

Why We Were Right and They Were Wrong

most, of the issues that were brought before them. Similarly, the majority of ECCs (2 out of 3) have also been unanimous.

More importantly, panels have not split according to national lines in most instances. The only notable exceptions are the ECC in *Softwood Lumber* and the panel in *Flat Hot-Rolled Carbon Steel*.⁹⁵ In *Softwood Lumber*, two of the three members of the ECC were Canadians and upheld the panel's decision, while the sole American vehemently disagreed with their views. In *Flat Hot-Rolled Carbon Steel*, 2 American panelists partially disagreed with the 3 Canadian members over the issue of causation. However, the 2 Americans concurred with the (Canadian) majority on all other issues and affirmed the majority's decision to uphold the agency's findings.

Therefore, panels have been very cohesive, united bodies. Panelists have not allowed themselves to side with their country's administrative agencies in the binational process of review. Instead, they have worked cooperatively to ensure that their task of reviewing the administration of AD/CVD laws was done properly and fairly. Such cohesiveness and unanimity has given panels a larger measure of credibility. Because they have not divided according to national lines, they have been perceived as more impartial bodies that have treated Canadian and American exporters more fairly than domestic courts have done. In this respect, panels have proven the proponents of Chapter 19 correct. Chapter 19 has offered a fairer, more impartial process of judicial review because of its binational, unified nature.

3. Conclusions and Policy Implications

(A) Conclusions

The Chapter 19 process of judicial review has disproven the arguments of its critics and substantiated those of its proponents. "They" were wrong, and "we" were right! Since 1989, experience has proven that most panel decisions:

- have been consistent with the two standards of review
- have been similar to domestic court decisions and have not created a second body of trade law exclusive to FTA/NAFTA countries
- have not violated the U.S. Constitution

⁹⁵ *United States-Canada Free Trade Agreement Article 1904.13 Extraordinary Challenge Committee Proceeding in the matter of Certain Softwood Lumber from Canada, ECC-94-1904-01 USA; Binational Panel Review in the matter of Certain Flat Hot-Rolled Carbon Steel Sheet Products originating in or exported from the United States, CDA-93-1904-07.*