

Why We Were Right and They Were Wrong

systems because panel rules closely regulate the servicing of documents, the timing of briefs, and the timing of oral arguments. Panel rules require hand delivery, overnight courier, or facsimile. Consequently, the panel system should not be impeded by regular mail service or "business-day counts" as domestic courts are. Chapter 19 panel rules also eliminate the need for scheduling conferences to review briefs, motions, and the administrative record.²⁷

Finally, proponents have affirmed the Chapter 19 system as a faster one because it does not permit routine appeals. Unlike the two domestic review systems, binational panel decisions may only be appealed under narrow circumstances. In the event that an appeal is warranted, and an ECC is convened, the Committee is required to issue a decision within 30 days under the FTA and 60 days under the NAFTA. Consequently, the entire review process under Chapter 19 (including appeals) is likely to be 1-2 years. In contrast, the entire process of review (including appeals) in Canada and the United States has tended to be from 2-5 years.

(2) *The binational panel system will be more consistent and predictable than the domestic processes of judicial review*

Generally speaking, critics of the U.S. system have argued that American review courts have not been consistent or predictable when reviewing AD/CVD determinations. They have pointed to the fact that the CIT is made up of 8 active and 5 senior judges who sit alone when reviewing a complaint. Consequently they have maintained that even though CIT judges meet regularly and read each other's opinions, it has been customary for CIT judges to decide similar questions differently.²⁸ Critics have also indicated that another consideration which adds to the inconsistency and unpredictability in the American judicial system is the fact that lower courts are permitted to reach different decisions. CIT judges are not bound by each other's decisions; they are only required to accept the decisions of a higher court such as the Court of Appeals for the Federal Circuit or the U.S. Supreme Court under the doctrine of *stare decisis*. For example, the CIT released two contradictory decisions regarding tax rebate issues in *Zenith Electronics*

docketed, consolidates appeals, and eliminates the filing of protective multiple appeals. Interested parties do not need to request panel review solely to be prepared in the event that an opposing party makes such a request. All parties can wait and see whether any party requests a review. If so, all parties are then able to contest any issues that they wish to raise by filing complaints under Rule 39 of the panel rules.

James R. Cannon Jr., "Dispute Settlement in the Article 1904 U.S.-Canada Binational Panel Versus the Court of International Trade," Unpublished, 1990, 6-8, 10, 13-14.

²⁷ James R. Cannon Jr., "Dispute Settlement in the Article 1904 U.S.-Canada Binational Panel Versus the Court of International Trade," Unpublished, 1990, 17-18.

²⁸ Andreas F. Lowenfeld, "Binational Dispute Settlement Under Chapter 19 of the Canada-United States Free Trade Agreement: An Interim Appraisal," *New York University Journal of International Law and Politics*, Vol. 24, No. 1 (Fall, 1991), 276-277.