TRADE POLICY DEVELOPMENTS

U.S. TRADE LAW PROPOSALS

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Numerous proposals for trade law reform have been introduced with the new Congress. It appears that a major trade bill will pass this year. The Chairmen of the two relevant committees--Senate Finance and House Ways and Means--have announced that they wish to pass a bill, and the Administration has agreed to work with them. Oddly enough, support for some sort of legislation, although broad, is not particularly deep. Virtually everyone in Washington involved with trade is upset with the continuing large size of the U.S. trade deficit, but those same people are well aware that trade legislation as such will not have much effect on it. Polls during the 1986 election campaign, and the election results, showed that, with scattered exceptions, trade as an issue did not move voters one way or another. However, the Democrats have picked out trade as their issue for Congress in 1987 to show that they can govern.

Administration

The Reagan administration sent a large package of "competitiveness" legislation to Capitol Hill February 19, 1987 with the intent "to assure American competitive preeminence into the 21st century." The proposal, the "Trade, Employment and Productivity Act of 1987" (S. 539 and H.R. 1155), includes a broad range of proposals aimed to increase investment in human and intellectual capital, promote the development of science and technology, better protect intellectual property, enact essential legal and regulatory reforms, control federal spending and shape the international economic environment. Major components of the President's proposals for trade law reform are outlined below.

- Expands the President's negotiating authority for the next round of multilateral trade talks with substantially expanded requirements for consultation with Congress and the private sector.

- Amends the *Export Trading Company Act* to eliminate regulatory and administrative disincentives to bank participation in export trading companies.

- Secures $200 million of "war chest" funding which will help U.S. firms compete with heavily subsidized official financing for foreign companies selling goods to the U.S.

- Eliminates uncertainties and clarifies ambiguities in the *Foreign Corrupt Practices Act.*

Section 201

- Makes changes in Section 201 which require the ITC to subdivide a recession into component causes of injury (each to be weighed individually against imports). The ITC must also determine whether import relief would likely lead to a competitive industry before recommending relief. Gives additional relief remedies to the President (i.e., multilateral negotiations or temporary exemptions from regulatory requirements). Provides expedited procedures for Section 201 cases involving perishable agricultural products.

Section 301

- Makes amendments which establish reciprocal access to foreign markets as an additional factor for considering a Section 301 case. Provides that recommendations must be made by 24 months after the initiation of the 301 investigation.

Antidumping and Countervailing Duty Law Amendments

- Amends the AD law to require Commerce to compare non-market economy import prices with a benchmark lowest average free market nondumped price for such or similar merchandise.

- Clarifies the scope of AD/CVD orders to prevent foreign companies from circumventing AD or CVD orders and to prevent diversion to the U.S. by (1) including incomplete or unfinished articles within the scope of an investigation in certain circumstances, (2) including imported products within the scope of the investigation where the product has been covered by an order and shipped to the U.S. through a third country where relatively little value is added or (3) including articles altered in form or appearance in minor aspects.

- Authorizes DOC to offset the full amount of foreign taxes forgiven on exports.

Section 337

- Amends Section 337 by eliminating the injury and industry requirements in cases involving certain intellectual property rights, by making cease and desist orders available in addition to exclusion orders, and by increasing the penalty limit for violation of these orders.

Customs User Fee

- Amendments to the customs user fee provision to make the fee more closely reflect the cost of customs services rendered in processing imports.

Senate

A comprehensive trade bill (S. 490) aimed at curbing foreign unfair trade practices and enhancing U.S. competitiveness was introduced February 5, 1987 by more than half the Senate with wide bipartisan support. The chief sponsors, Finance Committee Chairman Lloyd Bentsen (D-Tx) and former Finance International Trade Subcommittee Chairman John Danforth (R-Mo), hope to bring the measure to the Senate floor in July, but they intend to wait until H.R. 3 comes over from the House. The major components of S.490 are outlined below.

Section 201

- Amends the "threat of serious injury" standard to include four major new criteria. The enumerated factors the ITC is to consider would be expanded to include whether (1) foreign government action targets a specific industry; (2) AD or CVD determinations exist with respect to any merchandise produced by the domestic industry concerned; (3) domestic firms are unable to maintain existing levels of expenditures on R&D; and (4) the U.S. market is the focal point for diversion of exports of the article under investigation because of restraints on that article's exportation to or importation into the markets of any foreign country.

- Requires the President to impose provisional measures (equivalent to any of the final remedies he is authorized to impose) if he finds that "critical circumstances" exist during the course of an investigation.

- Amends the definition of domestic industry to require the ITC to treat as part of such domestic industry only its domestic production. Currently the ITC has discretion to include a domestic producer's imports as part of that industry.

- Requires USTR to establish an industry adjustment plan to improve the ability of the petitioning domestic industry to compete.

- Virtually mandates relief action by the President if the ITC finding of injury is unanimous. The President must take either (1) the actions recommended by the ITC or (2) substantially equivalent actions. If the President determines to take different actions or no action, he must submit a bill to Congress, subject to fast track approval (or veto), which waives any obligation to implement the ITC recommendations and implements instead any actions that the President determines should be taken.

- Leaves the President some discretion in granting relief if the ITC injury determination is not unanimous. The President shall take either (1) whatever actions create a reasonable expectation that the domestic industry can compete successfully with foreign producers after termination of such remedial actions or (2) actions to provide for the orderly transfer of the resources of the domestic industry to other productive pursuits. The President is not required to take action if he determines that it would be detrimental to the national security of the U.S. or would cause serious injury to a domestic industry.

- Broadens the available presidential remedial actions to include approving applications from domestic firms for antitrust exemptions, authorizing accelerated AD and CVD proceedings, or entering into multilateral negotiations to address problems not susceptible to unilateral solution (such as global oversupply or diversion or imports due to government targeting).

- Establishes faster procedural timetables and longer periods of relief. The ITC must make its recommendations within 150 days, not 6 months. The President may provide relief for up to 13 years (8 years with 5-year extension), rather than the 5 years (with a 3-year extension) currently available.

Section 301

- Requires USTR to determine for each foreign country identified in the *National Trade Estimate: Annual Report on Foreign Trade Barriers* whether such country maintains a consistent pattern of barriers and market distorting practices. The President then must initiate negotiations between the U.S. and any foreign country identified by USTR to eliminate all such barriers and practices.

- Requires the USTR to designate which significant barriers and distortions identified in the *National Trade Estimate* are likely to be either "unjustifiable" (any foreign "act, policy or practice which is in violation of, or inconsistent with, the international legal rights of the United States") or otherwise actionable under Section 301 and, if eliminated, to result in the greatest expansion of U.S. exports. USTR must then initiate 301 investigations with respect to those acts, policies and practices and make a determination within 9 months (6 months for investigations of export targeting).

- Requires the President, if USTR makes an affirmative determination, to retaliate within fifteen months of initiation or within nine months of a favorable GATT ruling, subject to certain exceptions.

- Expands actionable, unfair trade practices to include: subsidization practices that displace U.S. exports to third markets; import restrictions or export performance requirements that cause diversion of a third country's exports to the U.S.; the

enforcement of trade restraining agreements that result in the diversion of the exports of another foreign country to U.S. markets; foreign governmental targeting of industries that promotes export competitiveness, and trading by a state-owned enterprise on other than commercial considerations.

Antidumping and Countervailing Duty Law Amendments

- Changes the existing "critical circumstances" provisions to provide import relief in the early stages of dumping and countervail cases. The section limits the role of the ITC with respect to critical circumstances rulings, provides more flexible guidelines in determining "knowledge of dumping", and clarifies that "massive imports" means relative to previous import levels from the country under investigation.

- Requires Commerce to penetrate a transaction whenever it determines that a foreign manufacturer sets up a wholly-owned subsidiary that is not a normal channel of trade to absorb antidumping duties.

- Requires Commerce to calculate the impact of dumped materials or components on any processed or "downstream" products under investigation to the extent that their price is lower by reason of including materials or components that are the subject of either an antidumping order or an arrangement settling pre-existing antidumping cases.

- Works in conjunction with the diversionary dumping amendment and authorizes the ITC to monitor increases in imports of "downstream" products that are likely to be the vehicles for diversion. If dumping or countervail duties of 15% or higher are found, or a VRA entered into after a preliminary determination of net dumping or subsidy margins of at least 15%, U.S. producers may identify to Commerce the downstream products that use the dumped or subsidized inputs as a major part or material. If Commerce finds that there is a reasonable likelihood that imports of the downstream products will increase as an indirect result of any diversion with respect to the component parts, it notifies the ITC, which monitors imports of those products to determine whether there is more than a 5% increase in any quarter.

- Establishes the surrogate price for NME merchandise (the fair value of which cannot be ascertained) as the trade-weighted average price at which comparable merchandise is imported from the market economy that accounts for the largest volume of U.S. imports sold at arm's length.

House of Representatives

Last year's House omnibus trade bill (H.R. 4800) was reintroduced on January 6, 1987 as H.R. 3. House Speaker Jim Wright (D-Tx) has asked the committees working on the package to complete their sections of the bill by April 11, in order to get the bill to the floor by the week of April 20. The major components of H.R. 3 are outlined below.

Section 201

- Amends the definition of domestic industry to require the ITC to (1) treat as part of the domestic industry only its domestic production (similar to S. 249) and (2) treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article.

- Authorizes the U.S. Trade Representative (USTR) to preliminarily determine that "critical circumstances" exist and, if so, to suspend liquidation of articles and order the posting of a cash deposit or bond as immediate relief therefore.

- Authorizes the USTR, not the President, to determine whether to provide relief.
- Authorizes a petitioner to request an industry adjustment plan, but does not mandate any such plan.
- Amends the "threat of serious injury" standard to include two major new criteria: (1) the extent to which the U.S. market is the focal point for the diversion of exports of the article concerned (similar to S. 249) and (2) the inability of domestic producers to generate adequate capital to finance the modernization of their domestic plants and equipment.

Section 301

- Requires the President to take action in the face of foreign violations of existing trade agreements or "unjustifiable" trade practices.
- Provides presidential discretion to take appropriate or feasible retaliatory action if the President or USTR determine that an act, policy or practice of a foreign government is "unreasonable" or "discriminatory".
- Requires the President to take retaliatory action to obtain the elimination, or offset fully the injurious effects, of export targeting.
- Requires mandatory negotiations and action regarding foreign countries having excessive trade surpluses with the U.S.

  (a) The ITC must determine whether a nation has an excessive trade surplus with the U.S., and USTR must determine whether it is based on a "pattern of unjustifiable, unreasonable, or discriminatory trade policies or practices."

  (b) If so, USTR must negotiate with such nations within sixty days to reduce the surplus.

  (c) If negotiations fail, the President shall take action, from among a broad range of options such as quotas, tariffs, or orderly marketing agreements, that he considers necessary or appropriate to achieve his surplus reduction goals.

Antidumping and Countervailing Duty Law Amendments

- Amends the material injury and threat thereof standard to increase the possibilities of cumulation. Requires the ITC to consider the cumulative volume and effect of imports from two or more countries if their like products compete with each other and the imports are subject to any countervailing duty or antidumping investigation.
- Requires the ITC to consider whether dumping in third country markets, as evidenced by findings or antidumping remedies in other GATT member markets (against comparable merchandise exported by the same party as under investigation), suggests a threat of material injury to the domestic industry.
- Provides that if (1) a dumped input product is used in the production of merchandise under investigation and (2) the manufacturer of the merchandise purchased the dumped input product for a price less than the adjusted foreign market value, then the "diversionary dumping benefit" must be accounted for in determining the foreign market value of the product under investigation.
- Provides for ITC monitoring of downstream products, the component parts of which are subject to CVD or AD duties of 15% or higher, or agreements entered into after preliminary determinations of at least 15% net subsidy or dumping margins, similar to S. 490.
- Permits U.S. firms and workers to file private lawsuits to recover actual damages for economic loss suffered from injury resulting from dumping.

Conclusion

The most significant proposals from a point of view of competition (rather than the "competitiveness" label under which all manner of protectionist proposals are being advanced) include the proposals by Senator Bentsen to make Section 301 and Section 201 in some circumstances mandatory; the proposals in the House bill for a private right of action for dumping based on a pricing standard substantially higher than that used in domestic antitrust law; the "diversionary" dumping proposals; and the Administration's proposal to change the standard of injury in Section 201 to permit the ITC to subdivide non-import causes of injury to a point where imports will always be larger than any of those causes (along with a sneaky provision in the Administration bill to force producers of (soon-to-be-released) digital audio tape recorders to include a micro chip that will prevent copying of compact audio discs).

Trade legislation will almost certainly pass sometime this session now that the Administration has taken an active role in proposing trade legislation. We will likely see a compromise bill worked out with the aid of the Administration sometime this summer.

Steel Import Stabilization Act

On February 3, 1987, Sen. John Heinz (R-Pa), reintroduced legislation to amend the *Steel Import Stablization Act* (S. 441) which requires that steel that was melted and poured in a VRA country but enters the U.S. from a non-VRA country be allocated to the country in which it was melted and poured so as to prevent circumvention of the Voluntary Restraint Agreement limits. This bill also requires the U.S. Trade Representative (USTR) to consult with the governments of Canada, Sweden and Taiwan to negotiate bilateral steel restraint agreements so as to help contain the growth of steel imports from non-VRA countries. If the successful negotiation of an agreement has not occurred within ninety days, import restraints go into effect.

Export Controls

New export control legislation was introduced February 19, 1987 in the House and Senate which covers a wide variety of control issues such as re-export controls, foreign availability, and Defense Department review of license applications. The President's competitiveness proposal also contains a variety of export control policy proposals. The President is expecting a Cabinet report on additional recommendations for revisions. In addition, the Department of Commerce has recently issued a series licensing changes.

FREE TRADE TALKS

The Reagan administration has begun taking steps towards giving free trade talks with Canada a higher profile in contrast to the Administration's relative silence regarding negotiations since the start of talks. In his State of the Union address in January, President Reagan made a strong pledge "to complete an historic trade agreement between the world's two largest trading partners, Canada and the United States." In addition, Vice President George Bush and Treasury Secretary James Baker made a visit to Ottawa on January 18, 1987 to meet with Prime Minister Mulroney to assure him that the Administration was giving the talks a higher profile. Bush stressed that he understood the importance of the talks and that he was committed to carrying them through. Secretary Baker chaired a high level White House Economic Policy Committee session on Canada shortly after he and George Bush returned from the Ottawa visit. He also ordered monthly committee reviews of the bilateral trade relations.

President Reagan and Prime Minister Mulroney were scheduled to meet in Canada in April for the third "Shamrock Summit." Although it is unlikely that negotiations will be discussed in great detail, the meetings will likely reaffirm the U.S. commitment to reach an agreement. The meetings might trigger a flurry

of activity in this area as well as increase pressure to show visible progress in the negotiations.

Despite the Administration's recent optimism, many real obstacles stand in the way of the Administration's ability to reach a comprehensive agreement. The record U.S. trade deficit has fueled pressure for protectionist legislation which in turn diminishes support for the talks. Thus far, Congress has little sense of the content of a possible trade agreement with Canada and has evinced little interest in the substance of negotiations. The December visit to Canada by Senator Bentsen (D-Tx), Chairman of the Senate Finance Committee, may give the talks greater exposure in Congress.

The Administration needs to build up support for the initiative inside and out of the U.S. government. It appears that Reagan will need to expend a great deal of political capital in order to galvanize public sector support to help pressure Congress. This may prove to be difficult due to Reagan's weakened political standing in the wake of Irangate.

Another potential obstacle is the time constraints for negotiating an agreement. The United States and Canadian governments are proceeding on the assumption that they must conclude a free trade agreement, if one is to be concluded, by approximately October 1, 1987. This is because presidential authority to enter into a trade agreement subject to expedited, "fast track," congressional approval (an up or down vote on the agreement and the necessary implementing legislation, without any amendments permitted) expires on January 3, 1988. The President, however, must notify both Houses of Congress of his intent to sign an agreement at least ninety (90) days in advance of signing the agreement. Consequently, October 1, 1987 becomes the approximate deadline for informing Congress of an actual intent to sign a free trade agreement between Canada and the United States, although the President need not notify Congress of the contents of the agreement at this time.

Various proposals to extend the President's negotiating authority are pending. Yet they are all tied to a new trade bill. So far, the Administration has not requested separate authority from Congress to negotiate a bilateral trade agreement with Canada subject to fast-track approval. As a strategic matter, the Administration has taken the position that it needs no additional grant of negotiating authority from Congress, in order to maintain its ability to veto protectionist measures which may be part of a trade package. An additional reason for the Administration's reluctance to request an extension of time for fast-track authority for a Canadian agreement seems to be that it does not want the U.S. to appear too eager to conclude such an agreement.

The U.S. negotiators have been publicly unforthcoming in their assessment of the current status of the bilateral trade negotiations and the prospects for an agreement by October 1, 1987. The official position is simply that there will not be an agreement until there is agreement on everything.

The ITC recently released a study on tariffs to the U.S. negotiators. Informally, each side has taken the position that there is no reason not to pursue full tariff reductions across the board. (In fact, in order to benefit from the GATT's rules on free trade areas, both Canada and the United States would have to eliminate tariffs and other restrictions on substantially all their trade with each other.) Now that the ITC report has been issued, discussions of the possible length of any transition period or phase-in of tariff reductions are expected to be taken up in the next set of talks. Were there to be a transition period (which seems very likely), some sort of import surge mechanism probably will be adopted.

Because the current status of the talks is unclear, it is difficult to ascertain what size or form any eventual agreement might take. Some Administration sources point out that there is a real possibility that some issues may have to be taken up after the January 3, 1988 deadline because of the complexity of the negotiations (i.e., services, investment and auto pact).

Origin Rule for Proposed U.S. Canada Free Trade Area

At the request of the U.S. Trade Representative (USTR), Clayton Yeutter, the ITC instituted an investigation and held hearings in January concerning particular country of origin rules which might be employed under a U.S.-Canada free trade area. Yeutter stated that the common rule of origin for the free trade areas should confine its benefits to the intended products which contain sufficient U.S. and Canadian content to merit preferential tariff treatment, should be easily administered, and should produce consistent results. The two rules which he requested be the focus of the Commission's study are substantial transformation, which is used by the U.S. Customs Service, and change of tariff classification, which has been suggested as an original criterion to be used in conjunction with the Harmonized System tariff nomenclature.

TRADE LAW ACTIONS

Softwood Lumber

On December 31, 1986 the U.S. and Canadian governments reached an agreement to end a U.S. countervailing duty action on Canadian softwood lumber. The U.S. negotiators accepted the Canadian offer for a 15 percent export tax. This tax will be gradually phased out when Canada's stumpage fees are increased by an equivalent amount. However, a deadline for the change-over was not set. There will be considerable work to be done (a) on how to increase stumpage fees and (b) permissible uses of the export tax collections or increased stumpage fees.

As a result of the agreement, the Commerce Department did not issue a final subsidy decision. The U.S. industry agreed to the terms because Commerce was expected to announce a margin of 15 percent or less. Meanwhile, the Canadian government wanted to avoid a final affirmative ruling by Commerce in fear that it might set a precedent for action against other Canadian natural resource industries.

Brass Sheet and Strip

In its final antidumping investigation, the ITC ruled on December 24, 1986 that the U.S. brass industry is being materially injured by reason of imports from Canada which are being sold at less than fair value. The ITC ruling follows a recent final determination by the Commerce Department that imports of brass sheet and strip from Canada were being sold in the U.S. by dumping margins of 2.51, 8.10 and 11.54 percent.

Certain Fresh Cut Flowers

On February 27, 1987 the ITC ruled that the U.S. carnation industry is being materially injured by reason of imports of standard carnations but not miniature carnations. In January, the Commerce Department determined in its final antidumping investigation that imports of fresh cut carnations from Canada are being sold at less than fair value by a margin of 6.8 percent. In its final countervailing duty investigation, Commerce determined that these flowers are being subsidized by a net subsidy rate of 1.47 percent.

Potassium Chloride

The ITC instituted a preliminary antidumping investigation of imports of potassium chloride from Canada in response to a petition filed in February. Two U.S. producers allege that the Canadians are dumping by a margin of 42.86 percent.

Color Picture Tubes

The ITC in its preliminary investigation on January 6, 1987 determined that imports of color television picture tubes from Canada are injuring the U.S. industry by reason of sales at less than fair value. Five U.S. labor organizations submitted the antidumping petition in late November, 1986. The Department of Commerce is currently investigating the extent to which the imports are being dumped in the U.S.

Certain Line Pipes and Tubes

The ITC instituted a preliminary antidumping investigation of imports of line pipes and tubes from Canada in response to a petition filed by two U.S. producers on February 11, 1987. The Canadian products are alleged to be sold in the U.S. at less than fair value.

Sugar and Syrups from Canada

On February 10, 1987 the Department of Commerce published the preliminary results of its antidumping duty administrative review, tentative determination to revoke in part, and intent to revoke in part. Commerce will issue its final review in June.

Pig Iron

On March 2, 1987, the Department of Commerce published the final results of its administrative review and intent to revoke in part the antidumping finding on pig iron from Canada. The Customs Service will no longer assess antidumping duties on the merchandise manufactured and exported by Dofasco Inc., but will continue to require cash deposits for any shipments from four other manufacturers at the existing rate.

CANADIAN IMPORT TRIBUNAL INSISTS ON CLEAR DEMONSTRATION OF CAUSALITY

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The Canadian Import Tribunal's recent decision in dry pasta (CIT-5-86) confirms their insistence that complainants demonstrate a clear causal link between their claims of material injury and the effects of subsidized or dumped imports.

The Tribunal denied relief to Canadian pasta makers because there was, in their view, not adequate evidence of the causal link. Their reasons in this case are worth analysing to better understand the thinking on the question of causality. In support of their finding the Tribunal noted:

- Canadian producers' market share was relatively high (89%) and had been stable for about three years;
- the Canadian producers seemed to be more injured by competition among themselves than by import competition;
- Canadian pasta producers were engaged in a price war which prevented them from passing on cost increases;
- the situation of Canadian producers had deteriorated because they could not pass on a "quantum increase" in flour costs due to price increases for wheat consumed in Canada through the Canadian Wheat Board;
- Canadian consumers of Italian origin seemed to have a marked preference for Italian pasta, which was sold at retail on a higher per-gram basis than Canadian made pasta;
- Canadian producers booked promotional space for some months ahead with Canadian grocery retailers.

POSSIBLE FUTURE DIRECTION OF U.S. TRADE LAWS AND THEIR IMPACT ON CANADA

Recently, the Senate Finance Committee proposed the *Omnibus Trade Act* of 1987. One of its main purposes is to secure greater access to foreign markets by the United States. The implications of this bill for Canada cannot be overlooked in light of the ongoing Free Trade Talks with the U.S.

An important question, which must be analyzed by all Canadian companies competing with U.S. firms in Canada or in the United States, is how these initiatives might be modified in a Canada-U.S. Free Trade Agreement, and what will be the implications for the Canadian economy if the United States insists on these principles being included in a bilateral agreement.

This article examines the provisions of the bill and its implications for Canada. The following areas are addressed:

State Trading Enterprises
Authority to Negotiate Trade Agreements
Enhanced Competitiveness
Unfair International Trade Practices Investigation
Intellectual Property
National Security
Agriculture

State Trading Enterprises

An important element in the bill for Canada, particularly provincial governments, are the provisions related to State Trading Enterprises. The bill proposes that operations of State Trading Enterprises be based on "commercial considerations".

The determination of whether purchases and sales have been based on commercial considerations will be made on the basis of:

(i) similar arm's length commercial purchases and sales by any person or entity that is not a State Trading Enterprise, or

(ii) if evidence of arm's length commercial purchases and sales is insufficient, the constructed value of the merchandise purchased and sold, determined in accordance with section 773(e) of the *Tariff Act* of 1930.

This will mean that the definition of State Trading Enterprises will extend to state owned (fully or partially) manufacturing enterprises, such as steel mills. This could cause great problems in Canada. Hydro-electric utilities will also fall within the scope of this definition. As well, this revised definition could have serious implications for provincial alcoholic beverages distribution systems.

Authority to Negotiate Trade Agreements

The bill would give Congress more control over the negotiation process of trade agreements. The House and Senate would have full and continuous input in shaping each part of the trade package. It can be expected that the U.S. negotiating mandate will change frequently with changing circumstances in the U.S.A. (fast track approval without amendments).

The proposed process suggests that there will be no package unless the Senate (and the House) agree with the Administration's Statement of Trade Policy. Congress will use this Statement to insist on enforcement and implementation of the stated policies. The impact of this provision is that Congress will now play a much greater role in the input to, and negotiations of, trade agreements.

Enhancing Competitiveness

The bill also proposes to toughen the escape clause provisions. The expanded definition of threat of injury in the proposal would make it much more difficult for the ITC to find "no threat injury".

There is a similar provision in the *Canadian Textile and Clothing Board Act*, but it is not as elaborate as that which the Senate seems to be proposing. The Canadian provision is of little value as the plans submitted and the examination and monitoring of them are not at all thorough. The Canadian Textile and Clothing Board in the past has accepted plans which involve little more than keeping equipment up-to-date.

Of importance to Canada is the possibility that entering into multilateral negotiations could include, if interpreted broadly enough by sophisticated Washington trade counsel, the establishment of MFA (Textile) type accords to cover other products such as steel, footwear, electronics and autos, which are experiencing problems similar to those experienced for so long by the textile industry.

The most serious change concerns the reduction in the statutory time limits for processing anti-dumping or countervailing duty cases. This will create greater scope for harrassment.

Unfair International Trade Practices Investigations

The scope of "unfair" trade practices which can be attacked under Section 301 of the *Trade Act* of 1974 will be expanded.

Countries with aggressive or effective export programs will be challenged for their adversarial trade policies. Japan is cited as an example, but the scope will draw in many other countries, including Canada, Brazil, Korea and many developing countries. These countries may eventually be defined as those who have positive trade balances either with the U.S.A. or globally.

Some of the changes in the countervailing duty and anti-dumping areas could have an adverse impact on Canada. Energy intensive products, petrochemicals and fertilizers, natural resource and agricultural products could be subject to increased scrutiny and harrassment.

Intellectual Property

There will be tougher protection in intellectual property cases through the elimination of the need for an injury test. It will be assumed that any patent infringement is injurious. Reciprocal agreements relating to transfer of technology are also called for. This may lead to restrictions or threats of restrictions in U.S. exports of technology.

National Security

The proposed amendments would place very rigid time limits on dealing with proposals for protection for National Security reasons. The National Security process has been very slow moving in the past. These new time limits will be potentially dangerous to strategic materials producers (natural resources) and producers of textiles, clothing and footwear (on a sectoral rather than a broad basis).

Formulation of United States Trade Policy

This provision would require a detailed impact analysis on any major (U.S.) action that may affect international trade.

The legislation would also create a National Trade Data Bank which would contain extensive details on the economies, programs and practices of U.S. trading partners. This will be total data for trade, which would provide U.S. industry a handy source of data for filing unfair trade practices complaints, and detailed statistical and informational data to improve the competitiveness of U.S. industry.

Agriculture

This section outlines the United States' intention of increasing agricultural exports. It proposes to do this by providing credit and direct assistance to enhance exports and to change,

before negotiating panels of GATT, the barriers to agricultural trade that are illegal or inconsistent with GATT.

Conclusion

In characterizing the Senate Bill it would not be unfair to conclude that:

- it is designed to regulate or manage trade rather than to liberalize it;
- it will, at least in the short term, intensify current tensions in world agricultural markets, and further depress commodity prices, and injure Canadian interest;
- it seeks to give the U.S. Congress (through the Administration) much greater influence on the policies and practices of other governments. This will mean greater uncertainty for Canada as the whims and fancies of U.S. elected representatives respond to constituent pressures;
- it is an attempt to place severe restrictions or impose trade penalties on any type of government economic development activity particularly through government ownership or participation in commercial enterprises, practices that are commonly used in Canada;
- it increases the scope for harrassment of Canadian exporters to the U.S. market;
- it could pose great risks for the operations, both domestically and in export markets, of any state or crown owned enterprise. This has serious implications for provincial and federal government involvement in economic and industrial development within their own jurisdictions;
- it offers little for Canada in return, except perhaps relief from an even more inward looking U.S. system.