TRADE POLICY DEVELOPMENTS

CANADA AND U.S. SIGN HISTORIC FREE TRADE AREA PACT

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On October 4, 1987, Canada and the U.S. entered into a historic agreement in principle to create a North-American free trade area. Although the legal text of the agreement is still being drafted at the time of this writing, both governments have released preliminary transcripts of the principles agreed to.

Fundamental to the establishment of a free trade area are the eventual elimination of tariffs and non-tariff barriers to trade between the two countries. Tariffs on all products moving between the two countries will be eliminated within ten years after the agreement comes into effect on January 1, 1989. Tariff reductions will take place in three stages. Products have been separated into three categories: those in the first category will have duties eliminated immediately, those in the second category will have duties phased out over five years (at 20% per year), and duties on the most import-sensitive products will be phased out over a period of ten years (at 10% per year).

A unique and important feature of any free trade area agreement is its rules of origin. In a free trade area, member countries retain their own tariffs and customs procedures with respect to non-member countries. As a result, non-member countries have an incentive to ship their exports through the member country with the lower tariffs and then on into the other member country duty free. For this reason, it is extremely important that there be appropriate rules of origin to prevent such deflections of trade. A rules of origin system requires that products which have originated in whole or in part from a non-member country must satisfy certain national content requirements before they qualify for duty-free entry into the other member country. In this agreement, Canada and the United States have adopted a change of tariff heading rule similar to that used within the European Economic Community. Under the EEC system, a product is considered to be the product of an exporting member country, and therefore subject to duty free treatment, where sufficient processing or other operations have been performed within that member country to change the tariff classification of materials or components originating from a non-member country which were used in the manufacture of that product. As Canada and the United States both propose to conform to the International Convention on the Harmonized Commodity Description and Coding System (HS) effective January 1, 1988, a rules of origin system based on a change in tariff heading under the HS will provide for easy administration and uniform interpretation. Certain products such as agricultural products, automobiles, textiles and steel will be subject to special rules based on a value-added test.

With respect to automobiles, a new 50% North American rule of origin based on direct cost of processing will be applied. Canada has agreed, as well, to eliminate its duty remission program for off-shore automobile manufacturers. In addition, both countries have agreed to ensure that duty drawback, duty remission and other such programs will not unintentionally provide third countries with preferential access to the North American market. The U.S. has also agreed to phase out its new customs user fee on Canadian exports.

Significant changes have been included in this agreement with respect to agriculture, energy, government procurement and product standards and technical regulations. With respect to agriculture, the two countries have agreed to eliminate all agricultural tariffs within ten years. The agreement also provides greater access for agricultural products by conditionally eliminating Canadian import licences on U.S. wheat, barley, oats and grain products, liberalizing Canadian import quotas on poultry, poultry products and eggs, and eliminating U.S. quotas on sweetener-containing products. Canada has agreed to eliminate its transportation subsidies paid under the *Western Grain Transportation Act*. Also, the two countries have agreed to exempt each other from their meat import restrictions as well as other quantitative restrictions which distort trade flows.

The United States has achieved its significant objective of a continental energy market. Both countries have agreed to eliminate restrictions on energy imports and exports, including quantitative restrictions, taxes, minimum import or export price requirements or any other equivalent measures subject to very limited exceptions. They have agreed also to consult on energy regulatory actions which would result in discrimination inconsistent with free trade area principles.

With respect to government procurement practices, Canada and the United States have agreed to subject a wider range of federal government purchases to the rules of the GATT Government Procurement Code. In particular, the Government Procurement Code provisions will apply to any federal government purchase contracts of a value of $25,000 U.S. or greater. This opens up a U.S. market of approximately $3 billion to Canadian manufacturers. The "Buy America" regulations of U.S. states and the local preference requirements of Canadian provinces and municipalities are not affected by the agreement.

Significant progress has been made in the area of product standards and technical regulations which can often act as impediments to trade. The agreement seeks to harmonize federal standards in both countries. Furthermore, product testing and certification of products performed in either country will receive recognition in the other country. Again, this agreement has not reached provincial or state product standards or technical regulations.

The U.S. has achieved significant gains in the investment area. Canada has agreed to liberalize its investment restrictions by reducing its screening of direct acquisitions and phasing out its screening of indirect acquisitions and minimum Canadian performance requirements. With respect to direct acquisitions, Canada has agreed to increase the threshold for review to $150 million by 1992. As well, existing investment in Canada or the United States will be granted national treatment under the laws and practices of both countries. An important exemption was carved out for Canadian cultural industries. Canada will maintain its policy of reviewing all investments in the cultural area and requiring divestiture where there is not sufficient Canadian ownership.

An important element of this agreement is a new trade-in-services code. Although the details remain to be fleshed out in the text of the agreement, the adoption of this Code will have significant implications for all services industries. There are special rules in this agreement for financial services, telecommunications and computer services, tourism, architecture and transportation services.

Both countries have agreed to change their immigration laws to provide for temporary entry of business and professional persons as well as persons engaged in sales or after sales service functions. In particular, each country has agreed to provide immediate temporary entry to specific groups of business or professional visitors and intra-company transferees without requiring prior approval procedures, petitions or labour certification tests.

With respect to trade remedies, each country will continue to maintain and administer its respective antidumping and countervailing duty laws for at least another five to seven years. Canada and the U.S. have agreed to establish a Working Group to develop a substitute system of laws in both countries for antidumping and countervailing duties. The new system is to be developed and implemented within five years, which may be extended for a further two years. Failure to agree to implement a new regime will permit either country to terminate the free trade area agreement on six months notice.

In the meantime, each country may amend its domestic antidumping and countervailing duty laws only in the following circumstances: where it specifies in the legislation that such changes apply to the other member country, it notifies and consults with the other member country about the proposed changes, and it makes changes which are consistent with the GATT Antidumping Code and Subsidies Code and with the objects and purposes of the free trade agreement. After the agreement comes into force on January 1, 1989, either country may apply to a bi-national panel to obtain a declaratory opinion concerning proposed changes by the other member country to its antidumping or countervailing duty laws. Where a bi-national panel recommends that the proposed changes to the antidumping or countervailing duty laws are inconsistent with the GATT or inconsistent with the objects and purposes of the free trade agreement, the member countries are required to consult and seek a mutually agreeable solution or, in the event that such a resolution is not achieved, the other member country may take comparable legislative action or terminate the free trade agreement with sixty days notice.

Pending the implementation of a new Canada-U.S. trade law regime, a special bi-national panel process will be established to replace judicial review of antidumping and countervailing duty determinations in both the United States and Canada. At the request of either member government, this panel would review final antidumping or countervailing duty determinations made by either U.S. or Canadian administrative agencies to determine if those decisions were made in accordance with domestic law. The bi-national panel would be required to apply the appropriate standard of judicial review applicable under the domestic law of the member country where the antidumping or countervailing duty investigation was conducted. The decision of any such bi-national panel would be binding on the member governments.

In addition to the bi-national panel procedure for antidumping and countervailing duty cases, there is a general dispute settlement mechanism established to avoid or settle all disputes concerning the interpretation or application of the agreement. Under these provisions, a Canada-United States Trade Commission will be established to supervise the proper implementation of the agreement, to resolve disputes that may arise over the interpretation and application of the agreement, to oversee the further elaboration of the agreement and to consider any other matter that may effect the operation of the agreement. The Commission will be composed of Cabinet-level officers or ministers. The dispute settlement mechanism is modelled on the GATT panel procedure. There are notification and consultation provisions as well as provisions allowing for the appointment of technical advisors, mediators and binding arbitration panels in certain circumstances. In the case of a dispute, both countries are required first to consult government-to-government to attempt to arrive at a mutually satisfactory resolution. Where the governments fail to resolve a dispute through consultations within 30 days, either party may request in writing a meeting of the Commission. The Commission may then attempt to resolve the dispute by calling on technical advisors, seeking the assistance of a mediator, referring the dispute to binding arbitration, or establishing a panel of experts to consider the matter. Where a panel of experts is selected, the panel must make findings of fact and issue a report containing its recommendations for resolution of the dispute to the Commission. The Commission is required to take all of its decisions by consensus. Wherever possible, the resolution of the dispute is to take the form of non-implementation or removal of a policy or practice not conforming with the agreement or compensation to the injured member country.

The formal agreement will be drafted within the next few weeks. It must then be signed, ratified and implemented into U.S. and Canadian law before it takes effect. In the United States, Congress formally commences its review of the agreement and the implementing legislation on January 3rd, 1988. After that date, Congress has sixty legislative days to vote "yes" or "no" on the agreement and the legislative package. In

Canada, implementation must be effected by the introduction of legislation and regulations concerning the subject matter of the agreement. Provincial implementation will only be required with respect to the elimination of certain policies concerning wine and distilled spirits as well as new trade-in-services obligations.

AUTO MANUFACTURERS LAUNCH MAJOR ANTIDUMPING INVESTIGATION AGAINST HYUNDAI

On July 15, 1987, Revenue Canada announced that it had initiated an antidumping investigation into imports of Hyundai cars, specifically the Pony, Excel and Stellar models, from Korea. In an extensively detailed complaint filed on June 1, General Motors Ltd. and Ford Motor Company of Canada Ltd. alleged that Hyundai Motor Company of Korea has been dumping its cars in Canada at prices which are less than their normal values in the Korean market and that this has caused material injury to Canadian manufacturers.

Canadian and U.S. automobile manufacturers have complained in the past of unfair trading practices by lower-cost, offshore manufacturers, but this dumping investigation is the first formal trade action taken by the Canadian industry. Hyundai entered the Canadian market with a bang in 1984 with its low-priced, duty-free Pony subcompact. Its sales that year were around $169.6 million and increased almost fourfold in 1985 to $665.3 million. However, sales dropped as a result of a contracting market in 1986 to $443.4 million and as a result the small profits recorded by Hyundai in 1984 and 1985 turned into a $29.7 million loss before taxes. During its first 3 years in Canada, Hyundai benefited from an exemption from customs duties. However, that exemption was lifted in 1987 with the imposition of a 6% duty.

The complainants have alleged that the estimated dumping margins on 1986 models are in the range of 14.5 - 29.0% and on 1987 models in the range of 15.2 - 42.8%. In their voluminous complaint, Ford and GM have alleged that Hyundai has been selling its cars in Canada for less than it has been selling comparable models in the Korean market. To assess the margins of dumping, the complainants have based their estimates of normal values on the domestic selling prices in Korea of comparable versions of models manufactured by Hyundai. The Korean selling prices were adjusted to reflect differences between the domestic Korean cars and those exported to Canada as well as differences in taxes and duties borne by the two products. With respect to the Excel model, the complainants have estimated normal values by constructing the cost of production in Korea of versions of domestic models comparable to the cars exported to Canada. The complainants resorted to constructed value because the available evidence indicated that the comparable Korean models were being sold in Korea at a loss by Hyundai. With respect to the export price, or the selling price in Canada of the subject cars, the complainants calculated the ex-factory export prices by estimating the importers' selling prices in Canada for each of the models and deducting therefrom the estimated costs, charges and expenses incurred in packaging and shipping the cars from Korea.

With respect to material injury to the Canadian industry, the complainants have not alleged that there have been any adverse effects on production levels, utilization of capacity or employment in Canada. Rather, Ford and GM have alleged that the dumping has caused, is causing and is likely to cause material injury to the Canadian industry through margin erosion and price suppression. In this respect, Ford has alleged that the dumped imports have caused a significant decline in its gross margin as a percentage of net revenue in 1985 as compared with 1984. As well, the complainants have alleged injury through price suppression in that they have been forced to discount their net prices by granting marketing incentives to compete with lower-priced Hyundai imports.

The major emphasis in the complainants' injury claim is a threat of material injury from future unrestrained dumping by Hyundai into a contracting North American market. Market analysts are predicting a downturn in sales of cars in Canada over 1987-89 with a slight recovery in 1990. However, sales levels are not expected to approach the peak levels of 1985. Ford and GM have alleged that Hyundai is planning a major assault on the North American market. It is developing new lines of cars and will be establishing a manufacturing facility in Bromont, Québec which is expected to commence production in 1990. As a result of predicted increases in Hyundai exports in future, the complainants have alleged that dumping will cause reduced production, reduced utilization of capacity and reduced employment in the domestic automobile market.

On the day the investigation was initiated, the Deputy Minister of Revenue referred to the Canadian Import Tribunal the question of whether the information submitted disclosed a reasonable indication of material injury or retardation caused by the dumping into Canada of the Hyundai cars. Unlike the United States, it is normal procedure in Canada for the question of reasonable indication of injury to be dealt with in the preliminary determination by Revenue Canada along with the issue of subsidization. Under the *Special Import Measures Act*, section 37, the Deputy Minister of Revenue, an interested party or the government of the exporter may refer the question of reasonable indication of injury to the Tribunal prior to the preliminary determination by Revenue. Upon such a reference, the Tribunal is allowed to consider only the information contained in the complaint as submitted and there is no provision for exporters or importers to make representations to the Tribunal. In a normal case, where no reference to the Tribunal is made, the Deputy Minister of Revenue has the discretion to terminate an investigation at any point until the preliminary determination. However, where such a reference has been made to the Tribunal, the Deputy Minister has no discretion to terminate and the case may be terminated only upon a negative finding by the Tribunal.

In this case, the Tribunal issued its advice under section 37 of the *Special Import Measures Act* on August 14, 1987. On the basis of the information provided to the Tribunal by the Deputy Minister, the Tribunal advised that the evidence on the record disclosed a reasonable indication that the dumping into Canada of cars produced by or on behalf of Hyundai Motor Company of Korea or by companies with which it is associated has caused, is causing, or is likely to cause material injury to the production in Canada of like goods. The Tribunal stated its view that the "remarkable achievement of the Hyundai product in capturing 11% of the market in the short span of two years was attributable in the main to its low price." It accepted the complainants' allegations that they had suffered injury in the reduction of their gross margins and price depression. Also, the Tribunal advised that the complainants' had shown a reasonable indication of a threat of material injury from future unrestrained dumping by Hyundai especially given that the automotive market forecasts predict a contracting Canadian market.

Revenue Canada is expected to make its preliminary determination on the question of dumping by November 27. If the preliminary determination is affirmative, the Canadian Import Tribunal will conduct an inquiry into the question of material injury or threat thereof to Canadian production of comparable models of cars as a result of the dumped imports. In its inquiry, the Tribunal will receive representations from interested parties and conduct public hearings. It must issue its finding not later than 120 days after the preliminary determination.

Federal Industry Minister, Robert de Cotret, has announced that his department is in the process of developing a new federal policy with respect to automobiles and auto parts. The Hyundai antidumping investigation comes at a time when the federal government has no effective policy on offshore automobile manufacturers. The political result of this case may be to force the federal government to develop an appropriate policy concerning participation of offshore automobile manufacturers in the Canadian market.

HYUNDAI FEDERAL COURT APPLICATIONS

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On August 11, 1987, the Federal Court of Canada Trial Division heard an application (Court # T-1687-87) brought by Hyundai Motor Company, Hyundai Auto Canada Inc., and Hyundai Canada Inc., against the following respondents: the Attorney-General of Canada, the Deputy Minister of National Revenue for Customs and Excise (Revenue Canada), and the Canadian Import Tribunal (CIT).

The Applicants opposed the addition of the Ford Motor Company of Canada Ltd. and General Motors Ltd. as Respondents in the Application, without success.

The Application requested:

1. *certiorari* to quash Revenue Canada's July 15, 1987 decision to initiate an antidumping investigation regarding the Applicant's automobiles;

2. *prohibition* to restrain Revenue Canada from continuing the antidumping investigation;

3. *certiorari* to quash Revenue Canada's July 15, 1987 reference to the CIT regarding the question of whether the evidence disclosed a reasonable indication that the alleged dumping has caused or is likely to cause material injury with respect to production in Canada of like goods;

4. *prohibition* to restrain the CIT from giving its advice on the reference;

5. *mandamus* to require Revenue Canada to provide the Applicants with all the material considered by Revenue Canada in its decision to initiate, and to provide the Applicants with the opportunity to make representations before a new decision might be made with respect to the initiation of the antidumping investigation.

After the hearing of this application commenced, but before it was completed, the CIT rendered its opinion on the reference, as it was required by law to do, on August 14, 1987. The CIT was of the opinion that the evidence submitted disclosed a reasonable indication of material injury to Canadian producers.

At the end of the Federal Court hearing, Strayer J. dismissed the application in its entirety, with costs to the respondents, and stated that his reasons would be provided later.

In his written reasons dated August 21, 1987, Strayer J. stated at page 9 that:

> It must first be emphasized, as I emphasized in the *Chisholm* case, that it is not the role of the Court to act as an appeal tribunal on the substance of the Deputy Minister's decision as to the facts. It would only be in circumstances where it could be shown that the Deputy Minister or his representative had very clearly committed an error of law, by failing to take into account the legally relevant issues or facts, or by basing his decision solely on facts or issues which as a matter of law were irrelevant, that a court might intervene to quash the decision.

Strayer J. further stated at page 10:

> It is indeed surprising that applications such as this are brought to seek judicial review of initial factual determinations made by the Deputy Minister, where it is clear that the Deputy Minister had before him some evidence upon which he could find as he did. In my view such applications involve an ill-conceived attempt to judicialize an administrative, pre-investigative process.

The Applicants have appealed Strayer J.'s decision to the Federal Court of Appeal. The appeal will likely take several months to be completed.

In the meantime, the Applicants have indefinitely adjourned their companion Federal Court Trial Division application (Court # T-1688-87) in which they sought to force the CIT to release to them confidential information and to provide them with an opportunity to make submissions in the CIT reference. As was previously noted, the CIT made its report in the reference on August 14, 1987. The decision of Mr. Justice Strayer confirms the Federal Court's reluctance to intervene in administrative processes under *SIMA* at the initial investigative stages.

REGIONAL ANTIDUMPING INJURY DETERMINATIONS UNDER THE *SPECIAL IMPORT MEASURES ACT*

Section 42(1) of the *Special Import Measures Act*, S.C. 1984, c.25 (*SIMA*) directs the Canadian Import Tribunal (CIT) to make an inquiry concerning material injury or retardation to Canadian producers in an antidumping investigation after the Department of National Revenue, Customs and Excise (Revenue Canada) has made a preliminary determination on the issue of dumping. In recent months, Revenue Canada has issued several preliminary determinations of dumping where the definition of Canadian producers injured by the dumping was limited to certain regions of Canada. For example:

- On June 2, 1987, Revenue Canada made a preliminary determination regarding certain fertilizer blending and conveying equipment for use west of the Ontario-Manitoba border.
- On August 27, 1987, Revenue Canada made a preliminary determination regarding certain solid urea for use or consumption in Eastern Canada (Canadian territory east of the Ontario-Manitoba border).
- As well, on August 28, 1987, Revenue Canada initiated an antidumping investigation with respect to certain recreational vehicle entrance doors for use or consumption in the provinces of Alberta and British Columbia.

Since the above cases do not involve all ten provinces of Canada, they are not national inquiries. Revenue Canada and the CIT are considering material injury to producers within certain regions of Canada and, for that reason, they are regional inquiries.

This distinction is important. In order for a Canadian complainant to obtain relief under *SIMA*, the percentage of Canadian producers that must be materially injured from the dumping in a regional market differs from the percentage of Canadian producers that must be materially injured in a national market.

The statutory provisions that create this distinction are as follows.

Section 3 of *SIMA* states that antidumping duties shall be levied, collected and paid on all dumped goods imported into Canada in respect of which the Canadian Import Tribunal has made an order or finding, before the release of the goods, that the dumping of goods of the same description has caused, is causing, or is likely to cause, "material injury" or has caused, or is causing, retardation.

Section 2 of *SIMA* defines the term "material injury" to mean material injury to the "production in Canada" of like goods.

Subsection 42(3) of *SIMA* states:

> The Tribunal, in considering any question relating to the production in Canada of any goods or the establishment in Canada of such production, shall take fully into account the provisions of:
>
> (a) in a dumping case, paragraph 1 of Article 4 of the Agreement signed at Geneva, Switzerland, on December 17, 1979 on Implementation of Article 4 of the General Agreement on Tariffs and Trade (the Antidumping Code).

Paragraph 1 of Article 4 of the *Antidumping Code* states:

> 1. In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective

> output of the products constitutes a major proportion of the total domestic production of those products, except that
>
> (i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the industry may be interpreted as referring to the rest of the producers;
>
> (ii) in exceptional circumstances the territory of a Party may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market. (emphasis added)

In other words, the percentage of the regional market that a complainant must represent in a regional inquiry ("producers of all or almost all of the production within such market") is higher than the percentage of the entire Canadian market that the complainant must represent in a national inquiry ("domestic producers as a whole of the like products or [to] those of them whose collective output of the products constitutes a major proportio n of the total domestic production of those products") (emphasis added).

In its finding in *Frozen Dinners* (ADT-5-74) the predecessor of the CIT, the Antidumping Tribunal, interpreted the term "major proportion" at page 10 of its Statement of Reasons:

> A producer, or group of producers, can represent less than 50 per cent of the total and yet constitute "a major proportion" of the whole. The question is one of degree and therefore of fact upon which the Tribunal may pronounce. It would be otherwise had the Code used the expression "the major proportion".

The CIT's predecessor adopted this interpretation of "a major proportion" again in its decision in *Chain Saws* (ADT-5-76), and this interpretation was upheld by the Federal Court of Appeal in *McCulloch v. Antidumping Tribunal*, [1978] 1 F.C. 222.

At the time of writing this article, neither the CIT nor the Federal Court of Appeal have interpreted the term "all or almost all". However, the interpretation of this term was a central issue in the aforementioned *Fertilizer Equipment* decision.

SIMA AND THE PUBLIC INTEREST

The Canadian Import Tribunal's decision in *Subsidized Grain Corn Imported from the United States* (CIT-7-86) generated considerable concern from industrial users of corn, feed producers and farm user groups.

These user groups claimed that the substantial duties calculated by Revenue Canada - Customs and Excise would cause them serious problems. In their view, it would be in the public interest for the government to provide alternative relief for corn growers and to remove the countervailing duties.

The Tribunal examined the issues in some depth, but with little guidance about what constituted the "public interest". The Tribunal's decision had not been issued at the time of writing. It is expected, however, that whatever the decision may be, the Tribunal will analyze in some detail the issues which they considered, the interests to be weighed and the approach adopted.

The Tribunal's decision and statement of reasons will be examined in the next issue of the *Record*. Meanwhile, it may be useful to examine the "public interest" concept in the *Special Import Measures Act (SIMA)*, how it was developed, and similar provisions in customs law.

The public interest provision in Section 45 of *SIMA* provides that:

(1) Where, as a result of an inquiry referred to in Section 42 arising out of the dumping or subsidizing of any goods, the Tribunal makes an order or finding described in any of sections 3 to 6 with respect to those goods and the Tribunal is of the opinion that the imposition of an antidumping or countervailing duty, or the imposition of such a duty in the full amount provided for by any of those sections, in respect of the goods would not or might not be in the public interest, the Tribunal shall, forthwith after making the order or finding,

a) report to the Minister of Finance that it is of such opinion and provide him with a statement of the facts and reasons that caused it to be of that opinion; and

b) cause a copy of the report to be published in the *Canada Gazette*.

(2) Where any person interested in an inquiry referred to in subsection (1) makes a request to the Tribunal for an opportunity to make representations to the Tribunal on the question whether the Tribunal should, if it makes an order described in any of section 3 to 6 with respect to any goods in respect of which the inquiry is being made, make a report pursuant to paragraph (1)(a) with respect to those goods, the Tribunal shall afford such person an opportunity to make representations to the Tribunal on that question orally or in writing, or both, as the Tribunal directs in the case of that inquiry.

The public interest question was discussed before the Parliamentary Subcommittee on Import Policy, when it received public comment on the draft *SIMA* during the Thirty-Second Session of Parliament.

While there is considerable case law dealing with the "public interest" as it relates to decisions of the criminal courts, the CRTC, the Canadian Transport Commission, and the National Energy Board when dealing with issues such as standing, freedom of information, admissibility of evidence, and the administration of justice, there is nothing directly on point regarding what constitutes the "public interest" in the context of *SIMA*.

The *GATT* also offers little guidance regarding the "public interest" concept. However, the *GATT Subsidies and Countervailing Duties Code* envisages that less than the full amount of the duty may be imposed in certain circumstances. Paragraph 1 of Article 4, of the *Code* states:

> The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less are decisions to be made by the authorities of the importing signatory. It is desirable that the imposition be permissive in the territory of all signatories and that the duty be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry.

While public interest in the context of reduction or removal of trade-regulating duties may be a new concept under *SIMA*, it is not a new concept in the context of customs legislation.

Until the *Antidumping Act* was promulgated, antidumping duties were imposed under the authority of section 6 of the *Customs Tariff*. Until *SIMA* was promulgated in 1984, the authority to impose countervailing duties on subsidized imports was also found in the *Customs Tariff* and related regulations. Accordingly, the *Customs Tariff* should be consulted to determine the scope and meaning of the public interest concept prior to the enactment of Section 45 of *SIMA*.

The only direct reference in Canadian customs law to the public interest is in section 16 of the *Customs Tariff*. This provision has rarely been used.

Subsection 16 (1) states:

> Whenever the Governor in Council deems it to be in the public interest to inquire into any conspiracy, combination, agreement or arrangement alleged to exist among manufacturers or dealers in any article of commerce to unduly promote the advantage of the manufacturers or dealers in such article at the expense of the consumers, the Governor in Council may commission or empower any judge of the Supreme Court, or of the Exchequer Court of Canada, or of any superior court or county court in Canada, to hold an inquiry in a summary way and report to the Governor in Council whether such conspiracy, combination agreement or arrangement exists.

The public interest provisions contained in both Section 16 of the *Customs Tariff* and Section 45 of *SIMA* both envisage the removal of tariff protection. Subsection 16 (3) of the *Customs Tariff Act* states:

> If the judge reports that such conspiracy, combination, agreement or arrangement exists in respect of such article, the Governor in Council may admit the article free of duty, or so reduce the duty thereon as to give to the public the benefit of reasonable competition in the article, if it appears to the Governor in Council that such disadvantage to the consumer is facilitated by the duties of customs imposed on a like article.

Subsection 19 (1) of the *Customs Tariff* also envisions reductions in customs duties:

> In the event of producers of goods taking advantage of any duty imposed under this *Act* to increase the price of such goods to the consumer, or using any such duty to maintain prices at levels deemed by the Governor in Council to be higher than should prevail, having regard to general economic conditions in the country, the Governor in Council may reduce or remove such duty.

Although this provision has been part of the *Customs Tariff* for many years, it has seldom been used.

The duties to which section 19 now apply are tariffs under Schedule A of the *Customs Tariff* and the surtaxes which may be imposed under sections 7 and 8 of that *Act*. Section 19 was, in effect, the predecessor of section 45 of *SIMA*.

Although subsection 19 (2) is not directly relevant to the public interest concept, it does demonstrate the gravity of actions contemplated under this section. It states:

> In the event of any one such producer violating the provisions of this section, the Governor in Council may impose upon all the products of such producer, or any of them, an excise duty equivalent to the amount of customs duty that would be paid by such goods if the goods were imported into Canada under the General Tariff, and the same is collectible as a tax, and the provisions of the *Income Tax Act* as to the collection of taxes are applicable hereto.

Subsection 19 (3) is of interest to those involved in the *U.S. Grain Corn* case. It states: "This section does not apply to agricultural products."

While section 45 of *SIMA* has replaced section 19 of the *Customs Tariff*, in respect of anti-dumping and countervailing duties, the historical and parallel provisions in the *Customs Tariff* may give the Tribunal some guidance in its definition of the term "public interest".

Recommendations to remove or reduce duties are serious matters which should not be taken lightly without a clear understanding and weighing of all the facts. But what facts are relevant, and how should they be weighed?

The historical development of the public interest provisions now contained in *SIMA* relate to competitiveness and the consumer interest, and reflect a desire to ensure a balance between those who are best able to fend for their interests and those who are less able. The earlier exemption of agricultural products from the purview of section 19 may have been designed to safeguard the interests of farmers who are small operators selling to larger users.

Although the national or public interest concept did not appear in *Proposals For Import Policy* (the discussion paper which led to *SIMA*), it was discussed in several meetings of the parliamentary subcommittee which examined the proposals. The main discussion occurred during the testimony of the Director of Research and Investigation under the *Combines Investigation Act*, which appears in Volume 23 of the Minutes of Proceedings.

The Director's testimony makes it clear that his concerns were based on the possibility of excessive protection of industries benefiting from the antidumping duties and on injury to competition.

The focus of discussion before the parliamentary subcommittee was the antidumping case related to hardwood panels where Revenue Canada had determined a very high margin of dumping – which meant a price increase for imports well over 200 per cent. These high dumping margins had been determined, in the words of the witnesses, arbitrarily, that is, based on third-country valuations. The concern was that the dumping duties might provide excessive protection.

The Canadian Import Tribunal must determine how historical concerns should come into play when producers of an agricultural product are injured by unfair trading practices.

What criteria will the Tribunal use? Will they decide that those seeking relief under section 45 must demonstrate in a clear and compelling manner that it is in the public interest to suspend the duty or to reduce it? It is likely that the Tribunal will conclude that the public interest is not a simple matter of determining that there is an adverse impact or an alleged impact on one small segment of the country or the economy.

There are a variety of divergent interests which must be weighed and the Tribunal will exercise considerable discretion in weighing the public interest under Section 45 of *SIMA*.

GATT PANEL FINDS THAT COWS ARE NOT BEEF

The GATT Panel examining the Canadian Import Tribunal finding in the countervailing duty case involving imports of boneless manufacturing beef from the EEC has found that the complainant, the Canadian Cattlemen's Association, an association of cow/calf producers, did not have standing to bring the complaint.

The Panel appears to have concluded that the *Subsidies and Countervailing Duties Code* should be interpreted as restrictively as possible in order to minimize access to countervailing duty measures. This, in the view of the panelists, is what the drafters of the *Code* intended. They have apparently cited the drafting documents in support of this position.

This could mean, if the non-binding report is accepted, that Canada could be advised to rescind the Canadian Import Tribunal's finding and refund the duties. The status of such a ruling under the *Special Import Measures Act* raises questions which cannot be addressed until the full text of the Panel report is available.

It appears that the Panel recognized that the producers of identical goods, boneless manufacturing beef, are unlikely to be injured by imports because of the nature of the market and are therefore unlikely to bring a countervailing duty complaint.

If adopted, this Panel report would have significant implications for other cases involving agricultural products where the primary producers of the raw product are the most likely to file a countervailing duty or antidumping complaint.

GOVERNMENT OF SASKATCHEWAN REACTS TO U.S. POTASH ANTIDUMPING RULING

By: Debra P. Steger
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On August 20, 1987 the U.S. Department of Commerce (DOC) issued its preliminary determination in an antidumping case involving imports of potassium chloride (potash) from Canada. Although the petitioners had sought a duty of 43%, the DOC surprised everyone with a preliminary finding of margins of dumping ranging from 9.14% to 85.2%. The results of the U.S. antidumping investigation will have significant impact on the resource-based economy of Saskatchewan. Saskatchewan is a major world source of potash. Saskatchewan supplies approximately 80% of U.S. potash consumption and 60% of Saskatchewan production is exported to the U.S. In 1986, industry sales approached $550 million and the Saskatchewan industry employed around 3,600 persons. Potash is an important component in fertilizer and the imposition of such significant duties on Canadian potash would raise the cost of fertilizer to U.S. farmers significantly. For this reason, the National Corn Growers' Association and other U.S. agricultural organizations are expected to lobby hard against the imposition of antidumping duties.

The antidumping petition was filed by two small U.S. potash producers, Lundberg Industries Ltd. of Dallas, Texas and New Mexico Potash Corp. of Memphis, Tennessee on February 10, 1987. The exporters named in the petition included the government-owned Potash Corporation of Saskatchewan, the Central Canada Potash division of Noranda Inc., Potash Corporation of America, PPG Industries, Inc./ Kalium Chemicals, and International Minerals and Chemicals Corporation. The latter three firms are Canadian subsidiaries of U.S. corporations. As the petitioners represent only approximately 3% of the U.S. market, the Canadian exporters argued that the petitioners did not have standing to bring the action as they did not represent a majority of the industry producing like goods in the United States. The DOC found, however, that the two petitioners had standing to bring the action.

The DOC determined that all the respondents, except Central Canada Potash, had an adequate number of sales in the home market to be used for determining foreign market value. With respect to Central Canada Potash, the DOC used sales made to Japan as the basis for determining foreign market value. For the Potash Corporation of Saskatchewan and the Potash Corporation of America, the DOC found insufficient home market sales above cost to use as the base for determining foreign market value and, therefore, used constructed value as its basis for determining foreign market value. For the other respondents, where there were an adequate number of sales above cost, the DOC used those sales as a basis for foreign market value, and where there were insufficient sales above the cost of production, the DOC based foreign market value on constructed value. The very high margins of dumping for Central Canada Potash and Potash Corporation of America, in particular, resulted from the DOC's use of the constructed value method for determining foreign market value. Also, the extremely high dumping margin of 85.2% for Central Canada Potash is explained by the DOC's reliance on previous sales of potash to Japan, calculated in yen, as the basis for foreign market value.

In the preliminary determination, the DOC found the following margins of dumping:

• Central Canada Potash (a Division of Noranda Inc.)	85.20%
• Potash Company of America	77.44%
• Potash Corporation of Saskatchewan	51.90%
• PPG/Kalium	29.67%
• International Minerals and Chemical Corporation	9.14%
• All Others	36.62%

The preliminary determination by the DOC is only the first step in the antidumping investigation process. The DOC must make a final determination of dumping by November 3 and, if that is affirmative, the International Trade Commission is required to make a final injury determination by December 21, 1987. As a result of the DOC preliminary determination, Canadian exporters must post bonds equal to the estimated amount of the dumping margins for any shipments of potash to the United States after that date.

As a result of the preliminary determination by the DOC, the Potash Corporation of Saskatchewan has announced that it is raising its price to the U.S. by 60% to $93 a metric ton. Other potash exporters are expected to follow suit and announce similar price increases. These actions will result in higher prices to U.S. farmers for fertilizer.

The government of Saskatchewan responded swiftly to the U.S. determination with the introduction of the *Potash Resources Act* in the Saskatchewan legislature on September 1, 1987. This bill, which has now received Second

Reading, would give the Provincial Cabinet the power to control the production of potash in every mine in the province. "Mine" is defined in the Bill as meaning any facility in Saskatchewan for mining, extracting, recovering or producing potash, and includes any facility associated with a mine or in which potash is processed or refined. The Cabinet has been given extensive powers to prescribe minimum and/or maximum rates of primary production of potash, to restrict or prohibit the establishment of any new potash mine or mines in Saskatchewan, to restrict or prohibit the expansion of any existing potash mine or mines in Saskatchewan, and to restrict or prohibit increases in the productive capacity of any potash mine or mines in Saskatchewan.

The Bill also provides for the establishment of the Potash Resources Board which will be given the responsibility to inquire into and report on any factors that may assist the Cabinet in prescribing minimum and/or maximum rates of primary production of potash. The Board also has the responsibility to determine the appropriate minimum or maximum rate of primary production for each potash mine in Saskatchewan whenever the Cabinet has prescribed a minimum or a maximum rate of primary production for the province. The Board would have all the powers of a court, appeals would be limited to the Cabinet, and the Board would have exclusive jurisdiction to make or vary any decision required by the *Act*.

The Minister responsible for the legislation will be given extensive powers under the *Act* to apply for an injunction to prevent any person from contravening a provision of the *Act* or the Regulations. As well, it would be an offence punishable by a fine of $100,000 for an individual, or $1 million for a corporation, to contravene the *Act* or Regulations. The *Act* is to come into force upon proclamation.

Saskatchewan Premier Grant Devine has stated that it is his intention to use this legislation to fight back at the imposition of antidumping duties by the United States. Global over-supply of potash is the reason for significant losses and extremely low prices in the industry worldwide.

The Saskatchewan legislation is an attempt to regulate world supply and, in effect, to increase world prices for potash. The Potash Corporation of Saskatchewan sees the legislation as a positive move. Other companies, most notably Noranda's Central Canada Potash, have expressed the view that it is too blunt an instrument and could create a very inefficient industry. It is expected, however, that the Bill will become law and that Saskatchewan will establish its first production limits in October.

U.S. TRADE LAW PROPOSALS

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This article examines the key trade provisions of the Senate version of H.R. 3 and points to areas in which the Bill differs significantly from its House counterpart. (The key trade provisions of the House version of H.R. 3 were considered in detail in the last issue of the *Record*.)

The United States House of Representatives and Senate have now passed different versions of H.R. 3, the 1987 Omnibus Trade Bill. On July 21, 1987 the Senate passed its version of the Bill, now referred to as the Senate version of H.R. 3, by a margin of 71 to 27. Although the Senate bill large-ly parallels its House counterpart, passed on April 30 by a 290 to 37 margin, the two versions of H.R. 3 differ on numerous significant issues. These differences are scheduled to be considered and reconciled in September by a bi-partisan House-Senate conference committee. The single bill emerging from the conference committee must then be put before the House and Senate be-fore being sent to the President for approval or veto.

The challenge facing the conferees reconciling the House and Senate versions of H.R. 3 will be to produce a bill that the President will not veto. On the basis of a roll call vote in the Senate, the

White House appears to have enough votes on its side, either opposed to the bill or willing to accept it in final form only if it emerges from the conference more acceptable to the President, to withstand its veto being overridden by the required two-thirds majorities in both Houses.

Both the Senate and House bills, in their current form, contain numerous provisions that the Administration finds unacceptable. These include the House bill's requirement for foreign investment, the House bill's Gephardt provision mandating retaliation against countries with excessively high trade surpluses with the U.S., the Senate bill's plant closing provision, which requires companies employing 100 or more workers to give 60 days written notice before closing a factory or instituting mass layoffs, and the Senate bill's denial to the President of tariff proclamation authority. The Administration has nevertheless pledged to work with Congress to develop a bill that will be acceptable to the President.

Antidumping and Countervailing Duties

Multiple-Offender Monitoring

The Senate bill provides procedures similar to those provided for by the House for monitoring imports from manufacturers found to be repeatedly dumping their products in the United States. Under these procedures, the Department of Commerce is required to monitor the importation of a multiple offender's products in the product category designated for monitoring and in related product categories. If evidence from monitoring suggests that any of the products is being dumped, the Department must initiate an investigation.

Private Remedy for Injury Resulting from Dumping

The Senate version of the trade bill includes no provisions relating to the current private right of action available for injury resulting from dumping. In contrast, the House bill establishes the rebuttable presumption that a "multiple offender" intended to injure a U.S. industry. It eliminates, however, treble damages and criminal penalties now available to a successful plaintiff under the *Antidumping Act of 1916*.

Subsidy Determination

The Senate trade bill is more limited than its House counterpart, simply codifying the current Commerce Department practice of focusing on whether a subsidy has in fact been provided to a specific enterprise when determining whether a foreign country's domestic subsidy is subject to U.S. countervailing duties.

Downstream Product Monitoring

Domestic producers of component parts can, under both the House and Senate trade bills, petition the Department of Commerce to designate downstream products for monitoring. The two bills share the goal of providing for monitoring of imports of products with components on which an antidumping or countervailing duty of at least 15% has been placed during the previous five years. The Senate bill adds to the House bill the condition for monitoring downstream products that there be either an existing monitoring program in place for the component part or a large number of cases on related products from the same country or two or more cases against the same company on products similar in description and use.

Actions to Evade Payment of Antidumping Duties (Sham Transactions)

Under current law, the importer of record of a product is liable for payment of antidumping duties. The House bill would not change current law. The Senate bill would require the Department of Commerce to treat the U.S. end purchaser as the importer of record solely liable for payment of antidumping duties if the Department finds that goods are being imported by a manufacturer, producer or seller-exporter of the products for the purpose of absorbing the antidumping import duties rather than permitting them to be passed on through price adjustments.

Assessing Injury

The Senate bill adopts the factors in the House bill to be considered by the International Trade Commission (ITC) in its determination of whether domestic industry is materially injured or threatened with material injury by reason of dumped or subsidized imports. Like the House version, the Senate bill limits its injury considerations to domestic producers' production facilities and operations within the U.S. It goes beyond the House version by directing the ITC to include in its injury considerations the dumping findings of other countries and the impact of dumped or subsidized imports on existing research and development plans and on the efforts of the domestic industry to develop technology to produce products related to the imports under review (the latter is a Boeing amendment, aimed at Airbus).

Circumvention

Like its House counterpart, the Senate trade bill provides that if a product subject to an antidumping or countervailing duty order is completed or assembled in the U.S. or is finished or assembled in a third country, an antidumping or countervailing duty order applicable to the product may in certain cases apply to its parts. Under the House version, the duty is applicable to parts provided that:

(a) substantially all of the parts of the product are imported from the country subject to the order,
(b) the value added in the U.S. to the parts is low, and
(c) the parts were produced or exported by a company related to the company performing the U.S. operations.

The Senate bill does not include the third requirement but adds the requirement that before applying the duty to parts, the Commerce Department must consider the pattern of trade, the relationship between the parties involved and whether imports of the parts have increased after issuance of an order or finding against the finished product.

Diversionary Input Dumping

Unlike the House bill, the Senate trade bill includes no provision relating directly to diversionary input dumping, by which a producer of imports subject to an antidumping investigation buys for incorporation into the imports any material or component part priced at less than fair market value or that has been subject to an antidumping order, review or suspension agreement during the previous six years. The Senate bill addresses related practices through its downstream monitoring provisions.

Scope of Countervailing and Antidumping Orders

Whereas the House trade bill does not address the scope of countervailing and antidumping orders, the Senate version expands the scope of these orders to include merchandise developed after initiation of an antidumping or countervailing duty investigation. The Senate bill would require the Commerce Department to consider, in deciding whether to subject later developed merchandise to an order, whether the initial and subsequent merchandise have the same general characteristics, whether the expectations of ultimate purchasers for both goods are the same, whether the later developed merchandise is sold through the same channels of trade, and whether the merchandise is advertised and displayed in the same manner.

Sales Through Affiliates

The Senate bill, but not the House bill, contains a provision preventing subtraction of home market indirect sales expenses from normal value for companies selling in the U.S. through affiliated companies. This amendment, justified by a misstatement of European Communities and Canadian practice, was expressly introduced to raise dumping margins 20% against Japan (but, of course, would affect all importers).

Trade Agreement Negotiating Authority

With regard to multilateral trade agreements, the Senate bill authorizes the President to negotiate through January 3, 1992 with foreign countries for reductions in both tariff and nontariff barriers to trade. The bill, however, limits tariff reductions to cuts of 50% of existing duty rates, except for rates already below 5% *ad valorem*, which can be eliminated. Under the House bill, multilateral non-tariff authority is extended through January 3, 1991, with a further extension available to 1993. As to tariff authority, the President's authority to enter into multilateral tariff agreements is extended to 1993, subject to limitations that reductions of existing duties cannot exceed 60% of existing rates if either the International Trade Commission or the U.S. Trade Representative finds that a greater reduction on an article would have a significantly adverse economic effect on the domestic producers. Reductions on any other import-sensitive articles must be phased in over at least ten years.

With regard to bilateral agreements, the Senate bill, like the House bill, does not change the President's current authority to enter into bilateral tariff and non-tariff trade agreements. Current authority is subject to the limitation that neither the Senate Finance Committee nor the House Ways and Means Committee disapproves of the agreement within 60 days and that the extension of any trade benefit under a bilateral agreement will not be extended to any other country by way of a most favored nation provision.

Both the Senate and House bills provide that the President may invoke expedited Congressional procedures for the implementing bills required to implement tariff and non-tariff agreements. This expedited, or "fast-track", authority may be withdrawn at anytime by House and Senate resolutions of disapproval passed with 60 days of each other.

The Senate bill includes no provision proclamation authority, by which the President was authorized until 1980 to proclaim modifications or continuances of any U.S. duty to carry out tariff agreements negotiated under the 1974 *Act*. In contrast, the House version confers tariff proclamation authority subject to limitations that:

(a) tariff reductions cannot exceed 60% of existing rates if the International Trade Commission or the U.S. Trade Representative determines that any greater reduction would have a probable significant adverse economic effect on domestic industry and

(b) reductions on articles qualifying for greater than 60% tariff reduction must be phased in.

Section 201 (Import Relief)

The Senate and House bills retain current law requiring the International Trade Commission (ITC) to determine on request of Congress, the U.S. Trade Representative (USTR) or the President whether increasing imports are causing serious injury or are a threat of serious injury to a domestic industry.

Both bills direct the ITC, in making a determination of serious injury, to consider U.S. economic factors including but not limited to:

(a) significant idling of productive facilities,

(b) inability of a significant number of firms to operate domestic production facilities at a reasonable level of profit, and

(c) significant unemployment or under-employment within the industry.

With regard to indications of a threat of serious injury, both bills instruct the ITC to consider:

(a) a decline in the domestic industry's sales, market share, production, profits, wages, or employment,

(b) the extent to which foreign exports are being diverted to the U.S. by reason of restraints by other countries; and

(c) growing U.S. inventories.

The Senate bill takes into additional consideration antidumping or countervailing duty determinations, difficulty of the domestic industry to maintain research and development expenditures, and foreign industrial targeting.

If the ITC makes an affirmative injury finding, the Senate bill requires the President to provide the equivalent of import relief recommended by the ITC unless the President determines that such action would:

(a) disproportionately burden the poor or U.S. agriculture,

(b) result in more job losses than would be created by the imposition of relief,

(c) endanger the national security or

(d) be a substantial cause of serious injury to a downstream domestic industry.

Under the House bill, the USTR would make the decision either to take action to provide adequate relief to prevent or remedy serious injury or to decline to take action if costs outweighed benefits.

Section 301 (Retaliation)

The Senate and House bills retain the current law requiring the U.S. Trade Representative (USTR) to submit annually to Congressional committees a National Trade Estimate Report identifying foreign practices constituting significant barriers to or distortions of trade and making an estimate of their trade distorting impact on U.S. commerce. Both bills transfer from the President to the USTR the authority to determine whether any such foreign practice is actionable under section 301 of the *Trade Act of 1974*.

Under the Senate bill, if the USTR makes an affirmative unfairness determination, the President must retaliate to offset the practices that are the subject of the determination if he cannot resolve them through negotiations. Under the House bill, the USTR is directed to retaliate against unfair trade practices. The House bill, however, makes the USTR's actions subject to the specific direction, if any, of the President, implying that under the House bill the President could direct against retaliation.

The Gephardt provision in the House bill further instructs the ITC to determine which foreign countries with total U.S. trade of at least $7 billion have "excessive" bilateral trade surpluses with the U.S. If the USTR determines that these surpluses satisfy a pattern of unjustifiable actions having a significant adverse effect on U.S. commerce or contribute to the excessive trade surplus of that country, and if the USTR is unable to negotiate their elimination, then the USTR, subject to the special direction of the President, must take retaliatory action to reduce the surplus. For each year following a year in which an agreement is negotiated or action is taken in response to an excessive and unwarranted surplus, the country with the surplus must reduce its trade surplus with the U.S. by ten percent annually.

Under the milder Senate Byrd-Dole alternative, the USTR would identify countries with a consistent pattern of trade barriers and market distorting practices. The USTR would then be required to initiate section 301 cases against all major trade barriers and trade distorting practices.

Foreign Investment

The Senate bill contains no provision requiring foreigners to register their U.S. investment activities. In contrast, the House bill requires registration of all "significant" foreign ownership interests in U.S. business enterprises and real estate, held for a minimum period to be determined by the Secretary of Commerce. The House provision defines a "significant" interest as one of five percent or more in a business or real estate with assets exceeding $3 million or with annual sales exceeding $12 million. The registration requirement would also apply to a foreign interest of $10 million or more in U.S. property regardless of percentage.

Private Right of Action

The Senate bill, but not the House bill, would allow companies to sue their competitors for damages (which would include compensation for lower prices across an entire product line) caused by alleged customs fraud or gross negligence. No previous finding by the Customs Service of fraud or gross negligence would be required.

TRADE LAW ACTIONS

This article summarizes recent United States trade law actions affecting Canada.

Instant Potato Granules

The Department of Commerce announced on July 31, 1987 that it will leave unchanged the preliminary results of its antidumping duty administrative review and revoke the antidumping finding on instant potato granules from Canada.

Color Picture Tubes

On June 30, 1987, the Department of Commerce preliminarily determined that color picture tubes from Canada are being, or are likely to be, sold in the U.S. at less than fair value. On July 29, Commerce announced that it had begun final antidumping investigations to determine whether an industry in the U.S. is materially injured or is threatened with material injury by reason of imports of color picture tubes from Canada, Japan, the Republic of Korea and Singapore. Commerce will make its final determinations by December 22, 1987.

Elemental Sulphur

The Department of Commerce published on July 9, 1987 preliminary results of its antidumping administrative review of elemental sulphur from Canada. The review indicated the existence of dumping margins for certain firms. The Department expects to issue final results in December, 1987.

Bituminous Paving Equipment

The Department of Commerce announced on July 28, 1987 the final results of its antidumping administrative review on replacement parts for self-propelled bituminous paving equipment from Canada. Based on comments received, Commerce revised its preliminary weighted-average dumping margins for the period of September 1, 1985 through August 31, 1986.

Potassium Chloride (Potash)

The Department of Commerce announced on August 21, 1987 its preliminary determination that sales of granules of potassium chloride from Canada have occurred at less than fair market value, with dumping margins ranging from nine percent to eighty-five percent.

Salted Codfish

The Department of Commerce announced on July 6 the preliminary results of its antidumping duty administrative review of three companies producing or exporting dried salted codfish between July 3, 1985 and June 30, 1986. The Department preliminarily decided to assess zero dumping duties on the companies.

Revised Method for Calculating U.S. Exports to Canada

Beginning with the June merchandise trade deficit report, the Census Bureau, the arm of the Commerce Department that reports merchandise trade figures, included in its merchandise trade deficit figures with Canada previously undocumented exports by truck to Canada. Including such trade in the monthly merchandise trade figures reported by Census would mean an upward monthly adjustment in total U.S. exports to Canada. Undocumented exports to Canada were around $850 million a month in 1986, according to a recent annual report by Census on the subject.