



[Billing Code 3510-GT]

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904

Binational Panel Review: Notice of NAFTA Panel Decision

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce

ACTION: Notice of NAFTA Panel Decision in the matter of Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination (Secretariat File Number: USA-CDA-2015-1904-01).

SUMMARY: On April 13, 2017, the Binational Panel issued its Memorandum Opinion and Order in the matter of Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination (Final Determination). The Binational Panel affirmed in part and remanded in part the Final Determination by the United States Department of Commerce (Commerce) and copies of the NAFTA Panel Decision are available from the United States Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Paul E. Morris, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, D.C. 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy

determination being challenged and issue a binding Panel Decision. There are established NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews (Rules) and the NAFTA Panel Decision has been notified in accordance with Rule 70. For the complete Rules, please see <https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Rules-of-Procedure/Article-1904>.

PANEL DECISION: On April 13, 2017, the Binational Panel issued its Memorandum Opinion and Order which affirmed in part and remanded in part the Final Determination by Commerce. The Binational Panel concluded and ordered that Commerce's Final Determination is remanded for further consideration consistent with the Panel's decision with respect to (1) the use of Commerce's "concurrent subsidies" methodology to analyze the provision of "hot idle" funding to Port Hawkesbury Paper LLP (PHP) in a transaction between private parties; (2) Commerce's conclusion that the Government of Nova Scotia entrusted and directed Nova Scotia Power, Inc. to make a financial contribution by providing electricity; (3) Commerce's conclusion that Nova Scotia Power, Inc. provided electricity for less than adequate remuneration, addressing both its conclusion that a Tier 1 benchmark was not available and its calculation of a Tier 3 benchmark; (4) the use of Commerce's "concurrent subsidies methodology" with respect to granting of Forestry Infrastructure monies to New Page Port Hawkesbury (NPPH) prior to its acquisition by Pacific West Commercial Corporation (PWCC); (5) Commerce's statement that the administrative record contains no evidence of a hostile takeover of Fibrek by Resolute; (6) Commerce's failure to examine whether the grants to Resolute under the Northern Industrial Electricity Rate and Forestry Sector Prosperity Funds programs were tied to the production of a particular product or to the production of an input product; and (7) Commerce's use of the same

non-recurring grant as the source for Adverse Facts Available for both recurring and non-recurring grants.

The Binational Panel ordered that to the extent not rendered moot by Commerce's explanation on remand as to why a Tier 1 benchmark for measuring the adequacy of remuneration of Port Hawkesbury's electricity was not available, Commerce's October 21, 2016 motion for a voluntary remand to consider whether Commerce should include a separate component for return on equity in its Tier 3 benchmark for measuring the adequacy of remuneration of Port Hawkesbury's electricity is granted, and the calculation of the benchmark for such purchases is hereby remanded. The Binational Panel further ordered that the Final Determination in all other respects is sustained and directed Commerce to submit its redetermination on remand within 75 days of the date of issue of the NAFTA Panel Decision. For the full Memorandum Opinion and Order, please see <https://www.nafta-sec-alena.org/Home/Dispute-Settlement/Decisions-and-Reports>.

Dated: June 6, 2017

Paul E. Morris  
U.S. Secretary  
NAFTA Secretariat

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