a last-minute deal that enabled the two parties to save the negotiations and succeed in concluding a free trade agreement.[18]

In regard to the mechanism itself, questions were raised about whether the trade panels, composed for the most part of lawyers, should also have trade experts on them; whether the decisions of these panels would be narrow and legalistic or, as the FTA negotiators expected, broad and policy-oriented; and whether these decisions could create new law. In this regard, in accordance with the principles of international law, the U.S. legislation implementing the FTA (the U.S.-Canada Free Trade Agreement Implementation Act) specifies that the decisions of these panels do not create law. A binational review mechanism was considered especially useful in the case of complex disputes involving large trade volumes and in areas where questions remained, especially in regard to the definition and calculation of subsidies.

The ability of binational panels to make binding decisions about antidumping and countervailing duties was also seen as likely to induce the domestic investigating bodies in the United States to make more thorough, objective and consistent determinations, and hence to increase the predictability and security of access to the American market. The people who drew up the FTA and a number of commentators expected most of all that this mechanism would put an end to the harassment of Canadian exports to the United States.

In any case, Canada still had to rely in the end on the good will of American investigating bodies and hope that their conclusions reflected the general spirit and objectives of the FTA. Experts pointed out that the main accomplishment in the area of dispute settlement was the commitment on the part of both countries to agree in five to seven years on a substitute system of trade rules. It was recognized as well that a great deal of good will would be needed on the part of both parties to ensure that this substitute trade system was actually applied in a few years. The importance of developing these new rules should not be underestimated since, in their absence, there was no assurance that Canadian companies would not be victimized by trade disputes injurious to Canadian interests. Gary Horlick insisted in this regard on the importance for trade and investment of a stable or at least predictable environment. Some people thought, however, that this substitute set of common rules would become less necessary, or at least less urgent, with the implementation of the

[18] For a summary of the subsidy provisions in other agreements on economic integration, see Hart, *Canada-United States Working Group*, pp. 15-22; Debra Steger, "An Analysis of the Dispute Settlement Provisions of the Canada-U.S. Free Trade Agreement," in Earl H. Fry and Lee H. Radebaugh (eds.), *The Canada/U.S. Free Trade Agreement, The Impact on Service Industries* (Provo, Utah: Brigham Young University for the David M. Kennedy Center for International Studies, 1988), pp. 135, 136, 144.