binational review system.[19] On the other hand, a number of analysts did not think that this binational panel mechanism would necessarily result in significant changes to the administration of American trade remedies and ensure security of access to the American market for Canadian exporters.[20]

2.2 Evaluation of the Panel Mechanism

Even if it is true that the success of such a mechanism lies not in the number of disputes but in the number of investigations and protectionist determinations that it prevents, there is no denying that since they were implemented in 1989, the binational review panels have failed to meet expectations. Although, among other things, the panels have proved beneficial in forcing the reimbursement, after panel review, of duties initially imposed by American authorities, notably in the case of pork,[21] the harassment of Canadian exporters by their competitors south of the border has grown only worse. Since the FTA came into effect, the American authorities have conducted six countervailing duty investigations.[22] Half of them, involving magnesium, pork, and softwood lumber, resulted in the levying of duties. These cases also involved large trade volumes, and the Canadian government decided in these three cases to request a panel.[23]

In the dispute over pork, the countervailing duties levied by the American authorities had to be reimbursed after a trade panel determined after two remands to the U.S. International Trade Commission that the latter had failed to establish a threat of injury to the American industry. Disagreeing with these findings and under political

[19] See: Reisman, Comments, in *Assessing the Canada-U.S. Free Trade Agreement*, pp. 44, 113, 115; Debra Steger, "Analysis of the Dispute Settlement Provisions: A Canadian Perspective," in *Assessing the Canada-U.S. Free Trade Agreement*, pp. 91-98; Steger, "An Analysis of the Dispute Settlement Provisions," pp. 127-132, 139; Horlick, "Analysis of the Dispute Settlement Provisions," pp. 99-104; Shirley A. Coffield, "Dispute Settlement Provisions on Antidumping and Countervailing Duty Cases in the Canada-U.S. Free Trade Agreement," in Donald M. McRae and Debra P. Steger (eds.), *Understanding the Free Trade Agreement* (Halifax: Institute for Research on Public Policy, 1988), pp. 82-83.

[20] This was true, among others, of John J. Quinn, "A Critical Perspective on Dispute Settlement," in Marc Gold and David Leyton-Brown (eds.), *Trade-Offs on Free Trade* (Toronto: Carswell, 1988), pp. 188-196. Quinn was the author of the recommendations on dispute settlement and a Canada-U.S. free trade zone in the Macdonald Commission report. In addition, one of the most virulent critiques of the provisions of the FTA can be found in the testimony of Mel Clark, the deputy head of the Canadian GATT delegation during the negotiation of the Tokyo Round, before the Standing Senate Committee on Foreign Affairs, December 29, 1988, section no. 3, pp. 3:28-34.

[21] A (basically favourable) evaluation of the functioning of the panel mechanism can be found in Boddez and Trebilcock, *Unfinished Business*, pp. 69-161. A critical view of the same mechanism and its functioning can be found in Scott Sinclair, "Trade Law," in Duncan Cameron and Mel Watkins (eds.), *Canada Under Free Trade* (Toronto: Lorimer, 1993), pp. 173-184.

[22] Data as of December 1993.

[23] Canada, *U.S. Trade Remedy Law*, pp. 30-33.