

Chapter Nineteen

Review and Dispute Settlement in Antidumping and Countervailing Duty Matters

One of the main reasons Canada sought a free trade agreement with the United States was to achieve secure and predictable access to the U.S. market.

In the years prior to the FTA, actions under U.S. trade remedy laws, particularly countervailing duty investigations alleging the injurious effect of Canadian federal and provincial subsidies for fish, hog and softwood lumber exports, chilled investment decisions. This affected employment in Canada. Until such time as nations could resolve the subsidy issue, the solution lay in the creation of binational panels to review countervailing and antidumping duty determinations. These provisions are carried forward in the NAFTA. U.S. trade-remedy practices will continue, therefore, to be subjected to review by binational panels to ensure that U.S. law has been applied fairly and properly.

In the FTA, Canada and the United States agreed on a three-track set of obligations to promote fair competition. They are:

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

The NAFTA builds on these obligations and adds several new elements in order to extend them to Mexico. Mexico, for example, will draft new legislation governing countervailing and antidumping procedures. They will incorporate the kinds of procedural safeguards common to Canada and the United States. These will also be subject to review by binational panels.

The definition of what constitutes a subsidy and the problem of dumping remains a challenge. Recognizing that the issue would benefit from a multinational approach, the time-limit provision for a solution in the FTA has been dropped in the NAFTA. While no satisfactory substitute system of rules to address problems of dumping and subsidies has as yet