

North American Market Working Group
U.S. Food and Agriculture Dialogue for Trade

The Importance of Chapter 19 AD/CVD Review

Chapter 19 of NAFTA creates a process for reviewing (challenging) one member's imposition of anti-dumping or countervailing duties on imports from another NAFTA member. It has provided U.S. food and agriculture exporters an effective tool to hold AD and CVD investigators and administrators accountable through an appeals process that can overturn egregious AD and CVD investigations and keeps markets open for business. Since Chapter 19 was created, U.S. sectors, including beef, pork, chicken, corn syrup, apples, and other exported U.S. products, have taken advantage of this process. There are three principal innovations that distinguish this process:

- 1) It allows affected industries to challenge AD and CVD tariffs directly, apart from a Mexican or Canadian court or WTO processes.
- 2) It creates ad-hoc panels of trade experts and lawyers that review cases based on the domestic law of the country that imposed the AD or CVD tariffs, not on international law.
- 3) All decisions of the initial panel are essentially final, with only limited rights of appeal.

Without dispute-resolution mechanisms like those provided in Chapter 19 of NAFTA, U.S. companies would be forced to contest AD and CVD determinations in lengthy and potentially unreliable Canadian and Mexican court proceedings. Further, WTO processes are not a meaningful alternative as they are unduly lengthy and do not provide for restitution of AD/CVD duties found to be applied improperly.

Modernizing Chapter 19

Chapter 19 is an important tool for maintaining U.S. market access in Mexican and Canadian markets, introducing an efficient and trusted appeal process for unjustified AD and CVD duties. Over the years, the Chapter 19 process has been fair and well-reasoned, with 80 percent of panel decisions being unanimous decisions. In addition, home country representations on panels is strong, meaning home countries retain a high degree of national control—higher than any other dispute mechanism in any other U.S. trade agreement. Nevertheless, experience has shown that some changes could be made to help U.S. exporters. The North American Working Group looks forward to participating in ways to modernize Chapter 19 that may include:

- **Equal Sunset Review Mechanisms:** Currently, U.S. exporters cannot challenge decisions in Mexican sunset reviews of AD/CVD cases, leaving U.S. exporters subject to unreliable Mexican courts or WTO procedures that do not pay back illegally collected AD/CVD duties. This should be changed to match the application of Chapter 19 to U.S. and Canadian sunset review mechanisms.
- **An expedited panel selection process:** The recent challenge by U.S. chicken exporters to illegal Mexican AD duties was delayed by more than two years during panel selection. This process could be improved by using the accelerated panel selection process agreed by the U.S., Canada and Mexico in negotiating the dispute settlement chapter of the Trans-Pacific Partnership Agreement.

Include U.S. Agriculture

Members of the North American Working Group, which account for a significant portion of U.S. agricultural products, have faced foreign trade remedy cases against of U.S. food and agriculture products. If changes in U.S., Mexican, or Canadian trade remedy laws are to be discussed in the NAFTA negotiations, the views of U.S. exporters need to be fully considered. Proposals such as removal of the current exemption from global safeguards, or use of 'third country' dumping, could easily lead to loss of access to Mexican and Canadian markets for U.S. agricultural exports. Therefore, exploring such topics would best be handled apart from current NAFTA negotiations.