

Why We Were Right and They Were Wrong

(without remands) is 734 days and the average Canadian process (without remands) is 462 days. Even if remands are included in the panel process of review, the Chapter 19 is still a faster system. The average panel review, including remands has taken 502 days. When decisions are appealed further, the average time for a panel/ECC review has been 683 days, while the average time for a CIT/CAFC review has been 1210 days in the United States, and 1062 days for a Federal Court of Appeals/Supreme Court review in Canada.

A number of cases illustrate the quicker nature of the Chapter 19 system. The DOC issued a number of affirmative dumping determinations on steel products in June and July of 1993. Dofasco, Stelco, IPSCO Inc., and Continuous Colour Coat Inc. filed separate complaints for binational panel review of the determinations regarding corrosion-resistant carbon steel products and certain cut-to-length carbon steel plate on August 19, 1993. Panels were convened in response to the request. The Complainants filed briefs with the panels on March 22, 1994. Commerce and a number of U.S. steel producers filed their response briefs in support of various aspects of the final dumping determinations on May 23, 1994 and June 7, 1994. Oral arguments were presented before the panels on July 11-12, 1994. The *Corrosion-Resistant Carbon Steel* and *Cut-To-Length Plate* panels released their decisions on October 31, 1994 - slightly more than one year after being requested. The panels affirmed in part, and remanded in part, the agency's affirmative dumping determinations. The Determinations on Remand were unanimously affirmed by both panels on July 11, 1995 - slightly two years after the panels were requested.⁷⁴

The DOC's affirmative dumping determinations did not only involve Canadian steel producers, but producers from France, Spain, the Netherlands, Finland, Germany, Brazil, and Belgium as well. Steel firms in those 7 countries appealed the affirmative dumping determination to the CIT when the Canadian firms requested binational panel review in August of 1993.⁷⁵ To date, the CIT has reached a final decision in 5 of the 7 requests for judicial review. Of the cases where a decision was released, the CIT delayed making a decision until 1994-1995, and is considering remands in a number of cases. Decisions have not been given in 2 of the cases even though the cases were briefed and argued in late 1994 and early 1995.

⁷⁴ *Binational Panel Review in the matter of Certain Corrosion-Resistant Carbon Steel Products from Canada*, USA-93-1904-03; *Binational Panel Review in the matter of Cut-To-Length Carbon Steel Plate from Canada*, USA-93-1904-04.

⁷⁵ The seven countries appealed the DOC's affirmative dumping determination because of the agency's use of best-information-available and the highest aberrant concept. The cases included: France - *Usinor Sacilor v United States* (December 19, 1994, CIT No. 93-09-00592-AD, Slip Op. 94-197); Spain - *Empresa Nacional Siderurgica v United States* (March 6, 1995, CIT No. 93-09-00630-AD, Slip Op. 95-33); Netherlands - *National Steel Corporation v United States* (December 13, 1994, CIT No. 93-09-00616, Slip Op. 94-194); Finland - *Rautarukki Oy v United States* (March 31, 1995, CIT No. 93-09-00560-AD, Slip Op. 95-56); Germany - *Thyssen Stahl v United States* (November 17, 1995, CIT No. 93-09-00586-AD, Slip Op. 95-183); Brazil - no case name to date; Belgium - no case name to date.