

Why We Were Right and They Were Wrong

certain issues. Ad hoc panelists have also been able to bring fresh, sharp perspectives to issues whereas permanent courts or tribunals can be prone to offering stale, repeated conclusions. Finally, ad hoc panels have not become backlogged like permanent tribunals can be, and have therefore been more likely to uphold the timelines of Chapter 19.

Moreover, Canadians need to continually impart the value of rule-based trade to the Americans. We need to illustrate that the panel system has proven to be constitutional, compatible with domestic laws and judicial practices, and has been able to produce high quality, consistent decisions that uphold domestic laws. Chapter 19 has improved the climate for settling bilateral trade disputes in domestic legal circles. An Anti-Chapter 19, pro-U.S. protectionism lobby has grown extremely loud in Washington. Lumber, steel, semi-conductor, and pork producers have joined hands to hire powerful legal and lobby firms to ensure that American laws stay intact. Firms such as Dewey Ballantine are paid millions of dollars to engineer a constant stream of litigation against any firm, producer group, or country that challenges U.S. trade laws. Conventional wisdom holds that American politicians understand the politics of interest groups and lobbying. Allan Gotlieb extolled the importance of practicing public diplomacy to get a message in the American media and to politicize a point of view. He also insisted that co-opting like-minded American parties will only help because domestic lobbies have more influence than foreign ones do.⁹⁹ Canadian governments, policy-makers, and interest groups need to create an effective pro-Chapter 19 lobby to counter the critics in less competitive industries who have the ear of the U.S. Administration and Congress. Bringing like-minded officials and business groups from the United States and Mexico into the fight would help to politicize the importance of Chapter 19 as well. The FTA and NAFTA Chapter 19 negotiations have proven that Canadians can get Americans to accept their beliefs in rule-based trade by continually pushing a certain point of view. Therefore, the empirical evidence upholding the strengths of Chapter 19 must be stressed in bilateral relations to ensure that American officials preserve and promote the value of the binational process of judicial review at home.

Second, compliance could be encouraged by building on the strengths of the Chapter 19 system. Even though the panel system has proven to be effective and not plagued by the problems that have critics alleged, it can be improved. To counter the "remand phenomenon," a timetable could be placed into Chapter 19 to ensure that remands are applied quickly and complied with completely. In the event that timetables were unacceptable, an enforcement body such as the Dispute Settlement Board of the WTO board could be instituted to see that panel decisions are implemented as they were intended to be. Second, Chapter 19 could be improved and compliance encouraged by making panelists more familiar with the trade laws, administrative practices, and cultural idiosyncracies of Canada, Mexico, and the United States. Training

⁹⁹ Allan Gotlieb, *I'll be with you in a minute Mr. Ambassador: The Education of a Canadian Diplomat in Washington* (Toronto: University of Toronto Press, 1991), 131.