

of the FTA shows first that there was no *obligation* to reach an agreement (of the kind that the parties must reach or have agreed to reach a settlement). At the very most, there was a statement to the effect that the parties would make every effort. Furthermore, some American officials, irritated at the fact that binational panels could review and rule on decisions made by U.S. authorities, were awaiting the expiry of these provisions (seven years after the FTA came into effect) to return to the situation before the FTA, namely, the right to levy countervailing duties without any possible review by binational panels.³¹

As a result, Canada had something to gain from joining the free trade negotiations between Mexico and the United States, namely, ensuring that at least the binational trade panel mechanism did not disappear.

4, The Provisions of the North American Free Trade Agreement of 1992 and the Seattle Declaration of 1993

The North American Free Trade Agreement (NAFTA),³² which was signed in 1992 and came into effect on January 1, 1994, strengthens the binational panel mechanism, in particular by clearly putting it on a permanent footing. Apart from permanent binational panels, Chapter 19 of NAFTA ("Review and Dispute Settlement in Antidumping and Countervailing Duty Matters") basically repeats the FTA provisions, despite the efforts of the American negotiators to reduce the scope of these provisions. Taking its inspiration from the FTA, Article 1907, paragraph 2 of NAFTA states that the parties "agree to consult on the potential to develop more effective rules and disciplines concerning the use of government subsidies, and . . . the potential for reliance on a substitute system of rules for dealing with . . . government subsidization." Here too there is no firm undertaking and still no formal obligation to agree on a substitute system for regulating trade. In addition, the NAFTA provisions, for their part, fail to establish any timetable for dealing with the issue of trade remedies.³³

The trade remedy issue was debated during the federal election campaign of the fall of 1993, with the Liberal Party insisting in particular on maintaining the provisions of Article 1907 of the FTA, requiring the parties to seek to agree by the end of 1995

³¹ Confidential interview.

³² Canada, *North American Free Trade Agreement* (Department of Supply and Services Canada, 1992).

³³ For an analysis of the subsidy provisions in FTA and NAFTA, see Gilbert Gagné, "Le Canada et le libre-échange nord-américain: le problème des recours commerciaux," *Bulletin SDIE*, vol. VI, no. 2 (autumn 1993), pp. 15-17.