

Why We Were Right and They Were Wrong

Similarly, CITT determinations regarding hot-rolled, cold-rolled, and corrosion-resistant steel sheets were appealed to binational panels and to the Federal Court of Appeals. The three binational panels completed the review process in the allotted time, but the domestic process of judicial review took more than 2 years for all 6 cases to be completed.⁷⁶

Comparing the treatment of the steel cases in the two domestic systems and the binational panel process clearly illustrates how much faster the Chapter 19 system of review is. The panel processes (including remands) were completed within 2 years. However, the domestic processes took more than 2-3 years, and is still not completed for all 7 countries that challenged the final determination in the United States.

Interestingly, domestic courts in Canada and the United States have amended their rules of procedure which may speed up the domestic processes of review and make them comparable to the Chapter 19 process. The CIT modified some of its rules of procedures to replicate the timelines of the binational panels process. The CIT Clerk's Office indicated that the Court acted to significantly increase the speed at which it released AD/CVD decisions after Chapter 19 came into operation.⁷⁷ Effective on January 1, 1993, CIT Rule 56.2 incorporated time limits similar to those of Chapter 19 of the FTA and NAFTA. While time limits were not imposed on the judges, oral arguments must now be limited to 30 days after the closing of the briefing schedule, and proposed judicial protective orders and motions to enjoin liquidation must be filed within 30 days of the complaint. Rule 56.2 also provided for detailed judicial management of the progress of a matter, including the briefing schedules and the required filing of status reports with the court. In addition, the CIT adopted some of the procedural simplifications of the panel process. Parties before a binational panel do not need to file a motion for intervention or an answer. Instead, the panel rules simply provide for the filing of a Notice of Appearance by interested parties. The CIT changed its rules of procedure to parallel the binational panels rules. The amendments to the rules in 1993 eliminated the requirement for an answer for actions before the Court.⁷⁸

⁷⁶ The cases included: *Stelco Inc. v CITT et al* (1995), F.C.J. No. 832, Court File no. A-410-93; *Stelco Inc. v CITT et al* (1995), F.C.J. No. 831, Court File No. A-360-93; *Canadian Klockner v Stelco Inc.* (1995), F.C.J. No. 973, Court File No. A-294-94; *A.G. Der Dillinger Huttenwerke v Canada* (1995), F.C.J., No. 833, Court File No. A-375-93; *Aciers Francosteel Canada Inc. v Dofasco Inc.* (1996), F.C.J. No. 52, Court File No. A-432-94; *Companhia Siderurgica Nacional v Canada* (1996), F.C.J. No. 54, Court File No. A-411-94.

⁷⁷ Michael Greenberg, "Chapter 19 of the US-Canada Free Trade Agreement and the North American Free Trade Agreement: Implications for the CIT," *Law and Policy in International Business*, Vol. 25, No. 1 (1993), 46-47.

⁷⁸ Robert E. Burke, Brian F. Walsh, "NAFTA Binational Panel Review: Should it be continued, eliminated, or substantially changed," *Brook Journal of International Law*, Vol. 20, No. 3 (1995), 532-533.