

108TH CONGRESS
1ST SESSION

S. 1893

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2003

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Integrity of the United
5 States Courts Act of 2003”.

1 **SEC. 2. JUDICIAL REVIEW OF BINATIONAL PANEL AND**
 2 **COMMITTEE DECISIONS.**

3 (a) IN GENERAL.—Subtitle A of title IV of the North
 4 American Free Trade Agreement Implementation Act (19
 5 U.S.C. 3431 et seq.) is amended by inserting after section
 6 404 the following new section:

7 **“SEC. 404A. REVIEW OF BINATIONAL PANEL AND COM-**
 8 **MITTEE DETERMINATIONS.**

9 “(a) BASIS FOR REVIEW IN COURT OF INTER-
 10 NATIONAL TRADE.—

11 “(1) IN GENERAL.—If, within 30 days after
 12 publication in the Federal Register of notice that a
 13 binational panel or committee has issued a deter-
 14 mination following a review under article 1904 of a
 15 decision of a competent investigating authority in
 16 the United States, a Party or person, referred to in
 17 paragraph 5 of article 1904, alleges that—

18 “(A)(i) the determination of the panel or
 19 committee, as the case may be, was based on a
 20 misinterpretation of United States law;

21 “(ii) a member of a panel or committee
 22 was guilty of gross misconduct, bias, or a seri-
 23 ous conflict of interest, or otherwise materially
 24 violated the rules of conduct established for
 25 panelists or committee members, respectively,

1 “(iii) the panel or committee seriously de-
 2 parted from a fundamental rule of procedure,
 3 or

4 “(iv) the panel or committee manifestly ex-
 5 ceeded its powers, authority, or jurisdiction set
 6 out in article 1904, such as failing to apply the
 7 appropriate standard of review, and

8 “(B) any element described in subpara-
 9 graph (A) has materially affected the decision
 10 of the panel or committee and threatens the in-
 11 tegrity of the binational panel or committee re-
 12 view process,

13 then such party or person may file an appeal with
 14 the United States Court of International Trade,
 15 seeking review of the binational panel or committee
 16 determination pursuant to section 516A of the Tar-
 17 iff Act of 1930.

18 “(2) REVIEW IN COURT OF INTERNATIONAL
 19 TRADE WHERE BINATIONAL PANEL OR COMMITTEE
 20 DOES NOT ACT.—

21 “(A) IN GENERAL.—If a request for a
 22 panel or committee review has been made under
 23 article 1904, and a panel or committee, as the
 24 case may be, is not convened within 120 days
 25 after the request, a person, referred to in para-

graph 5 of article 1904, may commence an action in the United States Court of International Trade contesting the determination with respect to which the request was filed. The commencement of such an action shall be in accordance with paragraph (1) or (2) of section 516A(a) of the Tariff Act of 1930, notwithstanding the 30-day limitation on the commencement of actions set forth in such section 516A.

“(B) REQUESTS BY OTHER PERSONS.—

After an action is commenced under subparagraph (A), any other person may commence an action in accordance with the requirements of paragraph (1) or (2) of section 516A(a) of the Tariff Act of 1930 within 30 days after the date the initial action is filed under this paragraph, but only with respect to a claim that such person raised before the panel or committee.

“(b) DECISIONS OF THE COURT.—

“(1) IN GENERAL.—In an appeal filed under subsection (a)(1) for review of a binational panel or committee determination, the Court of International Trade shall, after examining the legal and factual analysis underlying the findings and conclusions of

1 the decision of the panel or committee, as the case
 2 may be, determine whether any of the elements de-
 3 scribed in subsection (a)(1)(A) has been established.
 4 If the court finds that any of the elements has been
 5 established, the court shall vacate the original panel
 6 or committee decision and enter judgment accord-
 7 ingly. If the elements are not established, the court
 8 shall affirm the original binational panel or com-
 9 mittee decision. Decisions of the Court of Inter-
 10 national Trade under this paragraph shall be bind-
 11 ing on the parties with respect to the matters be-
 12 tween the parties that were before the panel or com-
 13 mittee, as the case may be.

14 “(2) DECISIONS WHERE PANEL OR COMMITTEE
 15 NOT CONVENED.—In the case of an action for review
 16 of a determination filed under subsection (a)(2), the
 17 Court of International Trade shall conduct such re-
 18 view under section 516A(b) of the Tariff Act of
 19 1930. Decisions of the Court of International Trade
 20 under this paragraph shall be binding on all parties
 21 with respect to the matters between the parties that
 22 would have been before a panel or committee had
 23 the panel or committee been convened.

24 “(c) EXCLUSIVE JURISDICTION.—If a Party or per-
 25 son, referred to in paragraph 5 of article 1904, timely files

1 a notice of appeal to the Court of International Trade pur-
 2 suant to this section, the United States Court of Inter-
 3 national Trade shall have exclusive jurisdiction over the
 4 matter, and the determination of the United States Court
 5 of International Trade shall not be subject to review by
 6 an extraordinary challenge committee or binational panel.

7 “(d) APPLICABILITY.—This section applies to deter-
 8 minations by a binational panel or committee under
 9 NAFTA that involves an antidumping duty or counter-
 10 vailing duty determination of a competent investigating
 11 authority in the United States.”.

12 (b) CONFORMING AMENDMENT.—The table of con-
 13 tents of the North American Free Trade Implementation
 14 Act is amended by inserting after the item relating to sec-
 15 tion 404 the following:

“Sec. 404A. Review of binational panel and committee determinations.”.

16 **SEC. 3. JURISDICTION OF THE COURT OF INTERNATIONAL**
 17 **TRADE.**

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

20 (1) in subsection (a)(2)—

21 (A) in subparagraph (A)(i)(I), by striking
 22 “or (viii)” and inserting “(viii), (ix), or (x)”;
 23 and

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

1 “(ix) A final determination of a bina-
 2 tional panel convened pursuant to article
 3 1904 of the NAFTA.

4 “(x) A final determination described
 5 in section 404A(a)(2) of the North Amer-
 6 ican Free Trade Agreement Implementa-
 7 tion Act.”;

8 (2) in subsection (a)(5), in the matter pre-
 9 ceding subparagraph (A), by inserting “(other than
 10 a determination described in subsection
 11 (g)(3)(A)(vii))” after “apply”; and

12 (3) in subsection (g)(3)(A)—

13 (A) in clause (v), by striking “or” at the
 14 end;

15 (B) in clause (vi), by striking the period
 16 and inserting “, or”; and

17 (C) by adding at the end the following:

18 “(vii) a determination of which either
 19 a Party or person, referred to in paragraph
 20 5 of article 1904 of the NAFTA, has re-
 21 quested review pursuant to section 404A of
 22 the North American Free Trade Agree-
 23 ment Implementation Act.”.

1 **SEC. 4. APPLICATION TO CANADA AND MEXICO.**

2 Pursuant to article 1902 of the North American Free
3 Trade Agreement and section 408 of the North American
4 Free Trade Agreement Implementation Act, the amend-
5 ments made by this Act shall apply with respect to goods
6 from Canada and Mexico.

7 **SEC. 5. EFFECTIVE DATE.**

8 The amendments made by this Act shall apply to—

9 (1) any final determination of a binational
10 panel or committee convened pursuant to article
11 1904 of the North American Free Trade Agreement,
12 notice of which is published in the Federal Register
13 on or after the date of enactment of this Act; and

14 (2) any request for panel or committee review
15 to which section 404A(a)(2) of the North American
16 Free Trade Agreement Implementation Act applies
17 that is pending on or after the date of enactment of
18 this Act.

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