CHAPTER 19/10 MUST BE ELIMINATED FROM USMCA

WHAT IS CHAPTER 19/10?

"Chapter 19," the common name for the dispute resolution mechanism included in the North American Free Trade Agreement—and now Chapter 10 in the United States–Mexico–Canada Agreement (USMCA)—allows Canada and Mexico to circumvent the U.S. judicial system and force the U.S. government to reverse actions it has taken against unfair trade.

Chapter 19/10 applies when a member country uses its fair trade laws against another country's imports. If one country is selling or "dumping" its exports below cost, or subsidizing production, it can challenge and reverse actions taken to stop the unfair trade using a special "Chapter 19/10" panel process.

CHAPTER 19/10 is unique. Nothing like it has been included in any other U.S. trade agreement. It was a mistake to include in NAFTA and it would be a mistake to include it in USMCA.

TOP REASONS CHAPTER 19/10 MUST BE ELIMINATED

CHAPTER 19/10 IS UNCONSTITUTIONAL. It gives powers to international tribunals that the Constitution reserves for U.S. courts. Foreign panel members are appointed outside of constitutional oversight or democratic accountability.

CHAPTER 19/10 COSTS AMERICAN JOBS AND ECONOMIC GROWTH. It has been successfully used to flood the U.S. economy with unfairly priced goods inflicting billions of dollars of harm on the U.S. economy, costing hard-working American men and women their jobs. U.S. industries are denied a fair chance to compete, stifling economic growth.

CHAPTER 19/10 INFRINGES ON U.S. SOVEREIGNTY. Unelected foreign nationals are allowed to issue binding interpretations of U.S. law and compel U.S. agencies to reverse trade remedy decisions.

CHAPTER 19/10 IS UNNECESSARY. There is no evidence that U.S. courts are biased or cannot be relied upon to fairly adjudicate trade remedy decisions involving Canada and Mexico, as they do for every other country.

CHAPTER 19/10 IS UNFAIR TO AMERICAN WORKERS AND COMPANIES. It denies Americans their constitutionally protected rights of due process and judicial review. No recourse exists in instances where a panel renders biased decisions that run counter to U.S. law. Chapter 19/10 bars federal agencies or U.S. citizens from appealing decisions by unaccountable foreign nationals regarding findings of U.S. law to U.S. courts.

CHAPTER 19/10 IS BIASED AGAINST THE UNITED STATES. Over 70% of panel rulings have resulted in Canada or Mexico's favor. Conflicts of interest are prevalent, as some panel members represent private clients who are greatly impacted by their decisions. Many panelists face pressure to vote in their home country's best interest.

CHAPTER 19/10 IS BEING USED TO GAME THE SYSTEM. After NAFTA was negotiated, the WTO dispute settlement system was created. Since then, Canada and Mexico have routinely challenged U.S. trade remedy decisions *both* under Chapter 19/10 and at the WTO, simply to maximize their chances of success. Currently, Canada is using *two* WTO cases and *three* Chapter 19/10 cases to challenge just two U.S. trade remedy orders.

WHY CHAPTER 19/10 MUST BE ELIMINATED

IMPACT + EXAMPLE

The Chapter 19, now Chapter 10, panel system has resulted in the implementation of decisions that break U.S. trade laws. Lumber III (timeline below), which occurred between 1986 and 1994, exemplifies this broken system which has harmed several U.S. industries.

LUMBER III

DEC 1986	**Canada and the U.S. come to a trade agreement** under which Canada imposes a 15 percent export charge on its lumber exports to the U.S.
SEPT 1991	Canada **unilaterally withdraws from the agreement** after the U.S. did not agree to terminate it.
OCT 1991	The U.S. Department of Commerce immediately **starts an investigation** into Canadian subsidies on lumber.
MAY 1992	**The Department of Commerce issues a final determination** which set a countervailing duty rate of 6.51 percent.
JULY 1992	**The ITC then makes a final determination** that subsidized imports are injuring the U.S. industry.
JUNE-AUG 1992	**Canada appeals** the Department of Commerce's subsidy finding to a binational panel under Chapter 19. **A panel of 3 Canadians and 2 Americans is assigned to rule on the dispute.**
DEC 1993	After a redetermination by Commerce and a further appeal by Canada, **the Chapter 19 panel – on a 3-2 vote along national lines – orders Commerce to find no subsidy**, based on two novel interpretations of U.S. law.
AUG 1994	The Department of Commerce is forced to revoke the countervailing duty order due to a Chapter 19 extraordinary challenge committee decision resulting from a 2-1 vote along national lines.
DEC 1994	**Congress enacts changes** to U.S. law clarifying that both **grounds for the Chapter 19 lumber decision were based on flawed interpretations.**

- **UNDER CHAPTER 19/10, UNFAIR TRADE HAS BEEN ACCEPTED RATHER THAN DISCIPLINED, ROBBING U.S. INDUSTRIES OF A FAIR CHANCE TO COMPETE AND COSTING U.S. WORKERS THEIR JOBS.**
- **THESE BIASED RULINGS ARE BASED ON A FLAWED INTERPRETATION OF U.S. LAW, AND FORCE U.S. PRODUCERS AND WORKERS TO COMPETE AGAINST UNRESTRAINED, SUBSIDIZED AND UNFAIRLY TRADED FOREIGN IMPORTS.**
- **THE CHAPTER 19/10 SYSTEM MUST BE ELIMINATED.**