

Chapter Nineteen: Binational Dispute Settlement in Antidumping and Countervailing Duty Cases

In negotiating a better and more balanced framework for the conduct of trade between Canada and the United States, Canada sought to increase predictability and security for Canadian exporters to the United States. Without this predictability, Canadian companies cannot be sufficiently confident to take advantage of other provisions of the Agreement, such as the elimination of tariffs or improved access to government procurement.

Trade remedy procedures, such as antidumping and countervailing duty petitions, can pose a serious threat to predictability and security of access. In recent years, actions taken under U.S. trade remedy laws against Canadian exports have had a detrimental impact on investment and employment in Canada, and have become a major irritant in Canada-U.S. relations.

In this chapter, the two governments agree that in order for both sides to take equal advantage of the benefits of the Agreement, there will be need for conditions of fair competition to ensure that economic actors on both sides of the border have equal access to the whole free-trade area established by the Agreement. This will be achieved as a result of a three-track set of obligations:

- the development over a five- to seven-year period of mutually advantageous rules governing government subsidies and private anti-competitive pricing practices such as dumping, which are now controlled through the unilateral application of countervailing and antidumping duties;*
- bilateral review of any changes in existing countervailing or antidumping laws and regulations for consistency with the GATT and the object and purpose of the Agreement; and*
- the replacement of judicial review by domestic courts of countervailing and antidumping final orders by a bilateral panel.*

Article 1907 provides that the two governments will work towards establishing a new regime to address problems of dumping and subsidization to come into effect no later than at the end of the seventh year. During the course of the current negotiations, the two