Agreement Act of 1979, there has been in place a privately initiated, time-limited, mandatory, quasi-judicial machinery for investigating, hearing, and determining antidumping and countervailing duty cases. Readily accessible to private complainants, the administrative process provides quick and effective remedies against foreign unfair trade practices. The antidumping and countervailing duty procedures form a system of guaranteed private rights to U.S. producers and industry representatives. There is no room in the U.S. law for government-to-government consultations, negotiations, or compromise short of the foreign country agreeing to cease entirely the challenged subsidy practice.

Two features of the U.S. contingent protection system raise particular concerns for Canadian business and government. First, the process, with its strict time limits and mandatory, legalistic, quasi-judicial procedures, can be a source of harassment for Canadian exporters. By its very diversity and complexity, the system inhibits imports. U.S. producers can initiate countervailing duty, antidumping, Section 301, and Section 201 complaints simultaneously and may also launch a lateral attack in Congress. It is extremely expensive and time-consuming for Canadian business interests to defend themselves against quasi-judicial actions and to lobby the president, the USTR, the ITC, and individual congressmen on all fronts simultaneously. It is difficult to obtain information about how and who to lobby in a complex foreign administrative and legislative system.

The second important feature of the system is its treatment of substantive issues. The ITC determination of material injury to a domestic industry as a result of subsidized imports is not an onerous test for U.S. producers to meet if there has been increasing import penetration and declining sales, profits, employment, prices, or market share for the domestic industry. The more important issue, from the perspective of Canadian