

Why We Were Right and They Were Wrong

In summary, the Chapter 19 process has proven to be constitutionally sound, thus disproving the arguments of American critics once again. As the above review indicates, panels have not directly examined constitutional questions because they were created to review the administration of AD/CVD laws. However, a binational panel that was convened to review a Mexican antidumping order did discuss constitutional issues because they proved to be relevant to the case. The *Cut-to-Length Plate Products* panel considered the compatibility of SECOFI's⁶⁹ dumping determination and the "guarantee of legality" of Articles 14 and 16 of the Mexican Constitution. The panel held that it was to ensure that the SECOFI did not abuse the rights of American steel producers during its dumping investigation. The panel felt that its authority to remand SECOFI's determination came not only from the NAFTA but from the Mexican Constitution as well.⁷⁰ The *Cut-To-Length Plate Products* dispute illustrates that Chapter 19 panels can be expected to respect constitutional provisions if they affect the issues before them, thereby preserving the importance of those laws in the three political systems, and the constitutionality of the Chapter 19 system in the future.

(D) *Binational panels and conflicts of interest*

The *Softwood Lumber* dispute politicized conflict of interest charges. A binational panel was convened to review Commerce's CVD determination for softwood lumber imports from Canada. American lumber producers were unhappy with the panel's remand order. They lobbied the USTR to request that an Extraordinary Challenge Committee be convened to review the panel's findings. The USTR argued that Panel Chair Richard G. Dearden (Canadian) and Panelist Lawson Hunter (Canadian) had materially violated the FTA's rules of conduct by failing to disclose information about their personal clients and those that their law firms represented. Consequently, the USTR maintained that the two panelists were guilty of a serious conflict of interest and placed the integrity of the panel in jeopardy.

The majority of the ECC rejected the conflict of interest charges. Justice Hart explained that the FTA's rules of conduct required panelists to submit a disclosure statement before serving on a panel. For example, panelists were required to disclose: (1) any direct or indirect financial or personal interest in the outcome of the proceeding; (2) any existing or past financial, business, professional, family or social relationship, or any such relationship involving a family member, current employer, partner, or business associate; (3) public advocacy of a position on an issue in dispute in the proceeding that was not in the normal course of legal or other representation. The purpose of the disclosure statement was to reveal any interests or relationships that could

⁶⁹ SECOFI (Secretari de Comercio Y Fomento Industrial) is Mexico's administrative agency for AD/CVD/injury determinations.

⁷⁰ *Memorandum, Opinion, and Order of the Majority in the matter of Mexican Antidumping Investigation into Imports of Cut-To-Length Plate Products from the United States*, Mex-94-1904-02, 33.
