

NAFTA CHAPTERS 11, 19 AND 20: TIME TO START OVER

Elliot J. Feldman
Partner, Baker Hostetler LLP

April 4, 2009

Duration Of Chapter 19 Cases Against The U.S. Under FTA

FTA (1989 to 1993)						
Started	Product	# of Days	Started	Product	# of Days	
1989	Red Raspberries	413 *approx.	1991	OCTG	N/A	
	Bituminous Paving Parts	344 *approx.		Iron Castings	N/A	
	Bituminous Paving Parts	345 *approx.		Live Swine	670 *approx. & ECC included	
	Dried Codfish	N/A		Live Swine	644	
	Bituminous Paving Parts	N/A		Bituminous Paving Parts	N/A	
	Pork	599 *approx.		1992	Softwood Lumber	827 *approx. & ECC included
	Steel Rails	310 *approx.			Softwood Lumber	917
	Steel Rails	393 *approx.			Magnesium	521 *approx.
	Steel Rails	345 *approx.			Magnesium	452 *approx.
	Pork	639 *approx. & ECC included		Magnesium	N/A	1993
Induction Motors	N/A	Hot-Rolled Steel Flat	N/A			
1990	Bituminous Paving Parts	867	Cor.-Resistant Steel Flat	732		
	OCTG	N/A	Cut-to-Length Steel Plate	732		
	Sheet Piling	N/A	Cor.-Resistant Steel Flat	444 *approx.		
Average Duration under FTA					548	

Source: The NAFTA Secretariat.

Baker Hostetler

Duration Of Chapter 19 Cases Against The U.S. Under NAFTA

NAFTA (1994 to Present)

Started	Product	# of Days	Started	Product	# of Days
1994	Live Swine	539	2002	Lumber	1791
1995	Color Picture Tubes	316		Lumber	1719
1997	Carbon Steel Flat Products	849		Lumber	1154 + ECC
1998	Carbon Steel Flat Products	1227		Carbon/Alloy Steel Wire Rod	925
	Brass Sheet and Strip	364	2003	Alloy Magnesium	892
2000	Pure Magnesium	1291 + ECC		Wheat	893
	Pure/Alloy Magnesium	883		Wheat	1235
	Magnesium	2302 *approx.	2005	Lumber	1494
	Carbon Steel Flat Products	1653	2008	Carbon and Alloy Steel Wire Rod	Active
			2009	Carbon and Alloy Steel Wire Rod	Active

Average Duration under NAFTA 1089*Duration of active cases is not included.

Note: Terminated cases are not included.

Source: The NAFTA Secretariat.

Baker Hostetler

Average Duration Of Cases Filed In CIT And CAFC

Year Filed	# of Days	# of Cases Appealed to CAFC and Decided	CIT + CAFC Duration (Days)
Pre-NAFTA (1990 to 9/1994)			1201*
1994	768	n/a	n/a
1995	599	n/a	n/a
1996	651	n/a	n/a
1997	628	n/a	n/a
1998	872	n/a	n/a
1999	546	n/a	n/a
2000	759	n/a	n/a
2001	592	10	1759
2002	619	10	1504
2003	693	14	1574
2004	684	5	1086
2005	590	12	905
2006	663	3	765
2007	375	1	567
2008	100	n/a	n/a
Average	609		1166

* Source: GAO Report, CUSFTA: Factors Contributing to Controversy in Appeals of Trade Remedy Cases to Binational Panels, June 1995 (GAO/GGD-95-177BR) at 59.

Baker Hostetler

Duration Of Chapter 19 Cases Against Canada

Started	# of Days	Product	Started	# of Days	Product
1994	428	Synthetic Baler Twine	1998	682	Steel Sheet
1994	446	Steel Sheet	1998	527	Pipe Fitting
1994	325	Steel Sheet	2000	258	Iodinated Contrast Media
1995	316	Malt Beverage	2000	943	Iodinated Contrast Media
1995	438	Sugar	2000	553	Refrigerator, Dishwasher & Dryer
1997	402	Concrete Panels	2000	519	Refrigerator, Dishwasher & Dryer
1998	495	Baby Food	Average	501	

Note: Terminated cases are not included.

Baker Hostetler

Extraordinary Challenge Committees (ECC)

Product	Outcome	Order Issued on
Fresh, Chilled and Frozen Pork from Canada	Panel upheld.	14-Jun-91
Live Swine from Canada	Panel upheld.	8-Apr-93
Softwood Lumber from Canada	Panel upheld.	3-Aug-94
Pure Magnesium from Canada	Panel upheld.	7-Oct-04
Softwood Lumber from Canada	Panel upheld.	10-Aug-05
Gray Portland Cement and Clinker from Mexico	Panel upheld.	30-Oct-03
Softwood Lumber from Canada	Requested April 26, 2006; Suspended April 26, 2006; Withdrawn October 12, 2006.	

Baker Hostetler

Chapter 19 And Lumber: Duration

Description	# of Days	Terminated or Dismissed
AD	1712	CVD Section 129
CVD	1632 + Suspended ECC	Injury Section 129
Injury	1154 + CIT (421)	AD Section 129
CVD Administrative Review	1494	AD Administrative Review 2nd CVD Administrative Review Final Scope Ruling

Baker Hostetler

Duration Of Chapter 19 Cases Against Mexico

Started	Product	# of Days Until Panel Order Issued	Outcome	Status
Brought by Canadian Parties				
1996	Cold-Rolled Steel	n/a	n/a	Terminated
1996	Rolled Steel Plate	688	Remand	Completed
1996	Hot-Rolled Steel	504	Remand	Completed
Brought by U.S. Parties				
1994	Flat Coated Steel	757	Partial remand.	Completed
1994	Cut-to-Length Plate	363	Remand	Completed
1994	Polystyrene	643	Affirmed	Completed
1995	Seamless Line Pipe	n/a	n/a	Terminated
1997	Hydrogen Peroxide	n/a	n/a	Terminated
1998	Corn Syrup	1260	Remand	Completed
2000	Urea	749	Remand	Completed
2000	Bovine	1363	Partial remand.	Completed
2002	Bovine Carcasses	n/a	n/a	Terminated
2003	Sodium Hydroxide	1107	Panel lacked competence.	Completed
2003	Apples	n/a	n/a	Terminated
2005	Carbon Steel Tubing	993	n/a	Active
2006	Pork	1050	n/a	Active
2006	Fresh Apples	n/a	n/a	Active
2009	Peroxido de Hidrogeno	n/a	n/a	Active

Baker Hostetler

Chapter 19 Cases Against The U.S. Brought By Mexican Parties

Started	Product	# of Days Until Completion	Status	Started	Product	# of Days Until Completion	Status
1994	Leather Wearing	441	Completed	2001	Cookware	n/a	Terminated
1995	Cookware	583	Completed	2001	OCTG	2343	Completed
1995	Cement	525	Completed	2001	Cement	n/a	Terminated
1995	OCTG	561	Completed	2001	OCTG	2154	Completed
1995	Flowers	545	Completed	2001	OCTG	2099	Completed
1996	Cookware	n/a	Terminated	2002	Cement	n/a	Terminated
1997	Cement	2375* (ECC included.)	Completed	2002	Cement	n/a	Terminated
1997	Cement	630	Completed	2002	Steel Wire Rod	n/a	Terminated
1997	Cookware	n/a	Terminated	2003	Cement	n/a	Terminated
1997	Steel Pipe	n/a	Terminated	2003	Cement	n/a	Terminated
1997	Cookware	752	Completed	2004	Cement	n/a	Terminated
1998	Cement	n/a	Terminated	2005	Carboxy-methylcellulose	n/a	Terminated
1998	Cookware	n/a	Terminated	2005	Stainless Steel Sheet and Strip	1169	Completed
1998	Steel Pipe	2060	Completed	2006	Gray Portland Cement & Clinker	n/a	Terminated
1999	Cement	1795	Completed	2006	OCTG	n/a	Terminated
1999	Cookware	n/a	Terminated	2007	Stainless Steel Sheet and Strip in Coil	n/a	Active
2000	Cement	n/a	Terminated	2007	Gray Portland Cement & Clinker	n/a	Terminated
2000	Cookware	n/a	Terminated	2007	Welded Pipe	n/a	Active
2000	Cement	n/a	Terminated	2008	Stainless Steel Sheet and Strip in Coil	n/a	Active
2000	Cement	1963	Suspended/Stayed	2008	Light-Walled Rectangular Pipe & Tube	n/a	Active
				2008	Light-Walled Rectangular Pipe & Tube	n/a	Active
				2009	Stainless Steel Sheet and Strip	n/a	Active

Baker Hostetler

Chapter 19 Cases Against Canada Brought By Mexican Parties

Started	Product	# of Days Until Panel Order Issued	Outcome	Status
1997	Steel Plate	537	Remand	Completed
1999	Carbon Steel Plate	n/a	n/a	Terminated
2004	Wood Venetian Blinds	n/a	n/a	Terminated

Baker Hostetler

Chapter 11: Duration And Outcomes

U.S.				
Complainant	Notice of Arbitration Filed on	Decision Issued on	Duration* (Days)	Outcomes
Loewen Group, Inc.	30-Oct-98	26-Jun-03	1700**	Claim dismissed.
Mondev International	1-Sep-99	11-Oct-02	1136	Claim dismissed.
Methanex Corp.	3-Dec-99	9-Aug-05	2076	Claim dismissed.
ADF Group Inc.	1-Aug-00	9-Jan-03	891	Claim dismissed.
Canfor Corp.	9-Jul-02	19-Jul-07	1836	Consolidated and dismissed.
Kenex Ltd.	2-Aug-02	n/a	2343	Pending
Tembec Inc. et al.	3-Dec-03	19-Jul-07	1324	Consolidated and withdrawn with costs assessed.
Glamis Gold Ltd.	10-Dec-03	n/a	1848	Pending
Grand River	12-Mar-04	n/a	1755	Pending
Enterprises of Nations	31-Mar-04	19-Jul-07	1205	Consolidated and dismissed.
Case regarding the border closure due to BSE concerns	16-Mar-05	28-Jan-08	1048	Claim dismissed.
DGC Holdings	16-Apr-07	n/a	625	Pending
Apotex Inc.	10-Dec-08	n/a	21	Pending

*For pending cases, panel duration is counted to December 31, 2008.

**Decision on Respondent's Request for a Supplementary Decision was

granted on September 10, 2004.

Canada				
Complainant	Notice of Arbitration Filed on	Decision Issued on	Duration (Days)	Outcome
Ethyl Corp.	14-Apr-97	24-Jun-98	436	Cash award.
S.D. Myers Inc.	30-Oct-98	13-Nov-00	745	Cash award.
Pope & Talbot, Inc	25-Mar-99	31-May-02	1163	Cash award.
UPS	19-Apr-00	11-Jun-07	2609	Claim dismissed.

Note: Since many companies only filed Notices of Intent, pending cases are

counted from the date of filing of the Notice of Intent.

Baker Hostetler

Chapter 11 Cases Against Mexico

Complainant	Notice of Arbitration Filed on	Decision Issued on	Panel Duration (Days)	Outcome
Metalclad	2-Jan-97	22-Aug-00	1328	Cash award.
Azinia, et al	10-Mar-97	1-Nov-99	966	Claim dismissed.
Karpa	7-Apr-99	18-Dec-03	1716	Cash award.
Waste Management	29-Sep-98	30-Apr-04	2040	Claim dismissed
Fireman's Fund Insurance	15-Jan-02	22-Jul-04	919	Claim dismissed
GAMI Investments	9-Apr-02	15-Nov-04	951	Claim dismissed
Thunderbird Gaming	1-Aug-02	26-Jan-05	909	Claim dismissed
Corn Products International	4-Aug-04	n/a	n/a	Pending
ADM/Tate & Lyle	4-Aug-04	21-Nov-07	1204	Cash award.
Bayview Irrigation	19-Jan-05	n/a	n/a	Dismissed
Cargill	30-Aug-05	n/a	n/a	Pending

Baker Hostetler

NAFTA Chapter 20 Cases

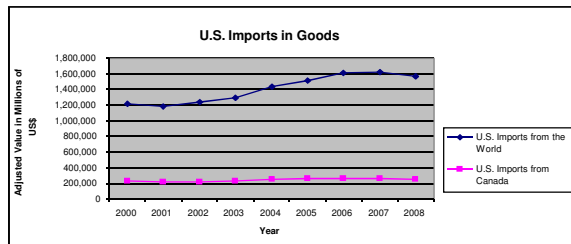
Date Panel Requested	Date Decision Issued	Case Description
17-Jul-95	02-Dec-96	Agriculture Tariffs
14-Jan-97	30-Jan-98	Safeguard on Broomcorn Brooms
22-Sep-98	05-Feb-01	Trucking

FTA Chapter 18 Cases

Date Panel Requested	Date Decision Issued	Case Description
23-May-89	16-Oct-89	West Coast Salmon and Herring
11-May-92	08-Feb-93	Durum Wheat
21-Dec-89	25-May-90	Lobsters
06-Jan-92	08-Jun-92	Non-mortgage Interest
17-Sep-92	03-Jun-93	UHT Milk

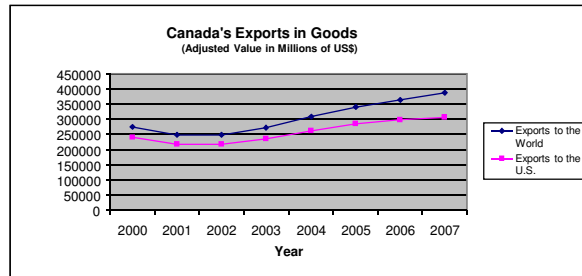
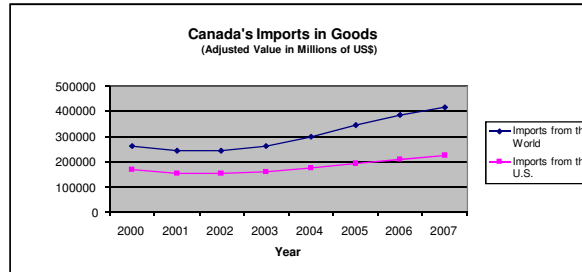
Baker Hostetler

U.S. Imports And Exports In Goods: Canada And The Rest Of The World



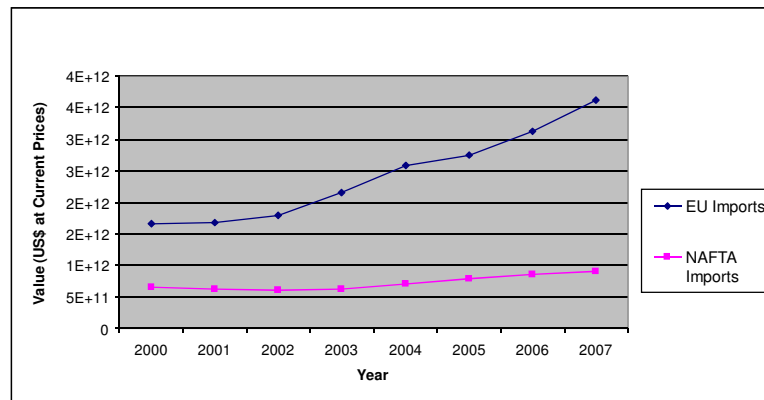
Baker Hostetler

Canadian Imports And Exports In Goods: The U.S. And The Rest Of The World



Baker Hostetler

Intra-Regional Trade: NAFTA And EU



Baker Hostetler