SPEECH

RESOLUTION OF TRADE DISPUTES BY CHAPTER NINETEEN PANELS: LONG-TERM SOLUTION OR INTERIM PROCEDURE OF DUBIOUS CONSTITUTIONALITY?*

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Since World War II, international trade has expanded exponentially, and the United States has had substantial incentives to negotiate trade agreements with a view toward lowering tariffs reciprocally. The benefits of these efforts have been particularly apparent in the formation and operations of the General Agreement on Tariffs and Trade (GATT)[1] and the World Trade Organization (WTO),[2] as well as with the United States' entry into the North American Free Trade Agreement (NAFTA) in 1992,[3] the United States-Canada Free-Trade Agreement (CFTA) in 1988,[4] and the United States-Israel Free Trade Agreement in 1985.[5] These agreements entered into

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* A similar version of this paper appears at 21 FORDHAM INT'L L.J. 1 (1997). An earlier version of this paper was presented at the Annual Dinner of the Customs and International Trade Bar Association on April 16, 1997.

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1. General Agreement on Tariffs & Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

2. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, 33 I.L.M. 1143 (establishing the World Trade Organization).

3. North American Free Trade Agreement, done Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 605 [hereinafter NAFTA].

4. Free-Trade Agreement, done Jan. 2, 1988, U.S.-Can., 27 I.L.M. 281 [hereinafter CFTA].

5. Free Trade Area Agreement, Apr. 22, 1985, U.S.-Isr., 24 I.L.M. 653.

by the United States reflect an international movement, particularly within regional areas, to reduce tariff barriers to trade.[6]

As tariffs have declined, interest in the remedies available under countervailing and antidumping duty laws seems to have increased.[7] While the United States has wanted to ensure that its domestic companies are not subject to unfair foreign competition, other countries have undoubtedly viewed the United States' countervailing duty and antidumping statutes as generally protectionist.[8] With the sweep of these and many other considerations as a backdrop, the Reagan Administration successfully negotiated CFTA. The negotiation and completion of the CFTA was brought about in no small measure by the motivation of the world's two largest trading partners to enjoy the fruits of a free trade area through the reduc-

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6. *See, e.g.*, Treaty Establishing a Common Market, Mar. 26, 1991, 30 I.L.M. 1041 (establishing a common market among Argentina, Brazil, Paraguay, and Uruguay); Treaty Establishing the Caribbean Community, July 4, 1973, 946 U.N.T.S. 17, 12 I.L.M. 1033 (establishing CARICOM); Association of Southeast Asian Nations Declaration, Aug. 8, 1967 (Bangkok Declaration) 6 I.L.M. 1233 (establishing ASEAN); Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 (establishing the EEC).

7. *See, e.g.*, Jagdish Bhagwati, *International Trade Issues for the 90s*, 8 B.U. INT'L L.J. 199, 199 (1990) (stating that "[t]he postwar decline of tariffs has focused our minds now on nontariff barriers. And the trade experts know that administered protection, operating through the unfair use of the `unfair trade' mechanisms such as countervailing duties (CVDs) aimed at foreign subsidies and anti-dumping (AD) duties, is now the favorite weapon of the protectionists"); Michael J. Trebilcock & Thomas M. Boddez, *The Case for Liberalizing North American Trade Remedy Laws*, 4 MINN. J. GLOBAL TRADE 1, 2 (1995) (noting that "[w]ith the decline in tariffs over successive rounds of the [GATT], antidumping actions have now become the remedy of choice for import-impacted domestic industries" (footnote omitted)); *see also* Joseph W. Dorn & Stephen J. Orava, *Anti-Dumping Dispute Settlement Is Now Binding*, NAT'L L.J., Oct. 27, 1997, at B8.

8. *See, e.g.*, 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, 525 n.1 (1995) (suggesting that "[t]he perception in Canada that the United States government had excessively used different forms of `contingent protection' to protect domestic industry from unfavorable foreign competition appears to have been justified"); Jordan B. Goldstein, Note, *Dispute Resolution Under Chapter 19 of the United States-Canada Free-Trade Agreement: Did the Parties Get What They Bargained For?*, 31 STAN. J. INT'L L. 275, 282 (1995) (noting that "[m]any Canadians perceived U.S. [countervailing duties and anti-dumping duties] as protectionist measures that were often applied in an arbitrary and political way"); *cf.* M. Jean Anderson, The Canadian-American Free Trade Agreement Binational Review Panel, *in* The Sixth Annual Judicial Conference of the United States Court of Appeals for the Federal Circuit, 122 F.R.D. 281, 339 (1988) (stating that "[t]he problem . . . was a belief in Canada that decisions of U.S. administrative agencies might be influenced by political or other factors that might prevent Canada from getting a fair shake under our unfair trade laws").

tion and elimination of barriers to investment and to trade in goods and services.[9]

Not surprisingly, each side had different objectives it hoped to accomplish in the negotiations. In an article published in the Spring 1995 issue of *Law and Policy in International Business*,[10] Charles Gastle and Jean-G. Castel, two Canadian lawyers, discussed the "awkward compromise" that brought about the CFTA/NAFTA mechanism for settling disputes. They state:

> The Canadian goal had been to eliminate existing antidumping and countervailing duty rules [in the United States] and to negotiate a new set of laws modeled on competition law principles with a binational tribunal to enforce them. This goal proved elusive because U.S. trade officials wanted strict limits placed upon what they considered to be trade distorting practices through Canada's improper use of subsidies.[11]

While the Canadians sought to exempt or ameliorate the effect of the United States' dumping and countervailing duty laws on its products,[12] there was strong opposition in Congress to weakening these laws.[13]

To resolve the conflict resulting from these polarizing points, the parties agreed not to change United States or Canadian countervailing or dumping laws, and substituted binational panels for

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9. *See* 19 U.S.C. § 2112 note (1994) (codifying the United States-Canada Free-Trade Agreement Implementation Act of 1988) [hereinafter Implementation Act].

10. 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 Lumber III?, 26 LAW & POL'Y INT'L BUS. 823 (1995).

11. *Id*. at 829.

12. *See id*.

13. *See* Goldstein, *supra* note 8, at 282 (stating that "[i]n addition, while Canada and the United States were negotiating the FTA, Congress was in a protectionist mood, considering legislation that would overhaul and strengthen U.S. trade laws and make them easier to invoke"); *id*. at 283 (pointing out that "[m]any industry and labor groups, as well as many members of Congress, therefore, strongly resisted any attempt to weaken U.S. trade laws or create exceptions for Canada"); *see also More Canadian Concessions Needed if FTA to be Reached, Senate Finance Members Say*, 4 Int'l Trade Rep. (BNA) 1016 (Aug. 12, 1987); *cf*. Anderson, *supra* note 8, at 339 (indicating that "[t]he widespread view in the United States that Canada subsidizes often and heavily — a view founded in fact, but somewhat exaggerated — left little enthusiasm on the U.S. side of the border for weakening private parties' access to unfair trade remedies without simultaneous discipline on subsidies").

judicial review. While the CFTA's adoption of the binational panel dispute resolution system was designed only as an interim measure, this compromise was materially significant in securing approval of the treaty in both countries.

BINATIONAL PANELS UNDER THE CFTA

Chapter Nineteen of the CFTA, which provided for binational dispute settlement in antidumping and countervailing duty cases, retained the substantive domestic antidumping and countervailing duty laws of the United States and Canada.[14] Article 1904 expressly recited the parties' intention to replace judicial review of antidumping and countervailing duty determinations with binational panel review.[15]

Panelists were selected from a list of fifty candidates, with each side submitting the name of twenty-five candidates, all of whom were to be citizens of Canada or the United States, of "good character, high standing and repute, . . . sound judgment, and a general familiarity with trade law."[16] Candidates were not to be affiliated with either party, and were not to take instructions from either party.[17] Judges were not considered affiliated with either party.[18] A majority of the panelists on each panel were to be lawyers.[19]

The United States and Canada each chose two panelists from the candidate list.[20] The United States Trade Representative was responsible for selecting panelists from the United States.[21] Each country possessed four peremptory challenges.[22] The fifth panelist was selected by the consent of the two governments, and if they could not agree, the four panelists already selected chose the fifth

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14. *See* CFTA, *supra* note 4, at art. 1902(1), 27 I.L.M. at 386 (stating that "each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of the other Party").

15. *See id*. at art. 1904(1), 27 I.L.M. at 387 (requiring that "the Parties shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review").

16. *Id*. at annex 1901.2(1), 27 I.L.M. at 393.

17. *See id*.

18. *See id*.

19. *See id*. at annex 1901.2(2), 27 I.L.M. at 393.

20. *See* CFTA, *supra* note 4, at annex 1901.2(2), 27 I.L.M. at 393.

21. *See* Implementation Act, *supra* note 7, § 405(a)(6)(A).

22. *See* CFTA, *supra* note 4, at annex 1901.2(2), 27 I.L.M. at 393.

panelist.[23] If they could not agree, the fifth panelist was selected by lottery from the roster, excluding those who had already been challenged peremptorily.[24]

Panel determinations were binding,[25] and both countries agreed that neither would approve domestic legislation to provide parties with an ability to appeal a panel decision in its domestic courts.[26] However, CFTA permitted parties to the agreement to appeal panel decisions before an "extraordinary challenge committee" (ECC) by alleging:

> a) i) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,
> ii) the panel seriously departed from a fundamental rule of procedure, or
> iii) the panel manifestly exceeded its powers, authority, or jurisdiction set forth in this Article, and
> b) any of the actions set out in subparagraph (a) had materially affected the panel's decision and threatened the integrity of the binational review process.[27]

ECCs were comprised of three members, selected from a ten-person roster, with each side selecting five candidates, who were to be judges or former judges of either a United States federal court or a court of superior jurisdiction in Canada.[28] Each party to the agreement chose one member of the ECC from the roster; the third member was then selected by the parties' two chosen members, or, if necessary, by lottery from the roster.[29]

ECC decisions were "binding . . . with respect to the particular

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23. *See id*. at annex 1901.2(3), 27 I.L.M. at 393.

24. *See id*.

25. *See* CFTA, *supra* note 4, at art. 1904(9), 27 I.L.M. at 388 (providing that "the decision of a panel under this Article shall be binding on the Parties with respect to the particular matter between the Parties that is before the panel").

26. *See* CFTA, *supra* note 4, at art. 1904(11), 27 I.L.M. at 388 (stating that "[a] final determination shall not be reviewed under any judicial review procedures of the importing Party" and that "neither Party shall provide in its domestic legislation for an appeal from a panel decision to its domestic courts").

27. *Id*. at art. 1904(13), 27 I.L.M. at 388–89.

28. *See id*. at annex 1904.13(1), 27 I.L.M. at 395.

29. *See id*.

matter between the Parties that was before the panel."[30] Upon finding that one of the grounds referred to above had been established, the Committee had the power to vacate the panel decision or to remand it to the original panel.[31] If the grounds were not established, it was to affirm the panel decision.[32] If the original decision was vacated, a new panel was to be established.[33]

It is significant that Chapter Nineteen was not intended to be permanent.[34] It was to last five years, pending both countries' development of a replacement system of rules.[35] If the parties did not implement a new rules system, Chapter Nineteen automatically continued for two years.[36] After that, if the parties still had not developed a new regime, either party was permitted to terminate the Agreement on six months' notice.[37]

The Department of Commerce's Chief Counsel for International Trade testified before a subcommittee of the House Judiciary Committee in Congress that:

> [T]he binational panel system is not, and is not intended to be, a model for future agreements between the United States and its other trading partners. Its workability stems from the similarity in the U.S. and Canadian legal systems. With that shared legal tradition as a basis, the panel procedure is simply an interim solution to a complex issue in an historic agreement with our largest trading partner.[38]

CHAPTER NINETEEN IN NAFTA

30. *Id*.
31. *See* CFTA, *supra* note 4, at annex 1904.13(1), 27 I.L.M. at 395.
32. *See id*.
33. *See id*.
34. *See id*. at art. 1906, 27 I.L.M. at 390.
35. *See id*.
36. *See id*.
37. *See* CFTA, *supra* note 4, at art. 1906, 27 I.L.M. at 390.
38. *United States-Canada Free Trade Agreement: Hearing Before the Subcomm. on Courts, Civil Liberties, and the Admin. of Justice of the House Comm. on the Judiciary*, 100th Cong. 73 (1988) (statement of M. Jean Anderson, Chief Counsel for International Trade, U.S. Department of Commerce).

The United States and Canada agreed to suspend CFTA upon NAFTA's entry into force on January 1, 1994.[39] Nevertheless, Chapter Nineteen of NAFTA substantially replicates the binational panel mechanism established by the CFTA.[40] NAFTA, however, does contain two significant changes in the binational panel dispute resolution process worth noting. First, NAFTA contains no language indicating the panel process is intended to be temporary, as was expressly stated in the CFTA.[41] Second, NAFTA provides the roster of individuals eligible to serve on panels "shall include judges or former judges to the fullest extent practicable."[42] There is no such provision in CFTA. Further, the roster of individuals eligible to serve as panelists was expanded to seventy-five, with each party to the Agreement selecting twenty-five candidates.[43]

Additionally, NAFTA made several important changes to the ECC mechanism. First, a party to the Agreement can challenge a determination when it believes a panel has failed to apply the appropriate standard of review.[44] There is no such language under CFTA. Further, the ECCs are directed to examine the "legal and factual analysis underlying the findings and conclusions of the panel's decision in order to determine whether one of the grounds" for vacation or remand, as set forth in the Agreement, has been met.[45] Again, the CFTA includes no similar language. Finally, NAFTA lengthens the time that ECCs have to review a panel decision, from thirty to ninety days.[46]

The dissenting opinion of retired United States Circuit Judge Malcolm Wilkey, in the CFTA Extraordinary Challenge Committee review of the panel decision in *In re Certain Softwood Lumber Products*,[47] criticized the limited review practices of ECCs. Judge

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39. *See United States-Canada Trade Under FTA and NAFTA: Hearing Before the Comm. on Small Business*, 103d Cong. 50 (1994) (statement of Charles E. Roth, Jr., Assistant U.S. Trade Representative for North American Affairs, noting that "when the NAFTA entered into force on the first of January of this year, the CFTA was suspended").

40. *See id*.

41. The CFTA process's temporary nature is discussed in text accompanying *supra* notes 31–35.

42. NAFTA, *supra* note 3, at annex 1901.2(1), 32 I.L.M. at 687.

43. *See id*.

44. *See id*. at art. 1904(13)(a)(iii), 32 I.L.M. at 683.

45. *Id*. at annex 1904.13(3), 32 I.L.M. at 688.

46. *See id*. at annex 1904.13(2), 32 I.L.M. at 688.

47. No. ECC-94-1904-01USA, 1994 WL 405928 (Ex. Chal. Comm. Aug. 3, 1994)

Wilkey indicated that if ECC review is limited to a narrow perspective of the meaning of impairment of the integrity of the binational review process, then the review may be tantamount to no review at all.[48] Judge Wilkey clearly was upset with the concept that even if it were established that a panel misinterpreted United States law, that issue would not, in the usual course, be reviewed by an ECC.[49] Judge Wilkey's dissent pointed out that, in testimony before the approval of the Canadian Free Trade Agreement, Congress was led to believe that United States substantive law pertaining to dumping and countervailing duties would not change, and that if panels strayed, appeals could be made to Extraordinary Challenge Committees.[50]

Judge Wilkey's dissent also pointed out that the panel in *Softwood Lumber III* did not apply the correct United States standard of review.[51] Canadian Justice Gordon L.S. Hart, also a member of the ECC in *Softwood Lumber III*, noted:

> I would like to point out that in reality the replacement of court adjudication by a five member panel of experts in international trade law may very well reduce the amount of deference to the Department in the future. When the Court of International Trade reviews the determinations of Commerce it would be expected to bow to the expertise within the Department.[52]

Additionally, Judge Wilkey's dissent discussed briefly the potential for problems to arise when panelists from countries with civil law systems are required to apply the standards of review applied by judges in common law countries, and vice versa.[53] Finally, Judge Wilkey pointed out that two of the Canadian panelists had serious conflicts, such as representing, as lawyers, Canadian lumber interests, the Canadian government, and other related interests.[54]

(Wilkey, J., dissenting) [hereinafter *Softwood Lumber III*].

48. *See id*. at *50.

49. *See id*.

50. *See id*. at *49.

51. *See id*. at **74–81.

52. *Id*. at *15 (Hart, J.).

53. *See Softwood Lumber III*, 1994 WL 405928, at *77 (Wilkey, J., dissenting) (noting that Mexico is "proudly a Civil Law country" that "has no mechanism and no concept of judicial review of administrative agency action").

54. *See id*. at **81–88.

In a lawsuit recently filed in the United States Court of Appeals for the District of Columbia, the American Coalition for Competitive Trade challenges the constitutionality of the panel dispute settlement system established under Chapter 19 of NAFTA and CFTA, as well as the legislation and executive orders implementing those two agreements.[55] The D.C. Circuit recently denied the government's motion to dismiss based on lack of standing, and it appears the case will go forward with oral argument, which is scheduled to take place in October.[56]

While it is not my purpose to report minutely on every aspect of the complaint, the plaintiff alleges that, by entering NAFTA and the CFTA, Congress and the President "exceeded the authority granted to them respectively by Article I and Article II of the Constitution, by unlawfully ceding or otherwise abdicating or delegating to the binational panels the judicial powers encompassed within the sovereignty of the United States."[57]

The plaintiff alleges further[58] that the agreements violate Article III, Section 1 of the U.S. Constitution, which provides: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish,"[59] and Article III, Section 2 of the Constitution, which provides: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ."[60]

The plaintiff goes on to complain of deprivation of due process and equal protection of the laws, violation of the Appointments Clause,[61] and violation of separation of powers by impermissibly altering the constitutional authority of the legislative, executive and judicial branches of the government.[62]

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55. *See* Complaint and Petition for Declaratory Judgment at 1, American Coalition for Competitive Trade v. United States, No. 97-1036 (D.C. Cir. filed Jan. 16, 1997) [hereinafter *Complaint*] (copy on file with the Author).

56. *See Washington Report: Behind the Chile-Canada Deal*, J. COMM., Apr. 7, 1997, at 6A [hereinafter *Washington Report*].

57. *See Complaint* at 8.

58. *See id*.

59. U.S. CONST. art. III, § 1.

60. U.S. CONST. art. III, § 2, cl. 2.

61. *See* U.S. CONST. art. II, § 2, cl. 2.

62. *See id*. at 9–12.

Canada has sought to intervene in the suit,[63] and Mexico has made application to appear as an *amicus*.[64]

I do not choose to give an opinion on the constitutionality of the binational panels or the ECC's procedures. It is obvious, nevertheless, that this challenge will create uncertainty, as does any lawsuit, until the issues it presents are ultimately resolved.

Under NAFTA, from January 1994 to December 1996, parties requested panel review to resolve twenty-four antidumping or countervailing duty disputes.[65] Some matters were resolved prior to full panel review.[66] Others resulted in the issuance of opinions on the merits.[67] While I have not had occasion to review the various determinations, I note that one dissenting panel opinion has already complained that the majority applied an improper standard of review,[68] suggesting the concerns expressed in Judge Wilkey's dissenting opinion[69] continue to be a problem under NAFTA.

While Chapter Nineteen of NAFTA contains provisions apparently designed to improve the functioning of the binational panel dispute resolution process, some may find the changes are simply inadequate to repair what may be perceived as a flawed system. Under the binational panel system, U.S. citizens effectively have no choice but to take a binational panel route when panelists decide how to apply U.S. domestic law, and even the U.S. Constitution as it affects United States citizens. The executive orders implementing CFTA and NAFTA accept in advance all decisions of binational panels and ECCs.[70] NAFTA expressly prohibits any party to the Agreement from legislatively establishing a procedure to challenge panel

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63. *See* Brief for Intervenor the Government of Canada, American Coalition for Competitive Trade v. United States, No. 97-1036 (D.C. Cir. Filed Jan. 16, 1997) (copy on file with the Author); *Washington Report*, *supra* note 56.

64. *See* Brief for *Amicus Curiae* the Government of Mexico, American Coalition for Competitive Trade v. United States, No. 97-1036 (D.C. Cir. Filed Jan. 16, 1997) (copy on file with the Author).

65. *See* David Lopez, *Dispute Resolution Under NAFTA: Lessons from the Early Experience*, 32 TEX. INT'L L.J. 163, 175 (1997).

66. *See id*. at 176–78.

67. *See id*. at 178–84.

68. *See id*. at 178–79.

69. *See supra* notes 47–54 and accompanying text.

70. *See* Exec. Order No. 12,889, 3 C.F.R. 708 (1994), *reprinted in* 19 U.S.C. § 3311 (1994); Exec. Order No. 12,662, 3 C.F.R. 624 (1988), *reprinted in* 19 U.S.C. § 2112 note (1994).

or ECC determinations in their respective domestic court systems.[71]

Was there, as the Canadian lawyers Gastle and Castel indicated, a fundamental Canadian objective to eliminate existing United States antidumping and countervailing laws? If so, and the United States wished to eliminate those laws, presumably Congress could have passed laws to implement that intent. Instead, what was created was a binational panel system that has demonstrated an ability to infringe upon the legitimate rights of citizens of the United States. If panelists in applicable cases fail to apply the United States' standard of review, or fail to apply United States domestic law as United States courts would apply such law, and ECCs refuse to intervene, serious constitutional questions concerning due process and equal protection of the laws will persist. When standing United States Presidential Executive Orders approve the decisions of binational panels and the ECC before those decisions have been rendered, there is sure to be complaint.

Ironically, by injecting confusion in the marketplace, the Chapter Nineteen panel system may tend to impede the economic goals the parties have so diligently sought. As Judge Wilkey noted, "[t]he system runs the risk not only of producing egregiously erroneous results . . . but also of creating a body of law . . . which will be divergent from United States law applied to countries not members of NAFTA."[72]

Apparently, our current NAFTA partners have already decided that Chapter Nineteen is not indispensable. It is my understanding Mexico has omitted Chapter Nineteen, as incorporated in NAFTA, from trade agreements with other Latin American countries. Canada and Chile omitted Chapter Nineteen from the trade agreement they signed late last year, which some believe foreshadows an expansion of NAFTA.[73] Canada and Chile agreed to phase out antidumping policies, but not countervailing duty policies, for the purposes of their bilateral agreement.[74]

Recent developments indicate that the United States' participation in NAFTA will come under increasingly sharp scrutiny. A bill

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71. *See* NAFTA, *supra* note 3, at art. 1904(11), 32 I.L.M. at 683.

72. *Softwood Lumber III*, 1994 WL 405928, at *57 (Wilkey, J., dissenting).

73. *See Eggleton Announces Bilateral Free Trade Deal Between Canada, Chile*, INSIDE U.S. TRADE, Nov. 15, 1996, at 1, 32.

74. *See id*.

with bipartisan support was recently introduced in the House of Representatives to establish benchmarks for evaluating NAFTA's impact on various sectors of the United States economy.[75] The bill would prohibit NAFTA expansion unless certain targets are met, and also includes provisions for the U.S. withdrawal from NAFTA as a last resort.[76] Additionally, with the United States' 1996 trade deficit with Mexico and Canada increasing to $16.3 billion and $22.8 billion, respectively,[77] NAFTA is certain to receive Congressional scrutiny.

The United States clearly wants to enjoy the fruits of a free trade area through the reduction and elimination of barriers to trade in goods and services and investment. But perhaps the United States should be chary to expand the binational review panel system in future trade agreements, particularly with the potential for negotiations on Chile's accession to NAFTA and the creation of a Free Trade Area of the Americas on the horizon. Keeping Chapter Nineteen, even if it does pass constitutional muster, will perforce add more confusion as new parties are added; that result can be in no one's interest.

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75. *See Bipartisan Coalition Introduces Bill to Measure NAFTA's Performance*, 14 INT'L TRADE REP. (BNA) 482 (Mar. 12, 1997) (discussing the NAFTA Accountability Act, H.R. 978, 105th Cong. (1997)).

76. *See id.*; *see also* Peter Morton, *Clinton Fights Free Trade Foes: Disgruntled Lawmakers Attempt to Scuttle Expansion of NAFTA*, FIN. POST, Mar. 6, 1997, at 5.

77. *See, e.g.*, John Crudele, *NAFTA Gets Blame for Trade Imbalance Growth*, AUSTIN AM.-STATESMAN, Mar. 1, 1997, at D2 (noting the combined Mexico/Canada trade deficit in 1996 was $39 billion); Martin Crustinger, *Job Losses Threaten NAFTA Expansion*, GREENSBORO NEWS & REC., Feb. 24, 1997, at A1.