

Why We Were Right and They Were Wrong

costly, and prone to conflict of interest charges as Dearden's were.⁷² Hart and Morgan did note that Dearden and Hunter may have been negligible in their responsibility of disclosing any interests or relationships that could have affected their ability to serve on a panel once it had been formed. Nevertheless, they concurred that a serious conflict of interest did not result from Dearden's or Hunter's actions.⁷³

In summary, conflict of interest allegations have not been substantiated as the *Softwood Lumber* case demonstrates. Indeed, protecting the Chapter 19 panel process from conflict of interest charges is facilitated by the rules of conduct, the four pre-emptory challenges that each government may make when the panel is selected, and the ability of panelists to withdraw. Panelists are wary of the potential for conflicts of interest, and therefore supply necessary information as the rules of conduct require. Moreover, a number of Chapter 19 panelists have withdrawn during the process of review to protect the integrity of the process. Finally, as the ECC decision illustrates, governments and panels are striving to ensure that panelists are chosen well and uphold their role as impartial, independent arbiters.

(E) Chapter 19 panels are faster than domestic judicial review

One of the principle objectives for the Chapter 19 process of review was to settle AD/CVD disputes quickly. The timelines set out in Chapter 19 have accomplished that goal as proponents hoped would occur. Panels have issued decisions within the 315 day timeframe in the majority of cases. Of the 30 Canada-U.S. disputes settled under Chapter 19 of the FTA, 15 decisions were given on time, and 15 were slightly late due to remands or suspensions (i.e., late panel selection or panelist withdrawal). Of the six decisions reached by NAFTA panels regarding Canada-U.S. disputes, 5 were released on time, and 1 was late (no official reason given for delay).

The degree to which panels have stayed within the 315 day timeframe has made the Chapter 19 system faster than the domestic processes of judicial review in Canada and the United States. This is most true when Chapter 19 is compared to the American process. The average panel process without remands is 359 days. Comparatively, the average American review process

⁷² Justice Gordon L.S. Hart, *United States-Canada Free Trade Agreement Article 1904.13 Extraordinary Challenge Committee Proceedings in the matter of Certain Softwood Lumber Products from Canada ECC-94-1904-01 USA*, 31-32.

⁷³ Justice Gordon L.S. Hart, *United States-Canada Free Trade Agreement Article 1904.13 Extraordinary Challenge Committee Proceedings in the matter of Certain Softwood Lumber Products from Canada ECC-94-1904-01 USA*, 46-49; Hon. Herbert Morgan, *United States-Canada Free Trade Agreement Article 1904.13 Extraordinary Challenge Committee Proceedings in the matter of Certain Softwood Lumber Products from Canada ECC-94-1904-01 USA*, 25-28, 44-46.