agreement Implementation Act applies, notice of which is published in the Federal Register on or after the date of enactment of this Act.

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