guarantees was commercially unreasonable, based on an assumption, and was not grounded on the administrative record. The panel also remanded Commerce because it did not explain why it had changed its policies regarding loan guarantees. The CIT issued a similar decision in *Armco*. The Court reversed a negative CVD determination because the DOC departed from its previous practice of assigning a 15 year period of useful life of assets in the steel industry when assessing loan guarantees.[58]

Similarly, the panel in the *Bituminous Paving Equipment* dispute adhered to the CIT's decision in *Atcor Inc. v United States* (1987). As explained above, *Atcor* held that the DOC did not need to conduct a full econometric analysis for tax laws. Instead, *Atcor* maintained that Commerce only had to obtain evidence on whether the manufacturer included the passed through tax in their home market sales. The *Bituminous Paving Equipment* panel exercised its authority to concur with some CIT decisions and reject others. It chose to adhere to the CIT's reasoning in *Atcor* and reject the Court's opinion in *Zenith* on the issue of a full econometric analysis for pass-through taxes. It justified its use of *Atcor* for efficiency's sake. To give even more credence to its decision, the panel cited the Court of Appeals for the Federal Circuit's decision in *Smith Corona Group v United States* (1983). As did the court, the panel held that a full econometric analysis was an excessive practice and denied the efficiency required in the administration of AD/CVD laws.[59]

Furthermore, the *Red Raspberries* panel reached conclusions regarding agency discretion that were reflective of three CIT decisions. In *Silver Reed, Timken,* and *U.G.F.C. Co.*, the CIT concluded that while an administrative agency was required to follow its own regulations and practices, it had discretion in interpreting the statute it administered.[60] Similarly, the *Red Raspberries* panel found that the DOC was not required to use home market prices in all circumstances except those specifically enumerated in American trade laws and regulations. Commerce had discretion to use other indicators such as third country sales when determining the margin of dumping. Nevertheless, the panel also held that while the DOC could fill in the "gaps" of statutes and regulations, it had to have a reasonable justification for doing so. In other

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58 *Binational Panel Review in the matter of New Steal Rail, except light rail, from Canada*, USA-89-1904-07; *Armco Inc. v United States* 733 F. Supp 1514 (CIT, 1990); Andreas F. Lowenfeld, "Binational Dispute Settlement Under Chapter 19 of the Canada-United States Free Trade Agreement: An Interim Appraisal," *New York University Journal of International Law and Politics*, Vol. 24, No. 1 (Fall, 1991), 292-293.

59 *Binational panel review in the matter of Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada,* USA-89-1904-03, 22-24.

60 *Silver Reed America Inc. v United States* 581 F. Supp 1290 (CIT, 1984); *Timken Co. v United States* 673 F. Supp 495 (CIT, 1987); *U.H.F.C. Co. v United States* 706 F. Supp 914 (CIT, 1989).