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Alternative Methods of Appellate Review in Trade Remedy Cases: Examining Results of U.S. Judicial and NAFTA Binational Review of U.S. Agency Decisions from 1989 to 2005

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When the United States and Canada agreed to replace U.S. judicial review of trade remedy cases with a new dispute mechanism under Chapter 19 of the Canada-U.S. Free Trade Agreement (now the North American Free Trade Agreement), the U.S. Congress and trade negotiators stipulated that the new dispute settlement panels would apply the U.S. law and standard of review in the same manner as U.S. courts. This requirement was embodied in the text of the agreement and has at least nominally been applied by Chapter 19 panels ever since. Empirical analysis of 17 years of decisions now allows a conclusion with a high degree of confidence that Chapter 19 panels are far more likely than U.S. courts to overturn U.S. agency decisions. Not only that, but Chapter 19 panels have produced outcomes more favorable to Canadian importers than have U.S. courts. This outcome illustrates that the

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facial legal terms of an international agreement may give a misleading impression of how it will actually be implemented, and suggests that greater attention must be paid to how it will be interpreted and by whom.

I. Introduction

Quantitative analysis on the economic effects and trends of trade liberalization has been both frequent and sophisticated. Vast quantities of easily accessible aggregate data, including multiple countries' trade volumes, average tariff levels, and gross domestic product, are available to economists from governmental or private sources. Perhaps due to the difficulty in obtaining quantitative data on legal phenomena related to the operation of the different international trade regimes, legal scholarship has scarcely used statistical analysis. This means that we have come to understand a good deal about the broad quantifiable economic consequences of trade agreements, but remain largely confined to anecdotal accounts of how such agreements have affected and been impacted by the legal proceedings taking place in the domestic and international legal infrastructure.[1] Thus, studying what can be quantified in the operation of this legal architecture is critical for an understanding of how international trade law has evolved as it has been applied by the institutions charged with adjudicating international trade disputes. This effort may also contribute to a more complete comprehension of the processes underlying economic change.

The United States, like Canada and nearly every other industrialized nation, maintains "trade remedy" laws that authorize U.S. administrative agencies to impose duties on imported goods they find to be "dumped" or subsidized. These anti-dumping (AD) and countervailing duty (CVD) determinations are subject to review by U.S. federal courts. Chapter 19 of the Canada-U.S. Free Trade Agreement (CUSFTA) and its successor,[2] the North American Free Trade Agreement (NAFTA), allowed replacing review of

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[1]For one such brilliant anecdotal study, see Daniel K. Tarullo, The Hidden Costs of International Dispute Settlement: WTO Review of Domestic Anti-Dumping Decisions, 34 Law & Pol'y Int'l Bus. 109, 110 (2002).

[2]Technically speaking, NAFTA did not terminate CUSFTA, which remains in operation, as specified in North American Free Trade Agreement, U.S.-Can.-Mex., Art. 103(1), Dec. 17, 1992, 32 I.L.M. 289, 297 (1993) [hereinafter NAFTA]. CUSFTA provisions that are inconsistent with NAFTA are no longer in effect. Id., Art. 103(2), 32 I.L.M. at 297.

agency decisions by national judges on trade remedy cases with review by binational panels appointed jointly by the governments involved.[3] Chapter 19 requires these binational panels to review agency decisions on AD and CVD law using the same standard of review *and* substantive law as would the domestic courts they replace.[4] NAFTA also prohibits domestic judicial review once one of the members requests the formation of a panel, and requires members to obey the decisions of these panels.[5] The U.S. and Canadian governments adopted this arrangement as a compromise after the United States rejected Canada's demands that CUSFTA eliminate all anti-dumping and countervailing duties in trade between the two countries.[6] Canadians reasoned that this new mechanism for review of agency decisions would put a check on what they perceived as a predisposition on the part of U.S. agencies to rule in favor of U.S. industry petitioners.[7]

Prior studies of Chapter 19 agree that these panels overturn U.S. agency decisions more often than U.S. judges. Yet, none of these studies has provided an actual empirical comparison of how review has been different under these two systems. This article reviews prior research and extends it by comparing the results of review of U.S. agency determinations with Chapter 19 review.

II. Operation of U.S. Trade Remedy Law

The AD and CVD law in the United States is a complex set of statutes designed to ensure that the executive branch takes action against unfair

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[3]See Canada-U.S. Free Trade Agreement, U.S.-Can., Art. 1904, Jan. 2, 1988, 27 I.L.M. 281, 387; NAFTA, supra note 2, Art. 1904, 32 I.L.M. at 683.

[4]See CUSFTA, supra note 3, Art. 1904(3), 27 I.L.M. at 387; NAFTA, supra note 2, Art. 1904(3), 32 I.L.M. at 683.

[5]See CUSFTA, supra note 3, Art. 1904(1), 27 I.L.M. at 387; NAFTA, supra note 2, Art. 1904(1), 32 I.L.M. at 683.

[6]Michael Hart, Dumping and Free Trade Areas, in Antidumping Law and Practice 326, 336–41 (John H. Jackson & Edwin A. Vermulst eds., 1989).

[7]U.S. General Accounting Office, GAO/GGD-95-175BR, U.S.-Canada Free Trade Agreement: Factors Contributing to Controversy in Appeals of Trade Remedy Cases to Binational Panels 3 (1995) [hereinafter GAO Report].

trade practices by foreign countries and/or foreign companies trading with the United States. Usually, a U.S. manufacturer files a petition with the U.S. Department of Commerce (Commerce).[8] The petition must claim that imports from another country have benefited from government subsidies or are being sold in the United States at prices lower than in their home market (dumping).[9] After a brief preliminary inquiry into sufficiency of the petition, Commerce then conducts an investigation to determine if the petitioner's claims are valid.[10] Concurrently, the U.S. International Trade Commission (ITC) investigates whether the U.S. domestic industry has suffered injury by reason of such imports.[11] If both agencies make affirmative determinations, then Commerce calculates an offsetting duty that will be applied against the subject import.[12]

Agency determinations can be reviewed only by the U.S. Court of International Trade (CIT), an Article III court sitting in New York City.[13] The U.S. Court of Appeals for the Federal Circuit (CAFC) has exclusive appellate jurisdiction over final decisions of the CIT.[14] The U.S. Supreme Court has discretion to review CAFC decisions,[15] though it has reviewed only a handful of AD and CVD cases in the last 100 years.[16]

Review of U.S. agency final determinations occurs under the "substantial evidence" standard. Under this standard, the reviewing court decides whether such determinations are "unsupported by substantial evidence on the record, or otherwise not in accordance with law."[17] Specifically, this

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[8]19 U.S.C. §§ 1671a(b) (CVD), 1673a(b) (AD) (2006).

[9]Id.

[10]19 U.S.C. §§ 1671a(c), 1673a(c).

[11]19 U.S.C. §§ 1671d(b) (CVD), 1673d(b) (AD).

[12]19 U.S.C. §§ 1671d(c) (CVD),1673d(c) (AD).

[13]See 28 U.S.C. § 1581 (2006).

[14]28 U.S.C. § 1295(a)(5).

[15]28 U.S.C. § 1254.

[16]The last case the Court reviewed was *Zenith Radio Corp. v. United States*, 437 U.S. 443 (1978).

[17]19 U.S.C. § 1516a(b)(1)(B)(i).

standard has been interpreted to be the equivalent of asking: Is the determination unreasonable?[18] In the majority of cases, when deciding whether an agency's decision is "not in accordance with law," a court will provide some deference to the agency's legal interpretations, upholding them unless they are "effectively precluded by the statute."[19]

This review process is open to *all* foreign parties who wish to appeal U.S. agency determinations before U.S. courts; however, NAFTA member countries have another option in Chapter 19 panel review.

III. The Chapter 19 Review System

Chapter 19 came into effect on January 1, 1989.[20] It was in part a result of a compromise between Canada—which had wanted complete exemption from U.S. AD law[21]—and the United States—which was not ready to do so unless Canada agreed to a stricter set of rules against subsidies.[22] This arrangement, a product of last-minute negotiations,[23] enabled the two trading partners to enter what they perceived as a mutually advantageous agreement. At the time, the United States and Canada had the largest bilateral trade relationship in the world.[24] The United States was Canada's largest export market and Canada was the United States' second largest

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[18]Nippon Steel Corp. v. United States, Nos. 05-1404 & 05-1417, slip op. at 9 (Fed. Cir. Aug. 10, 2006) (internal punctuation omitted) (quoting SSIH Equip. SA v. United States Int'l Trade Comm'n, 718 F.2d 365, 381 (Fed. Cir. 1983) (Nies, J., concurring)).

[19]PPG Indus. v. United States, 928 F.2d 1568, 1573 (Fed. Cir. 1991).

[20]CUSFTA, supra note 3, Art. 2105, 27 I.L.M. at 399.

[21]See Hart, supra note 6, at 336–37.

[22]Charles M. Gastle & Jean-G. Castel, Should the North American Free Trade Agreement Dispute Settlement Mechanism in Antidumping and Countervailing Duty Cases Be Reformed in the Light of Softwood, 26 Law & Pol'y Int'l Bus. 823, 829 (1995).

[23]Charles M. Gastle, Policy Alternatives for Reform of the Free Trade Agreement of the Americas: Dispute Settlement Mechanisms, 26 Law & Pol'y Int'l Bus. 735, 743 (1995) (explaining that Chapter 19 was a "last-minute compromise that [had] saved the free trade negotiations").

[24]See Senate Committee on Finance, Report of the Committee on Finance, in Approving and Implementing the United States-Canada Free-Trade Agreement: Reports and Other Materials, S. Rep. No. 100-509, at 3, 8 (1988).

export market, ranking only behind Japan.[25] To Canada, improved access to the largest consumer market in the world—combined with the increase in U.S. and other foreign direct investment that normally follows the creation of a free trade area—provided a number of benefits, including the long-term permanence in Canada of Canadian and foreign-owned multinational corporations (MNCs).[26] From a U.S. perspective, the FTA would, among other things, ensure an open investment environment in Canada for U.S. companies, and facilitate U.S. access to vast Canadian energy resources.[27] Chapter 19 was later extended to Mexico when it entered into the NAFTA in 1994.[28]

To implement a more closely integrated dispute settlement regime for trade remedy investigations in the NAFTA area, members agreed to waive their sovereign right to have their agency determinations be reviewed by their domestic courts, opting instead for review by binational panels.[29] Agency compliance with its country's domestic trade remedy laws, as determined by these binational panels, would be the measure of that country's compliance with its NAFTA obligations.[30] Thus, parties from NAFTA countries affected by U.S. trade remedy determinations were given the option to seek either U.S. judicial or Chapter 19 panel review.[31] However, a request for the formation of a binational panel by any party who took part in the agency proceedings forecloses U.S. court review of such determinations.[32]

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[25]Id.

[26]See, e.g., Ralph H. Folson et al., Nafta—A Problem Oriented Coursebook 6 (2000) (noting that "the majority of exports from MNCs in Canada are intra-firm exchanges," and explaining how this fact influenced MNC decisions to maintain operations in Canada despite the removal of tariff barriers).

[27]See The Constitutionality of Establishing a Binational Panel to Resolve Disputes in Antidumping and Countervailing Duty Cases: Hearing on United States-Canada Free Trade Agreement Before the S. Comm. on the Judiciary, 100th Cong. 2 (1988) (Statement of Ambassador Alan F. Homer, Deputy U.S. Trade Representative).

[28]NAFTA, supra note 2, Art. 2203, 32 I.L.M. at 702. For convenience, this article will refer to NAFTA rather than the CUSFTA unless there is a particular need to distinguish the two.

[29]NAFTA, supra note 2, Art. 1904(1), 32 I.L.M. at 683.

[30]NAFTA, supra note 2, Art. 1904(2), 32 I.L.M. at 683.

[31]See 19 U.S.C. § 1516a(a)(2); NAFTA, supra note 2, Art. 1904(5), 32 I.L.M. at 683.

[32]19 U.S.C. § 1516a(g)(2); NAFTA, supra note 2, Art. 1904(11), 32 I.L.M. at 683.

Panels, which consist of "experts" in international trade matters (usually lawyers in private practice), are bound to apply the domestic law of the party whose agency order is challenged, that is, the law of the importing country.[33] More importantly, as reviewing authorities, NAFTA panels must apply "the standard of review . . . and the general legal principles that a court of the importing party otherwise would apply to" determinations of the competent agencies in the importing country.[34] Therefore, NAFTA panels reviewing Commerce or ITC trade remedy decisions are bound to (1) apply U.S. trade remedy law; and (2) employ the statutorily mandated standard of review and assume a level of deference similar to that extended to such agencies by the CIT and the CAFC.[35]

In contrast to the U.S. judicial review system where the U.S. federal courts of appeal have no discretion to refuse appeals of final determinations from lower courts,[36] there is no appeal as a matter of right from a panel decision. Under NAFTA, only governments can file a request for an "extraordinary challenge" to a panel decision.[37] Extraordinary Challenge Committees (ECCs) exist partly to ensure that NAFTA decisions remain consistent with domestic law and precedent,[38] but are permitted only in relatively extreme circumstances. For example, a government can file an extraordinary challenge if a panelist is guilty of "gross misconduct," or the panel "manifestly exceeded its powers, authority or jurisdiction . . . for example by failing to apply the appropriate standard of review," but even then only if

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[33]Id.; NAFTA, supra note 2, Annex 1901.2(1)–(2), 32 I.L.M. at 687.

[34]NAFTA, supra note 2, Art. 1904(3), 32 I.L.M. at 683.

[35]Id.; accord GAO Report, supra note 7, at 35.

[36]See 28 U.S.C. §§ 1291, 1295.

[37]NAFTA, supra note 2, Art. 1904(13), 32 I.L.M. at 683.

[38]Pure Magnesium from Canada, No. ECC-2003-1904-01USA, at ¶ 29 (Oct. 7, 2004) (ECC should not permit "formation of two streams of anti-dumping and countervail duty law, one developed by binational panels and one by courts; a result that is clearly antithetical to the whole construct of Chapter 19"). Cf. Synthetic Baler Twine with a Knot Strength of 200 Lbs. or Less Originating in or Exported from the United States of America, No. CDA-94-1904-02, at 12 (Apr. 10, 1995) (binational panel should use same standard of review as Canadian federal court, even though binational panels are particularly expert in international law, to ensure "certainty, consistency, and predictability in decision-making" between decisions involving NAFTA and non-NAFTA members).

such an action "materially affected the panel's decision and threatens the integrity of the binational panel review process."[39]

IV. Earlier Studies on the Record of Chapter 19 Review

Many authors have in some way sought to compare the results of Chapter 19 review of U.S. agency decisions with the outcomes of adjudication by the CIT and CAFC.[40] They all have noted that Chapter 19 panels overturn agency decisions more often than the U.S. courts.[41] Most consider this a desirable outcome or at least one permissible under U.S. law.[42] Some studies have also compared how Chapter 19 panels review U.S. and Canadian agency decisions. They have concluded that Chapter 19 panels have showed far more deference to Canadian decisions, and have ruled more often in favor of petitioners from Canada.[43] None of these studies, however, has systematically looked at the outcomes of all Chapter 19 decisions during both CUSFTA and NAFTA periods. They relied either on data available from the CUSFTA

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[39]NAFTA, supra note 2, Art. 1904(13), 32 I.L.M. at 683.

[40]See Patrick Macrory, NAFTA Chapter 19: A Successful Experiment in International Trade Dispute Resolution, C.D. Howe Inst. Comment. Sept. 2002, at 1; Jennifer Danner Riccardi, The Failure of Chapter 19 in Design and Practice: An Opportunity for Reform, 28 Ohio N.U.L. Rev. 727 (2002); Kent Jones, Does NAFTA Chapter 19 Make a Difference? Dispute Settlement and the Incentive Structure of U.S./Canada Unfair Trade Petitions, Contemp. Econ. Pol'y, Apr., 2000, at 145; Eric J. Pan, Assessing the NAFTA Chapter 19 Binational Panel System: An Experiment in International Adjudication, 40 Harv. Int'l L.J. 379 (1999); Judith Goldstein, International Law and Domestic Institutions: Reconciling North American "Unfair" Trade Laws, 50 Int'l Org. 541 (1996); John M. Mercury, Chapter 19 of the United States-Canada Free Trade Agreement 1989–95: A Check on Administered Protection? 15 NW J. Int'l L. & Bus. 525 (1995); GAO Report, supra note 7, at 2; James R. Cannon, Jr., Resolving Disputes Under NAFTA Chapter 19 chs. 13–14 (1994); Michael Krauss, The Record of the United States-Canada Binational Dispute Resolution Panels, N.Y. Int'l L. Rev. 85 (Summer, 1993); Andreas F. Lowenfeld, Binational Dispute Settlement Under Chapter 19 of the Canada-United States Free Trade Agreement: An Interim Appraisal, 24 N.Y.U. J. Int'l L. & Pol. 269 (1991).

[41]Id.

[42]See Macrory, supra note 40, at 18; Jones, supra note 40, at 149; Pan, supra note 40, at 442–44; Goldstein, supra note 40, at 562; Mercury, supra note 40, at 527–28; Lowenfeld, supra note 40, at 338.

[43]See, e.g., Mercury, supra note 40, at 529–35, 568–72; Jones, supra note 40, at 149.

period or data from the earlier years of NAFTA. More importantly, no prior study has compared the results of Chapter 19 review with outcomes of U.S. judicial review.

V. Empirical Analysis of Federal Judicial and NAFTA Review of U.S. Agency Determinations on Trade Remedy Cases from 1989 to 2005

A. Statement of Hypotheses and Some Methodological Considerations

To empirically verify whether the agreed-upon review mechanism of NAFTA has behaved similarly to the CIT/CAFC review system, I looked at quantifiable aspects of decisions by these parallel adjudicatory systems. To confirm or refute the general impression that NAFTA panels have been less deferential to U.S. agency decisions than U.S. courts, I examined AD/CVD rate, scope, and injury decisions before and after review.[44] The goal was to test the following two hypotheses.[45]

H_1: *NAFTA panel review is less likely to leave rate determinations unchanged than U.S. federal court review.*

H_2: *NAFTA panel review is less likely to result in rate increases than U.S. federal court review.*

The foremost purpose of these hypotheses is twofold: (1) to allow us to look at agency deference from a neutral, nonsubjective perspective; and (2) to monitor the impact of NAFTA or judicial review on these agencies' original determinations. In applying U.S. trade remedy statutory law, Commerce and the ITC issue determinations that either establish or deny the imposition of AD/CVD remedies to imports deemed to be within the scope of their investigations. From both legal and economic perspectives, these

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[44]To simplify sentences and facilitate the flow of text in this section, when I use the term "rate(s)," the reader should understand that I may also be referring to decisions about the scope of an order. For substantive, not textual, reasons explained in the text below, injury determinations are also subsumed under the general label "rates."

[45]Technically, "[t]he hypothesis that is actually tested is . . . the null hypothesis," which generally states that "there is no difference between [the two] groups [studied] or relationship between the variables . . .." Hubert M. Blalock, Jr., Social Statistics 156 (McGraw Hill, rev. 2d ed. 1979). Accordingly, in this study, the "null" states that there is no difference between the two review systems under any of these research hypotheses.

decisions about duty rates or scope (Commerce) and injury (ITC) constitute the core of these agencies' determinations. Examining what happens to the quantifiable dimensions of such decisions once judicial or NAFTA review is completed allows us not only to test empirically whether these two systems have approached agency decisions similarly, but also permits assessment of the overall impact of judicial or NAFTA review on these decisions.

To accomplish these goals, the *first hypothesis* tests specifically whether original AD/CVD rate determinations by U.S. agencies have the same "success" rate under the two review systems. By looking at whether the final results of either type of review maintain or alter the original agency decision—by reference to what happens to the rate after all review is completed—one can develop a picture of how often agency findings (whether affirmative or negative) receive deference. For our purposes, an agency "win" is either an outright affirmance by the CIT or NAFTA panel or an affirmance of a determination on remand that leaves the original rate undisturbed. Conversely, a "loss" occurs whenever the rate changes as a result of review. Assuming ceteris paribus conditions, if one detects statistically significant differences in the way the two adjudicatory systems approach agency decisions under review, one can then identify one of these two systems as being systematically less deferential than the other.

Looking at a subset of these cases, the data collected under the *second hypothesis* help us determine what happens to rates when an agency is reversed. This hypothesis notably excludes cases where agencies have "won," as explained in the first hypothesis. By examining how rates change as a result of review, we attempt to detect whether a particular statistically significant trend in the direction of rates exists. Specifically, when we exclude cases where rates remain the same after review, do these adjudicatory systems differ in terms of trends in postreview rates in such a way that one tends to reduce or increase rates more than the other? If one of these review systems is more likely to reduce agency-determined AD/CVD rates than the other, then we can consider that particular system to be more beneficial to exporting interests than to the competing domestic industry in the importing country. Thus, by determining that one review system is more likely to increase (or decrease) rates than the other, we should be able to identify which set of economic interests tends to benefit more under each system—an inquiry beyond the notion of deference, tested in the first hypothesis.

In sum, should empirical analysis support these two hypotheses, we would be justified in concluding that binational review under NAFTA has failed to comply with the requirement that it apply the U.S. substantive law

under the same principles of administrative review that prevail in U.S. courts. Such sustained pattern of adjudication that limits the operation of U.S. trade remedy statutes would amount to a failure to comply with Congress's will and the basic terms of the bargain to which NAFTA members agreed.

B. The Data

To test the two hypotheses, I collected data covering completed results of CIT/CAFC review and NAFTA binational review in the period from January 1, 1989 to December 31, 2005. These results focused on determinations made by the Department of Commerce and the ITC. For CIT/CAFC review, the two main sources of primary data were (1) the U.S. Court of International Trade Reports (1989–1999);[46] and (2) the websites of the CIT (1999–2005),[47] CAFC, and Georgetown Law Library (1995–2005), which contain all decisions by these courts during the relevant period.[48] Of all CIT/CAFC opinions, I looked only at trade remedy cases, discarding other types of litigation, such as appeals of Customs decisions to the CIT/CAFC and appeals of government contracts, patents, trademarks, and certain money claims against the U.S. government to the CAFC. I also examined the effects of CAFC reversal of CIT decisions. As I looked at each of these decisions, I monitored subsequent developments on remand by looking at agency remand redeterminations according to the case file number assigned at the CIT.

Because the CIT issues on average more than 120 decisions regarding trade remedy determinations every year, I developed an algorithm that restricted the size of the sample to manageable proportions while assuring randomness. This algorithm is based on the last five digits of the case file number assigned at random to all CIT decisions. If the sum of these digits divided by three yields an integer, the case enters the sample. However, if the selected case involves procedural issues (e.g., requests for injunctions, mandamus, motions for rehearing, etc.) not relevant for comparison with

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[46]United States Court of International Trade Reports: Cases Adjudged in the United States Court of International Trade, vols. 13–23 (1989–1999).

[47]Court of International Trade website, http://www.cit.uscourts.gov/slip_op/slip-op.html (last visited Nov. 10, 2006).

[48]Court of Appeals for the Federal Circuit website, http://www.fedcir.gov/dailylog.html (last visited Nov. 10, 2006); Georgetown Law Library website, available at ⟨http://www.ll.georgetown.edu/federal/judicial/cafed.cfm⟩ (last visited Nov. 10, 2006).

NAFTA dispute settlement, that selected case, though part of the sample, will not appear in the total number of observations.

I obtained the initial agency rate from the *Federal Register* notice communicating the results of the agency's final determination or from the court's opinion. To obtain information about what happened to rates when the CIT did not affirm, I searched through the *Federal Register* database for information about agencies' redeterminations on remand.[49] When I did not succeed in obtaining any information through this means, I contacted the Office of the Clerk of the CIT and requested information about these particular remands. This was particularly necessary for remand redeterminations issued between January 1, 1989 and May 16, 1997, because the Department of Commerce has not published its remand results for this period and in some cases may not retain them. Remand redeterminations for the relevant cases in the remaining period of our sample were obtained from Commerce's website.[50] However, because information about some of these cases was proprietary, I was not granted access to such remands and could not reach a decision with respect to rates for such cases, and thus had to eliminate them from the sample.

Because only 42 completed Chapter 19 cases reviewing U.S. agency determinations occurred during the research period, I was able to collect data on the entire population of published cases before NAFTA panels. Primary data on these Chapter 19 cases were obtained from the NAFTA Secretariat's database of panel and ECC decisions.[51] I also monitored subsequent developments on remand by looking at agency remand redeterminations to determine how prior rate decisions were affected. Information about pre- and post-NAFTA review agency rates was collected from *Federal Register* notices and the text of NAFTA panel or ECC reports following remand.

Upon completion of data collection, I coded each case for purposes of hypothesis testing. Although detailed information about how cases were coded is presented in the section below, my final decision with respect to where a particular case fits is based on the final outcome of review once all remand activity, if any, was approved by the reviewing body.

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[49]Federal Register Database, http://www.gpoaccess.gov/fr/index.html (last visited Nov. 10, 2006).

[50]See ITA website, http://ia.ita.doc.gov/remands/ (last visited on Nov. 10, 2006).

[51]NAFTA Secretariat's Database, http://www.nafta-secalena.org/DefaultSite/index_e.aspx?DetailID=76 (last visited on Nov. 10, 2006).

To include ITC cases within the sample, I developed a method that allowed me to convert review results from injury determinations into a rate-based approach. Because of the binary nature of injury determinations in U.S. trade remedy law, final judicial or NAFTA review of affirmative injury determinations can result in either affirmance or revocation of the underlying AD/CVD duty order.[52] Therefore, an affirmance of an *affirmative* injury determination was coded as a decision that does not alter the rate, while a final decision vacating or calling for the revocation of a prior affirmative injury determination on remand means that the rate is in effect reduced (i.e., the rate actually disappears) as a result of the order being revoked. Accordingly, final affirmance of a *negative* injury determination was interpreted as a decision that leaves the rate unchanged (i.e., the rate remains at zero as no order imposing offsetting duties exists), while a court or panel-mandated remand that subsequently results in the ITC issuance of an affirmative injury remand redetermination does count as a change in rates, since duty rates will necessarily be imposed, and rates will change from zero upward.

C. Statistical Comparison of Chapter 19 and U.S. Judicial Review Outcomes

1. First Hypothesis: NAFTA Panel Review is Less Likely to Leave Rate Determinations Unchanged than U.S. Federal Court Review

To test this hypothesis, I looked at whether the rates prevailing after the conclusion of all review remained the same or changed (upward or downward) in comparison with the rates reported at the conclusion of U.S. agency trade remedy investigations.[53] Among the 168 cases in U.S. courts in the sample, 68 percent (114 cases) resulted in no change in the agency-determined rate after review, while 32 percent (54 cases) resulted in a different rate. In contrast, among the 41 cases reviewed at NAFTA, 34 percent (14 cases) did not change the rate imposed by the agency. Signifi-

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[52]19 U.S.C. §§ 1671(a), 1673.

[53]That is, rates established in Commerce's original final determinations constitute the baseline for rate comparisons throughout this study. For a number of reasons, not all relevant cases were included in the reported number of observations. An otherwise relevant case was excluded where either (1) the final disposition on review did not occur before December 31, 2005; (2) the information regarding rates after remand was not available, as explained in Section IV.B; or (3) the final disposition of a case, though occurring at a later year, was recorded earlier (to avoid the risk of double-counting).

cantly, NAFTA changed original agency rates 66 percent (27 cases) of the time. Thus, in rounded figures, over two challenges in three fail to succeed in changing U.S. agency rate decisions in U.S. courts. Yet, only one challenge in three at NAFTA fails to change rates. Conversely, U.S. judicial review of agency determinations change rates less than one-third of the time, while review at NAFTA does so just short of two-thirds of the time.[54] These results demonstrate that varying the review system impacts the likelihood that rates will remain the same. To be precise, U.S. judicial review is more deferential to prior agency determinations than NAFTA binational review because it allows the status quo to stand much more frequently.

To determine whether a statistically significant relationship exists between ADJUDICATING SYSTEM and RATE STATUS, I performed a Fisher's exact test. I obtained a p value less than 0.001 (two-tailed), and was able to corroborate the hypothesis that NAFTA panel review is less likely to leave rate determinations unchanged than U.S. federal court review. That the source of review affects whether rates change suggests that U.S. judicial review is more deferential to agency determinations than NAFTA as a result of the principle of judicial deference prevailing in all administrative litigation in U.S. courts.

2. Second Hypothesis: NAFTA Panel Review is Less Likely to Result in Rate Increases than U.S. Federal Court Review

By examining the subset of decisions where U.S. agencies were reversed, one seeks to determine if the two review systems also differ with respect to the direction that revised rates assume after review is completed.[55] This examination reveals that although both review systems are more likely to decrease than increase rates when they reverse agencies, they differ markedly in terms of how often rates are increased or decreased. When U.S. courts reverse U.S. agencies, their review leads to increased rates about 32 percent (14 of 44 cases) of the time or almost three times for every 10 reversals. NAFTA, on the other hand, does so 8 percent (2 of 25 cases) of the time, or less than once

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[54]See the Appendix for a list of the cases in which NAFTA review changed rates. Due to the large sample size, I do not provide a list of the CIT/CAFC cases that resulted in changed rates.

[55]As with the first hypothesis, not all relevant cases were included in the reported number of observations. In addition to the reasons for exclusion listed in note 53, an otherwise relevant case was excluded where either (1) the rates did not differ from the original rates; or (2) the rates assessed to particular companies changed in opposite directions ("mixed-rate" cases).

for every 10 reversals. In relative percentages, NAFTA review is thus four times less likely to result in increased rates than U.S. court review. Conversely, after NAFTA review, rates are decreased 92 percent of the time (23 out of 25 cases) compared to only 68 percent of the time (30 of 44 cases) in U.S. federal courts.[56]

Statistical testing (p value approximately 0.036, two-tailed) confirmed the interpretation above, allowing me to corroborate the hypothesis that NAFTA panel review is less likely to result in rate increases than U.S. federal court review. That NAFTA review is more likely to result in rate decreases than U.S. judicial review supports the earlier inference that NAFTA is more beneficial to exporting interests than to the competing U.S. domestic industry seeking relief against foreign trade practices.

One should note that of the 14 CIT/CAFC reviews that resulted in rate increases, nine were filed by plaintiffs representing the domestic industry.[57] To date, such plaintiffs have never initiated a Chapter 19 proceeding (though they have cross-appealed in reaction to importers' appeals). In theory, one could suppose that the difference in outcomes between Chapter 19 and CIT adjudication arises because U.S. industries have neglected to file appeals that would have succeeded if they had bothered to pursue them. But it is hard to imagine why U.S. industries would be relatively more neglectful of their own rights in cases with Chapter 19 jurisdiction than in cases with CIT jurisdiction. In both forums it is relatively cheap to appeal, compared with pursuing an investigation, so that if the expense of filing a petition justified pursuing a matter, the chance of filing an appeal with a good chance of success would seem equally to justify doing so. Thus, the reluctance on the part of U.S. domestic industry to request Chapter 19 review likely results from the perception that its chances of success are low. This perception may be based on commentators who have observed different success rates[58] and the history of Chapter 19, which was introduced as a result of Canadian complaints that the CIT did not give Canadian parties a sufficient chance of success.

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[56]See the Appendix for a list of cases where NAFTA review has decreased rates.

[57]See the Appendix for a list of CIT/CAFC cases filed by the domestic industry.

[58]Supra note 40.

D. Why a Priest-Klein Case Selection Effect Cannot Account for the Results of Chapter 19 Litigation

Priest and Klein posited that samples consisting only of litigated cases are not necessarily representative of the larger population of disputes about which one draws causal inferences.[59] In light of this, one may question whether a case selection effect might actually account for the demonstrated propensity of Chapter 19 panels to rule against U.S. agency decisions. If fewer challenges to NAFTA mean only stronger cases are being pursued, the difference in reversal rates between the two systems may be a result of case selection, rather than an indication of less deference in the Chapter 19 system.

Two important facts refute this conjecture. First, from 1989 through 2003 (the most recent year for which statistics on agency orders are available), the United States issued 15 AD/CVD orders on Canadian imports,[60] all of which were appealed to Chapter 19 panels.[61] That Canadian parties chose to challenge *every* order a U.S. agency issued against their exports shows how unselective they have been with respect to their decisions to appeal. In contrast, since *New Steel Rails from Canada* in 1990,[62] U.S. industry has not bothered to appeal any negative dumping, subsidy, or injury decision by U.S. agencies regarding Canadian goods, even though appeals typically require

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[59]For a detailed discussion of this model, see George Priest & Benjamin Klein, The Selection of Disputes for Litigation, 13 J. Legal Stud. 1 (1984).

[60]See International Trade Administration, U.S. Department of Commerce, Antidumping Investigations Case Activity (Jan. 1, 1980–Dec. 31, 2003), available at ⟨http://ia.ita.doc.gov/stats/ad-1980-2003.html⟩ (last visited Nov. 10, 2006); International Trade Administration, U.S. Department of Commerce, Antidumping Investigations Case Activity (Jan. 1, 1980–Dec. 31, 2003), available at ⟨http://ia.ita.doc.gov/stat/cvd-1980-2003.html⟩ (last visited Nov. 10, 2006); International Trade Administration, U.S. Department of Commerce, AD/CVD Investigations Federal Register History, available at ⟨http://ia.ita.doc.gov/stats/caselist.txt⟩ (last visited Nov. 10, 2006).

[61]See NAFTA Secretariat, Decisions and Reports, available at ⟨http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=76⟩ (last visited Nov. 10, 2006).

[62]New Steel Rail, Except Light Rail, from Canada, Panel No. USA-89-1904-08 (FTA Panel Aug. 13, 1990).

much less effort than investigations.[63] Second, a comparison of the ratio of Canadian appeals to U.S. agency *determinations* before and after the creation of the Chapter 19 system shows that the Canadian appeals increased with the inception of Chapter 19 review. Canadian parties appealed 19.5 percent of Commerce determinations to the CIT in the period between January 1985 and December 1988.[64] In contrast, Canadians challenged 47 percent of such determinations before Chapter 19 panels in the period from January 1989 to September 1994.[65] That Canadian appeals have become more frequent since the creation of Chapter 19 review refutes the notion that these cases are somehow made up of stronger claims.

A similar effect could arise if U.S. agencies discriminated against Canadian imports by imposing a disproportionate number of AD/CVD orders on Canadian products. The opposite is true. U.S. agencies have imposed fewer duties on NAFTA members, and U.S. industries have filed relatively fewer petitions regarding NAFTA members' goods.[66] In sum, Chapter 19's high rate of agency reversal in comparison with U.S. judicial review cannot be explained by any kind of case selectivity effect.

E. Pre-Chapter 19 Litigation Results in Cases Involving Canadian Goods

A comparison between litigation patterns in challenges to U.S. agency determinations on Canadian goods before and after the creation of Chapter 19 is necessary to ensure that attribution of the higher reversal rate in Chapter 19 review to the change in adjudicatory system is appropriate. In other words, should Chapter 19 reversal rates match those of U.S. judicial review in the years immediately preceding its creation, one would be forced to conclude that Chapter 19 is not deciding Canadian cases differently than would the U.S. courts it replaced. Further, arguments about changes in the degree of deference could not be maintained, as no change would have occurred.

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[63]E.g., Live Swine from Canada, 70 Fed. Reg. 20,400 (Int'l Trade Comm'n Apr. 19, 2005) (final injury determ.); Live Swine from Canada, 70 Fed. Reg. 12,186 (Dep't of Commerce Mar. 11, 2005) (final countervailing duty determ.); Durum and Hard Red Wheat from Canada, 68 Fed. Reg. 60,707 (Int'l Trade Comm'n Oct. 23, 2003) (final.injury determ.).

[64]See GAO Report, supra note 7, at 41.

[65]See GAO Report, supra note 7, at 41.

[66]See Macrory, supra note 40; Jones, supra note 40.

Thus, we must examine the rate of U.S. agency wins and losses during the post-*Chevron* period that preceded the creation of Chapter 19 (1984–1988).

A perfect comparison between the data sets in the two periods is not possible due to lack of information on the status of rates (pre- and post-review), but we can still roughly determine the extent to which U.S. agency decisions were maintained (or changed) by analyzing published court opinions involving Canadian goods in the relevant period. A search of published CIT decisions produced 26 slip opinions involving "nonprocedural" challenges to U.S. agency final determinations on Canadian products in the 1984–1988 period. These 26 decisions occurred on 17 separate cases brought by U.S. domestic industry, U.S. importing industry, or Canadian producers.

Of these 17 cases, the U.S. government won 10 (58.82 percent), with other parties winning 7 (41.18 percent). Although this analysis does not reveal what happened to the rate after court review, it uses U.S. government wins as a proxy for agency affirmance and, therefore, deference. I suspect that if data on rates before and after review were available for this period, some of these cases would result in rates being left ultimately unchanged, since, as we learned from the other sample (1989–2005), not all court reversals lead to rate decreases on remand. Regardless, this means that *at least* 58 percent of cases resulted in no change in rates. In comparison with the 34.15 percent U.S. agency win rate at NAFTA, this is quite a change. Furthermore, we can now surmise that nonagency parties went from a less than 42 percent win rate before NAFTA to a 66 percent win rate, which is a significant increase. Thus, we can conclude that change in review systems brought a greater agency reversal rate.

Of course, this analysis combines under the label "other parties" Canadian and U.S. plaintiffs (U.S. domestic industry and U.S. importers). Yet, except for a desire to reverse prior agency action, these parties have opposing interests. Therefore, I analyzed these 17 cases according to whether the party who won had a preference to maintain or increase duty rates (U.S. government and U.S. domestic industry), or was attempting to reduce or eliminate these rates altogether (Canadian producer and U.S. importer). Bearing in mind that U.S. agencies won 10 of these cases, if one takes note of the fact that among the seven wins for other parties, three wins are for U.S. domestic industry, one can conclude that pro-rate parties won (at least) 76.47 percent of these pre-NAFTA cases, much above the 23.53 percent win rate for anti-rate parties.

These changes in rates of agency reversal and duty rate reductions show a systemic pattern: far from mirroring preexisting litigation patterns in

U.S. judicial review, the switch from CIT adjudication to Chapter 19 review has profoundly altered the general profile of outcomes in favor of Canadian producers and against U.S. agencies and U.S. domestic industry. More importantly, they corroborate the notion that Chapter 19 panels have not behaved like the U.S. courts they replaced.

F. Examining Alternative Causation Explanations

Conceivably, one could argue that the reported differences between the two systems merely reflect a pro-U.S. agency bias in U.S. courts. Therefore, NAFTA results are different because its panels are simply providing a more "correct" interpretation of the law (though this would still mean that NAFTA panels were not fulfilling their mandate to apply U.S. law *in the same fashion* as the U.S. courts). However, there is reason to think otherwise.[67] If this were true, this conclusion would still have momentous implications. CIT judges are highly qualified U.S. lawyers, who are appointed for life under strict Article III requirements specifically to shield them from political influence. They typically have many years' experience on the bench, where they *specialize* in trade law. Their decisions are subject to appeal to the Court of Appeals for the Federal Circuit, where judges have similar qualifications and experience. Thus, if this arrangement produces outcomes that are dramatically more biased against foreign nationals than do ad hoc panels of part-time judges of mixed legal backgrounds, often with no prior judicial or trade experience or even law degrees, and no regular appellate review, then the entire U.S. system of lifetime judicial appointment needs rethinking.

Additionally, a bias argument simplistically assumes that all U.S. parties—including the agency, the petitioning domestic industry, and the U.S. importers—have homogenous interests. The opposite is true. For example, the domestic industry would want to impose or increase duties while U.S. importers would want to eliminate or decrease them. In turn, the agency has a greater interest in seeing its earlier decisions upheld on appeal regardless of whether they authorized or denied the imposition of AD/CVD duties. Even if domestic producers could control the appointment process to "pack" the CIT with pro-duty judges (assuming U.S. importers do not form as strong a lobby), it would be much more difficult to sustain that level of

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[67]See Juscelino F. Colares & John W. Bohn, NAFTA's Double Standards of Review, 42 Wake Forest L. Rev. 199, 228–33 (2007) (explaining why NAFTA panels would be less likely to adhere to U.S. standard of review than U.S. courts).

control over CAFC appointments. This is the case because review of trade law decisions is a smaller part of the CAFC docket than review of other cases, such as patent cases and claims against the U.S. government. Thus, judicial appointments would be made based on considerations other than just the candidate's views regarding trade law.

More importantly, a bias argument simply cannot undermine the CIT/CAFC's alignment with other federal administrative review. If one takes the data and statistical analysis coming from the CIT/CAFC portion of this study and compares them with the results of general appellate review of agency action in the United States, no discrepancy appears. As Graves and Teske showed, when considering a period that predated *Chevron* by several years, federal appellate and Supreme Court review of administrative decisions yielded affirmance rates of up to 63 percent, which is not much different from the 68 percent affirmance rate detected in the first hypothesis.[68] If affirmance rates of this magnitude are the norm for agency review proceedings throughout the federal judiciary, one can only conclude that the NAFTA binational review system is not acting like reviewing courts in the United States.

Equally, it is possible that some unknown factual distinction accounts for the difference in outcomes. That is, there could be some unique factor that distinguishes appeals involving Canada from appeals involving other countries. Many papers have used statistical analysis to try to identify factors that influence the outcomes of *agency* determinations of dumping, subsidization, or injury.[69] For example, many have considered whether factors that

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[68]See Scott Graves & Paul Teske, State Supreme Courts and Judicial Review of Regulation, 66 Alb. L. Rev. 857, 859–60 (2003).

[69]E.g., Michael O. Moore, An Econometric Analysis of U.S. Antidumping Sunset Review Decisions, 142 Rev. World Econ. 122 (2006); Bruce A. Blonigen, Evolving Discretionary Practices of U.S. Antidumping Activity, NBER Working Paper 9625 (Apr. 2003); Bruce A. Blonigen & Chad P. Brown, Antidumping and Retaliation Threats, 60 J. Int'l Econ. 249 (2003); Kyung-Ho Lee & Jai S. Mah, Institutional Changes and Antidumping Decisions in the United States, 25 J. Pol. Modeling 555 (2003); James M. De Vault, Congressional Dominance and the International Trade Commission, 110 Public Choice 1 (2002); Wendy L. Hansen & Thomas J. Prusa, The Economics and Politics of Trade Policy: An Empirical Analysis of ITC Decision Making, 5 Rev. Int'l Econ. 230 (1997); Keith B. Anderson, Agency Discretion or Statutory Direction: Decision Making at the U.S. International Trade Commission, 36 J. L. & Econ. 915 (1993); Stefanie A. Lenway et al., To Lobby or to Petition: The Political Environment of U.S. Trade Policy, 16 J. Mgmt. 119 (1990); Judith Goldstein & Stefanie Ann Lenway, Interests of Institutions: An Inquiry into Congressional-ITC Relations, 33 Int'l Studies Q. 303 (1989); J.M. Finger et al., The Political Economy of Administered Protection, 72 Am. Econ. Rev. 452 (1982).

are proxies for political influence correlate with outcomes at the ITC or Commerce, generally with inconclusive or negative results.[70] Analysis of these discussions is interesting but falls outside the scope of this article.[71]

Unfortunately, no study has similarly tried to analyze factors explaining the outcomes of *judicial* review of agency decisions in trade cases, which is not the same thing. For example, Blonigen and Brown find that China tends to receive higher anti-dumping margins from Commerce, and Korea, Taiwan, and Russia to have significantly lower ones.[72] But that does not necessarily mean that judicial review is more—or less—likely to overturn Commerce decisions involving China than Korea. These figures, in themselves, do not suggest that Commerce is "biased" against China or in favor of Korea, or that judicial review would reverse those biases, or whether some other factor entirely explains the observed differences in margins (e.g., that the absence of reliable input price data in China's imperfectly market-based economy means that firms tend more frequently to sell below cost and hence dump more frequently). Accordingly, while more research regarding factors influencing court review of trade cases may be useful, there is no currently known factor that would cause the outcome of trade appeals involving Canada to differ from appeals involving other countries, other than different application of standards of review.

VI. Conclusion

A striking feature of the data analyzed above is the sustained asymmetrical pattern of review results between NAFTA and CIT/CAFC adjudication.

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[70]See Finger, supra note 69 (finding no significant evidence of political influence on Commerce anti-dumping and countervailing duty decisions); Lenway, supra note 69 (finding no significant evidence of political influence on ITC decisions); Hansen & Prusa, supra note 69 (finding that ITC decisions positively correlated with PAC contributions and House Ways & Means Committee representation but non- or negatively correlated with Senate Finance Committee representation); De Vault, supra note 69, at 1, 18 (Congress has "influenced" ITC decisions but not "micromanaged" them).

[71]Faced with a potentially infinite number of possible correlations that might be analyzed between potential explanatory variables and observed outcomes of trade cases, it is not necessarily surprising to find some statistically significant positive correlations. Interpretation of the significance of these correlations requires caution.

[72]See Blonigen, supra note 69.

Looking in different ways at the agency-determined rates prevailing before and after adjudication, U.S. agencies consistently "lose" on NAFTA appeals at a greater rate than when those challenges are raised before U.S. courts. Similar results would normally be interpreted as uncontroversial if they emanated from parallel review systems where the substantive law or guiding principles of administrative review (or both) were different. That is not the case with review before NAFTA and the CIT/CAFC systems.

NAFTA's lack of conformity with the pattern of adjudication in all U.S. federal administrative review, including international trade, may mean more than just a mere difference in approaching U.S. substantive law. It may suggest that the NAFTA system is deficient not because it is necessarily determined to misapply U.S. *trade* remedy law—though such may be the *effect* of its decisions—but because it just "doesn't get" U.S. *administrative* law. The Honorable Malcolm Wilkey, a retired judge from the District of Columbia Circuit, former U.S. ambassador, and former member of a NAFTA ECC, diagnosed this problem long ago.

> Why do these distinguished Panel experts make this type of error? The answer is, I suggest, that they are experts in *trade law*; they are *not* experts in the field of judicial review of agency action; they do not necessarily have any familiarity whatsoever with the standards of judicial review under United States law.[73]

Both empirical analysis of the above hypotheses and the systemic-wide findings of previous studies seem to support Judge Wilkey's criticism. For example, while declining to establish a causal pattern based on behavioral differences between Chapter 19 panelists and U.S. judges as the reason why their decisions differed, a prior GAO study found "significant differences between the behavioral characteristics of the binational panel process and the U.S. judicial system that it replaces."[74] Further, Judge Wilkey's observation can perhaps help explain the marked increase in U.S. agency reversals in cases involving Canadian goods between the years immediately preceding and during Chapter 19 dispute settlement, during which U.S. law remained largely the same. This remains more than a theoretical discussion, however. The fact is that U.S. trade remedy law is being applied differently as a result of this two-track system. That goes explicitly against the express will of

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[73]Certain Softwood Lumber Products from Canada, ECC No. 94-1904-01USA (Ex. Chal. Com. Aug. 3, 1994).

[74]GAO Report, supra note 7, at 4.

congressional committees[75] and should be the object of future reform.[76] Subsequent research on Chapter 19 review of Canadian agency cases would further our understanding of whether the same asymmetric pattern of adjudication extends beyond the application of U.S. trade remedy law.

Appendix

A1. NAFTA Review Has Changed Rates in the Following Cases

Hard Red Spring Wheat from Canada, Panel No. USA-CDA-2003-1904-06 (NAFTA Panel June 7, 2005) (final injury determ.)

Certain Duram Wheat and Hard Red Spring Wheat from Canada, Panel No. USA-CDA-2003-1904-05 (NAFTA Panel Mar. 10, 2005) (final CVD determ.)

Certain Softwood Lumber Products from Canada, Panel No. USA-CDA-2002-1904-07 (NAFTA Panel Sept. 5, 2003) (threat of injury determ.)

Pure Magnesium from Canada, Panel No. USA-CDA-2000-1904-06 (NAFTA Panel Mar. 27, 2002) (AD sunset review)

Gray Portland Cement and Cement Clinker from Mexico, Panel No. USA-MEX-99-1904-03 (NAFTA Panel May 30, 2002) (7th AD admin. rev.)

Pure Magnesium and Alloy Magnesium from Canada, Panel No. USA-CDA-2000-1904-07 (NAFTA Panel Mar. 27, 2002) (CVD sunset review)

Corrosion-Resistant Carbon Steel Flat Products from Mexico, Panel No. USA-CDA-98-1904-01 (NAFTA Panel Mar. 20, 2001) (3d AD admin. rev.)

Brass Sheet and Strip from Canada, Panel No. USA-CDA-98-1904-03 (NAFTA Panel July 16, 1999) (AD admin. rev.)

Gray Portland Cement and Clinker from Mexico, Panel No. USA-97-1904-01 (NAFTA Panel June 18, 1999) (5th AD admin. rev.)

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[75]See, e.g., Senate Committee on Finance, Report of the Committee on Finance in North American Free Trade Agreement Implementation Act: Joint Report, S. Rep. 103-189, at 41–42 (1993) [hereinafter S. Joint Rep.] (explaining that the requirement that "binational panels . . . apply the same standard of review and general legal principles that domestic courts" employ "is the foundation of the binational panel system"); accord S. Comm. on the Judiciary, Report of the Committee on the Judiciary in S. Joint Rep. at 126 (expressing the desire that the inclusion of judges in the panel system "would diminish the possibility that panels and courts will develop distinct bodies of U.S. law").

[76]See generally Riccardi, supra note 40, at 727–46.

Porcelain-on-Steel Cookware from Mexico, Panel No. USA-97-1904-07 (NAFTA Panel Apr. 30, 1999)

Fresh Cut Flowers from Mexico, Panel No. USA-95-1904-05 (NAFTA Panel Dec. 12, 1996) (final AD determ.)

Oil Country Tubular Goods from Mexico, Panel No. USA-95-1904-04 (NAFTA Panel July 31, 1996) (final AD determ.)

Porcelain-on-Steel Cookware from Mexico, Panel No. USA-95-1904-01 (NAFTA Panel Apr. 30, 1996) (5th AD admin. rev.)

Leather Wearing Apparel from Mexico, Panel No. USA-94-1904-02 (NAFTA Panel Oct. 20, 1995) (final CVD determ.)

Live Swine from Canada, Panel No. USA-94-1904-01 (NAFTA Panel May 30, 1995) (6th AD admin rev.)

Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, Panel No. USA-93-1904-03 (FTA Panel Oct. 31, 1994) (final AD determ.)

Certain Cut-to-Length Carbon Steel Plate from Canada, Panel No. USA-93-1904-04 (FTA Panel Oct. 31, 1994) (final AD determ.)

Pure and Alloy Magnesium from Canada, Panel No. USA-92-1904-04 (FTA Panel Oct. 6, 1993) (final AD determ.)

Certain Softwood Lumber Products from Canada, Panel No. USA-92-1904-02 (FTA Panel July 26, 1993) (final injury determ.)

Certain Softwood Lumber Products from Canada, Panel No. USA-92-1904-01 (FTA Panel May 6, 1993) (final CVD determ.)

Live Swine from Canada, Panel No. USA-91-1904-04 (FTA Panel Aug. 26, 1992) (5th CVD admin. rev.)

Live Swine from Canada, Panel No. USA-91-1904-03 (FTA Panel May 19, 1992) (4th CVD admin. rev.)

Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, Panel No. USA-90-1904-01 (FTA Panel May 24, 1991) (final AD determ.)

Fresh, Chilled, and Frozen Pork from Canada, Panel No. USA-89-1904-06 (FTA Panel Sept. 28, 1990) (final CVD determ.)

Fresh, Chilled, and Frozen Pork from Canada, Panel No. USA-89-1904-11 (FTA Panel Aug. 24, 1990) (final injury determ.)

New Steel Rail, Except Light Rail, from Canada, Panel No. USA-89-1904-07 (FTA Panel June 30, 1990) (final CVD determ.)

Red Raspberries from Canada, Panel No. USA-89-1904-01 (FTA Panel Dec. 15, 1989) (final AD determ.)

A2. NAFTA Review Has Decreased Rates in the Following Cases

Duram and Hard Red Spring Wheat (June 7, 2005)
Duram Wheat (Mar. 10, 2005)
Softwood Lumber (Sept. 5, 2003)
Pure Magnesium (Mar. 27, 2002)
Pure Magnesium and Alloy Magnesium (Mar. 27, 2002)
Gray Portland Cement and Cement Clinker (May 30, 2002)
Corrosion-Resistant Carbon Steel Flat Products (Mar. 20, 2001)
Brass Sheet and Strip (July 16, 1999)
Gray Portland Cement and Clinker (June 18, 1999)
Fresh Cut Flowers (Dec. 16, 1996)
Oil Country Tubular Goods (July 31, 1996)
Porcelain-on-Steel Cookware (Apr. 30, 1996)
Leather Wearing Apparel (Oct. 20, 1995)
Certain Cut-to-Length Carbon Steel Plate (Oct. 31, 1994)
Pure and Alloy Magnesium (Oct. 6, 1993)
Lumber (July 26, 1993)
Softwood Lumber (May 6, 1993)
Swine (Aug. 26, 1992)
Swine (May 19, 1992)
Fresh, Chilled, and Frozen Pork (Sept. 28, 1990)
New Steel Rail, Except Light Rail (June 8, 1990)
Fresh, Chilled, and Frozen Pork (Aug. 24, 1990)
Red Raspberries (Dec. 15, 1989)

A3. Domestic Industry Filed the Following Cases in the CIT/CAFC System

Maui Pineapple Co. v. United States Dep't Commerce, 264 F. Supp. 2d 1244 (Ct. Int'l Trade 2003)
Al Tech Specialty Steel Corp. v. United States Dep't Commerce, 25 C.I.T. 343 (2001)
Allegheny Ludlum Corp. v. United States Dep't Commerce, 215 F. Supp. 2d 1322 (Ct. Int'l Trade 2000)
Inland Steel Indus., Inc. v. United States Dep't Commerce, 967 F. Supp. 1338 (Ct. Int'l Trade 1997)
Torrington Co. v. United States Dep't Commerce, 973 F. Supp. 164 (Ct. Int'l Trade 1997)
NACCO Materials Handling Group, Inc. v. United States Dep't Commerce, 896 F. Supp. 1248 (Ct. Int'l Trade 1995)

NTN Bearing Corp. of Am. v. United States Dep't of Commerce, 858 F. Supp. 215 (Ct. of Int'l Trade 1994)

Smith Corona Corp. v. United States Dep't of Commerce, 796 F. Supp. 1532 (Ct. Int'l Trade 1992)

Timken Co. v. United States Dep't Commerce, 714 F. Supp. 535 (Ct. Int'l Trade 1989)