

Why We Were Right and They Were Wrong

- have not created conflicts of interest
- have been issued within the proper timeframes
- have been thorough, consistent, well-reasoned, and fair

Chapter 19 process of review has been able to manage the increased number of Canada-U.S. disputes well because it has become the "policy equivalent of fighting fair [and has] strengthened judicial processes and procedural due process in what can be painful and unavoidable AD/CVD actions."⁹⁶ Consequently, the Chapter 19 system has given North American exporters greater confidence that the AD/CVD laws of each country will be applied properly and fairly. Indeed, the fact that Chapter 19 has been supported by business people in all three NAFTA countries indicates that it is widely seen as introducing fairness and predictability into disputes over the use of unfair, politically motivated trade remedies. Moreover, the rising number of exports between Canada, Mexico, and the United States confirms the enhanced degree of confidence in North American trade since 1989.

(B) *Policy Implications*

For William Davey, a rule-based, rule-enforcement system of trade resembles a judicial system, and establishes procedures for a party to complain about the actions of another, creates a consultation procedure for discussing the complaint, institutes a neutral decision-making mechanism to judge the merits of the complaint, and creates an enforcement mechanism to "punish" a party which refused to remove the offending measure.⁹⁷ In many ways, Davey's system parallels Chapter 19. Chapter 19 allows parties to complain to their governments, who may seek to settle the dispute via negotiations and/or request the formation of a binational panel to assess the appropriateness of an AD/CVD determination. What Chapter 19 does not do is establish a strict enforcement mechanism to "punish" a party which refused to remove the offending measure. Chapter 19 authorizes panels to issue binding decisions which are not to be appealed under routine circumstances. However, Chapter 19 does not empower panels to enforce their binding decisions. After a panel remands a determination, it is the responsibility of the "remanded" administrative agency to comply with and execute the order. Furthermore, as signatories of the FTA and NAFTA, the three governments are obligated to ensure that the

⁹⁶ Gilbert R. Winham, Annie M. Finn, "Accession to NAFTA: The Implications of Extending Chapter 19 Dispute Settlement of Antidumping and Countervailing Disputes," in Joseph McKinney, Melissa Essary (eds), *Free Trade for the Americas: Issues in Economics, Trade Policy and Law* (Waco: Baylor University Press, 1995), 104.

⁹⁷ William J. Davey, *Pine and Swine: Canada-United States Trade Dispute Settlement - The FTA Experience and NAFTA Prospects* (Ottawa: Centre for Trade Policy and Law, 1996), 4-5.