TRADE POLICY DEVELOPMENTS

HYUNDAI WINS ANTIDUMPING CASE

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On March 23, 1988, the Canadian Import Tribunal rendered its decision in the antidumping case involving imports of cars produced by Hyundai Motor Company of Korea. In a landmark ruling, the CIT found that Hyundai has not caused, is not causing, and is not likely to cause in future, material injury to the production in Canada of like goods. The CIT will issue its Statement of Reasons on April 7. The complainants, General Motors of Canada Limited and Ford Motor Company of Canada Limited, have filed notice that they will seek judicial review of the CIT's decision in the Federal Court of Appeal.

The Hyundai case is the largest and most complex antidumping investigation ever conducted in Canada. It is viewed as an important precedent for future antidumping actions involving Korean and Japanese car makers in the United States as well as Canada. The result, therefore, in this case will influence whether future actions are brought by North American car manufacturers against other Asian producers.

The investigation was initiated by a voluminous and complex complaint filed by Ford and GM. The imported goods under investigation were identified as cars (including those in a semi knocked-down condition), with or without options such as automatic transmissions produced by or on behalf of Hyundai Motor Company, Seoul, Korea, or by companies with which it is associated, and originating in or exported from the Republic of Korea. Unlike U.S. law, which permits only the identification of the subject goods in relation to the countries from which they are exported, Canadian law permits the identification of the subject goods by the country of origin as well as the name of the manufacturer. In a U.S. antidumping investigation, for example, an investigation launched against cars from Korea would involve all Korean manufacturers including Daewoo and KIA which produce cars for the North American market in joint ventures with GM and Ford.

As described in the last issue of the *Canadian Competition Policy Record* the Deputy Minister of National Revenue for Customs and Excise made a preliminary determination of dumping on November 24, 1987, in which he found an overall, weighted average margin of dumping estimated at 36.3%. On a model basis, the Deputy Minister found the weighted average margins of dumping to be 37.3% on the Pony; 36.6% on the Stellar; and 35.0% on Excel. In his final determination of February 19, 1988, the Deputy Minister found an overall, weighted average margin of dumping during the review period to be 26.3%. The weighted average margins on specific models were 31.8% on the Pony, 30.1% on the Stellar, and 16.2% on the Excel.

After receiving extensive written representations from all parties and conducting four weeks of public hearings, the Canadian Import Tribunal concluded that the dumped Hyundai cars had not caused, were not causing, and were not likely to cause in future, material injury to domestic production in Canada of like goods. Three major legal issues considered by the CIT were:

(i) what comprised "like goods";
(ii) was there material injury to "production in Canada of like goods"; and
(iii) whether the injury was caused by the dumped goods.

On the first question, counsel for GM and Ford had submitted in legal argument that the market for like goods constituted the continguous and mainstream mini, basic small, lower middle and upper middle sizes of cars. Hyundai, on the other hand, argued that like goods included cars of all sizes, including vans. On the injury question, GM and Ford argued that injury had been inflicted on domestic producers by the dumped goods in the form of price suppression and margin erosion. Also, because analysts were forecasting overcapacity in the automobile industry and a downturn in sales, the complainants argued that there was a likelihood that the dumped cars would cause material injury in future. Hyundai countered that if there was injury or a threat thereof, it was not caused by the Hyundai imports.

This case will have significant implications for other Canadian industries if the Canada-U.S. Free Trade Agreement is implemented. As a result of the Auto Pact, which was signed by the governments of Canada and the United States in 1965, there has been significant restructuring and rationalization in the North American auto industry. As a result, less than 20% of cars produced in Canada are actually sold in this country. More than 80% of Canadian domestic production of automobiles is sold in export markets, primarily in the United States. Also, approximately 80-85% of Canadian sales by North American manufacturers involve cars imported from the United States, Korea and Japan. Almost all of the small cars sold by GM and Ford in Canada are made in Japan or Korea. Thus, in a rationalized, international industry, it becomes difficult for an import tribunal to find, in an antidumping investigation, the requisite material injury to domestic production. In the Hyundai case, the complainants argued, and the Canadian Import Tribunal found, that "production in Canada of like goods" means domestic production of like goods for domestic consumption. The result was that the CIT could not find that the dumped goods had enough of an impact on approximately 20% of Canadian production sold in Canada to warrant a finding of material injury. If the decision of the CIT stands, it will be very difficult in an integrated North American market (created as a result of the Free Trade Area Agreement) for a domestic tribunal to find material injury to domestic production in cases involving highly rationalized industries.

A more extensive article on the Hyundai decision will appear in the next edition of the *Canadian Competition Policy Record.*

LEGISLATION TO ESTABLISH NEW TRADE TRIBUNAL INTRODUCED

On February 12, 1988, Bill C-110, *An Act to Establish the Canadian International Trade Tribunal*, was introduced in the House of Commons. The bill will amalgamate the existing agencies responsible for international trade: the Canadian Import Tribunal, the Tariff Board, and the Textile and Clothing Board. It will bring the economic inquiry functions and the appeal functions of these three agencies under one roof. Also, the bill provides a new private complaints procedure in safeguards cases.

The Canadian Import Tribunal was established under the *Special Import Measures Act* in 1984, replacing the Antidumping Tribunal which had been in existence since 1969. It conducts inquiries into the issue of material injury to production in Canada of like goods in antidumping and countervailing duty investigations. It also conducts injury inquiries when requested by the Governor-in-Council in safeguards investigations. The Tariff Board, established in 1931, provides advice to the Minister of Finance on trade and economic issues, particularly on tariff-related matters. It also hears appeals from excise and tariff decisions made by the Deputy Minister of Revenue - Customs and Excise. The Textile and Clothing Board, established in 1971, provides advice to the Minister of Finance on matters relating to the Canadian textile and clothing industry, and conducts injury inquiries in safeguards cases involving the textile and apparel sector.

The Canadian International Trade Tribunal will be comprised of nine permanent members. A maximum of five temporary members may also be

appointed. In some circumstances, an individual member may be directed to receive evidence on behalf of the Tribunal. This will enable the Tribunal to distribute its increased workload and use its resources efficiently.

The new Tribunal will have the responsibility to conduct inquiries and report on a wide range of economic and trade matters upon the request of the Governor-in-Council or the Minister of Finance. Such matters may include tariff-related matters, as well as injury investigations in countervailing duty, antidumping and safeguards cases. Its authority will extend to injury inquiries relating to the provision of services in Canada by foreign nationals as well as importation of goods into Canada. The Tribunal will also assume responsibility for the appellate functions of the Tariff Board.

In a move designed to provide direct involvement by private parties in trade investigations, the bill will provide a new formal complaint procedure whereby private parties may initiate an injury inquiry in a safeguards case. The textile and clothing industry currently has the ability to directly petition the Textile and Clothing Board for an injury inquiry where increased imports are injuring or threatening to injure a domestic industry. Currently under the *Special Import Measures Act*, a majority of domestic producers may file a complaint alleging that imports of dumped or subsidized products have injured or are likely to injure production in Canada of like goods. This amendment will bring the initiation procedure in safeguards investigations more into line with existing antidumping, countervailing duty and clothing and textile investigations, as well as with U.S. law.

Bill C-110 provides that a majority of domestic producers of like or directly competitive goods may file a written complaint with the Tribunal alleging that goods are being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to production in Canada. Upon receiving such a complaint, the Tribunal will be required to commence an inquiry if it is satisfied that the information provided by the complainants discloses a reasonable indication that the goods are being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods. If the Tribunal during the course of its inquiry finds that the imported goods were really dumped or subsidized, it is required to refer the complaint to the Deputy Minister of Revenue for Customs and Excise for consideration under the *Special Import Measures Act.*

The Tribunal's mandate is to receive representations and conduct an inquiry into whether there has been a surge in imports of the subject goods which is causing or threatening to cause injury to a domestic industry. The bill provides that the increase in importation of goods must be a principal cause, i.e. no less important than any other cause, of injury to domestic producers. After conducting its inquiry, the Tribunal is required to submit a report on its findings to the Governor-in-Council and the Minister of Finance. Where the Governor-in-Council referred the matter initially to the Tribunal for examination, the Minister will be required to file a copy of the Tribunal's report in the House of Commons and the Senate. Unlike the procedures under section 201 of the U.S. *Trade Act of 1974* (the U.S. "safeguards" law), the Tribunal will not be authorized to make a recommendation for relief or action to the Minister and the Governor-in-Council. The Tribunal's only responsibility will be to issue a report. The Governor-in-Council will have the sole discretion to take any action that it deems necessary. The Governor-in-Council may, however, ask the Tribunal to investigate and report on subsequent issues after an inquiry has been conducted and a report submitted. Such issues could include matters concerning the public interest, such as competition policy, recommendations for relief, and possible effects on the economy of suggested measures.

Bill C-110 does not represent a new policy initiative. The federal government had announced its intention to introduce legislation to amalgamate the three international trade tribunals in its May 1985, budget. The integration of these agencies is a long-overdue and welcome reform which, in part, was made

necessary at this time by the Canada-U.S. Free Trade Agreement. Under the FTA, a new binational panel system for review of certain final orders of these trade agencies will be established. By streamlining the functions of the three agencies into one tribunal, Bill C-110 will make the implementation of the new binational panel review system simpler.

The inclusion of a private complaints procedure for safeguards cases is also a welcome reform which will provide private parties with an opportunity to initiate such investigations. This change has been criticized as possibly encouraging protectionism in Canada. On the other hand, this new procedure may not lead to increased protectionism because the Tribunal will not be empowered to grant or even recommend relief in a particular case. If anything, the new procedure will provide the government with a public inquiry mechanism to deflect complaints and defuse protectionist pressures. The Governor-in-Council will retain the sole authority to recommend action and make decisions about relief in particular cases. The new safeguards procedure will not provide for mandatory relief, it will simply provide private parties with a fair, open administrative procedure to file complaints.

D.P.S.

LIQUOR TRADE WARS

In trade disputes between countries, the interests of domestic consumers are often overlooked. One of the primary objectives of the *GATT* is to encourage trade liberalization which will ultimately result in greater efficiencies in the world economy and general improvement in consumer welfare. It is paradoxical, however, that domestic trade laws are designed essentially to protect domestic producers. There is probably no trade dispute in recent years that has excited the interest of consumers more than the current dispute brewing between Canada and the European Community (EC) over wine, beer, and distilled spirits.

Canada's restrictive policies concerning alcoholic beverages have long been an irritant in Canadian-U.S., as well as Canadian-European, relations. In 1980, the provinces signed a statement of intent containing a commitment on their part to freeze the differentials between foreign and domestic wines, eliminate the mark-ups on distilled spirits, and liberalize listing policies. The federal government filed the provincial governments' statement with the *GATT* Council; however, the provinces have not lived up to their promises. This has led to continuing complaints by the United States and the EC about Canadian practices.

Canada-U.S. Free Trade Agreement

Restrictive Canadian marketing and distribution practices for alcoholic beverages were an important topic in the Canada-U.S. free trade negotiations. In the FTA, Canada agreed to change some listing, pricing and distribution practices relating to the importation and internal sale of U.S. wines and distilled spirits in Canada. Current provincial restrictions on the brewing and sale of beer in Canada were "grandfathered." This means essentially that existing provincial restrictions on beer may be maintained, but any new government measures regulating the manufacture, marketing and distribution of beer in Canada must not discriminate against U.S. manufacturers. Also, the United States reserved its rights in the FTA to complain to the *GATT* about existing Canadian practices concerning beer.

The FTA contains the following commitments by Canada concerning provincial government measures governing the internal sale and distribution of wine and distilled spirits. With respect to the listing practices of provincial liquor control boards, the FTA provides that these policies must not discriminate against U.S. products, be based on normal commercial considerations, be published and available to the public, and establish fair, open procedures for review and approval of listing applications. Applicants are to be promptly notified of any listing decision and, where an application is

refused, are to be given written reasons and an opportunity for appeal. With respect to pricing practices, the FTA provides for the phasing out by 1995 of discriminatory mark-ups on U.S. wine in excess of the actual cost of service differential between U.S. and Canadian wine. The cost of service differential is defined as the actual amount by which the audited cost of service for U.S. wine exceeds the audited cost of service for Canadian wine. All discriminatory mark-ups on distilled spirits over and above the actual cost of service differential are to be eliminated immediately as of January 1, 1989,(the date the FTA comes into effect).

The FTA also requires that existing distribution policies and practices be changed so that U.S. wines and distilled spirits are treated no less favourably than Canadian products. Exceptions to this "national treatment" rule have been made for certain distribution practices for locally produced wine in Ontario, British Columbia, and Québec. First, any winery that sells its products in a store or on its premises may continue to restrict itself to wines produced on those premises. Second, the provinces of Ontario and British Columbia which currently licence private wine store outlets to sell only Ontario or B.C. wines, respectively, may continue to discriminate in favour of their local wines. Third, the province of Québec's requirement that any wine sold in grocery stores must be bottled in Québec may be continued, as long as there are other outlets available for the sale of U.S. wine in Québec.

There are major constitutional concerns in Canada with the implementation of the FTA provisions relating to wine and distilled spirits. The internal sale and distribution of alcoholic beverages in Canada is conducted, in most provinces, by provincially-owned government monopolies or liquor control boards. The power to import and sell alcoholic beverages manufactured outside the province or outside Canada was delegated to the provincial governments by the federal government in the *Importation of Intoxicating Liquors Act* in 1928. Each province has a liquor control act, such as Ontario's, which establishes a provincial liquor control board or commission with powers to regulate the listing, pricing, distribution and sale of alcoholic beverages within the province.

A major constitutional battle is developing between the federal government and the province of Ontario with respect to who has the authority to implement the provisions of the FTA relating to the sale and distribution of wine and distilled spirits. The government of Ontario has consistently maintained that it will not implement those provisions of the FTA. Its position is that the provinces have exclusive jurisdiction over the distribution and sale of alcoholic beverages within their boundaries. If the federal government attempts to implement these provisions of the FTA on its own, the Ontario government has threatened to launch a constitutional challenge to the federal legislation in the courts.

The government of Canada is expected to introduce within the next few weeks its legislative package implementing the FTA. It is expected there will be provisions dealing with the implementation of the FTA measures concerning wine and distilled spirits in this package. The federal government has taken the position publicly that it has the exclusive jurisdiction to implement all of the provisions of the FTA, including those relating to wine and distilled spirits. The government of Canada is also obliged by Article 103 of the FTA to do "everything necessary" to ensure that the provinces implement the FTA. If any province chooses not to cooperate in the implementation of these provisions, the federal government believes that it has the power to enact the measures required and is prepared to meet any constitutional challenge that may be brought. One approach the federal government could take would be to amend the federal *Importation of Intoxicating Liquors Act*. Another alternative would be to establish a federal liquor marketing agency with the exclusive authority to import alcoholic beverages and regulate the distribution and pricing of wine, beer and distilled spirits from other provinces or outside Canada. The federal government could use these methods to ensure that U.S. wines and distilled spirits are given equivalent treatment with Canadian products. The National Energy Board currently regulates the importation,

pricing and internal distribution of oil and gas from foreign countries.

It is an open question as to how the government of Ontario would respond to an attempt by the federal government to implement the FTA's provisions relating to the sale and distribution of wine and distilled spirits. Ontario has stated that its position is that the internal sale and distribution of wine and distilled spirits is a matter solely within provincial jurisdiction. It has indicated that it will not implement the provisions of the FTA and, if the federal government attempts to implement those provisions, the government of Ontario may bring a constitutional challenge in the courts.

It is uncertain at this time whether the Ontario government will carry out its threat to challenge any such action by the federal government. Seven out of ten provincial governments have taken positions in favour of the FTA, and there is an election underway in Manitoba. It is likely that these other provincial governments will attempt to persuade Ontario not to challenge the FTA. If Ontario does challenge the FTA, the other provinces will be placed in the uncomfortable position of defending Ontario's constitutional position while at the same time supporting the federal government's FTA initiative.

EC Case in the *GATT*

In November, 1987, a *GATT* panel released its preliminary report on a complaint filed by the EC involving Canadian listing, pricing and distribution practices for wine, distilled spirits and beer. Although the *GATT* panel report has not been made public, it has been reported that the panel found the Canadian practices complained of were in violation of Article III (the "national treatment" provisions) of the *GATT* because they treat imported products less favourably than domestic products.

After the *GATT* panel report was released to members of the *GATT* Council, Canadian and EC officials held consultations in an attempt to negotiate a mutually acceptable resolution of the dispute. In the midst of these consultations, the Premier of Ontario made a proposal to phase out discriminatory mark-ups, listing and distribution practices on wine within twelve years. Canada offered to phase out the discriminatory practices relating to European wine but maintained that beer should be excluded. The EC rejected the Canadian proposal and stood firm in its demand that Canadian discriminatory policies must be phased out over two years or Canada would be liable to pay significant amounts in compensation. The EC also rejected the Canadian proposal to exclude beer from the ruling. In February, 1988, the negotiations between the two parties broke down.

The *GATT* Council adopted the panel's decision on March 22, 1988. The government of Canada acceded to the *GATT* ruling, and agreed to report back to the *GATT* Council by the end of 1988 on actions proposed to implement the ruling. The federal-provincial Committee of Ministers on Internal Trade and a federal-provincial committee of officials have been given the task of negotiating proposals to eliminate discriminatory liquor board policies. Mr. James Grandy has been appointed as a consultant to the federal government responsible for chairing the officials' committee.

Canadian Complaint Against the EC

In a move apparently directed at the EC-*GATT* action, the Ontario Grape Growers Marketing Board, the Wine Council of Ontario, the Wine Council of British Columbia, the British Columbia Grape Marketing Board, the Association of Canadian Wine Representatives in Nova Scotia and the Grape Growers Association of Nova Scotia have filed an application on March 16, 1988, with the Minister of Finance, under section 59(2) of the Customs Tariff, which provides that the federal Cabinet may take retaliatory action against restrictive practices of a foreign government that burden or restrict Canadian trade. This provision is similar to section 301 of the U.S. *Trade Act of 1974*. The complainants have alleged that European grapes and wine are unfairly subsidized as a result of the Community Agricultural Policy (CAP), and that the member countries of the EC unreasonably restrict market access to imported table wines.

The complainants have asked that the government of Canada impose a 33 1/3 per cent surtax and a quantitative restriction on imports of certain table wines from the EC.

This complaint is the first ever to be filed in Canada under section 59(2) of the *Customs Tariff*. Counsel for the complainants has stated their objective is to encourage the federal government to initiate a *GATT* panel investigation into EC wine practices. The usual practice followed by the United States in a section 301 case involving an allegation of violation of the *GATT* is that the U.S. Trade Representative will conduct an investigation into a complaint launched by private petitioners, seek consultations with the other government concerned, and ultimately refer the dispute to a *GATT* panel for a ruling if the dispute cannot be resolved by consultations. It is expected that the Canadian government will follow a similar procedure in this case.

Depending upon the Canadian government's response to this private complaint, and the speed with which the federal government acts in requesting that a *GATT* panel be established, the two *GATT* actions involving the wine and liquor practices of Canada and the EC could result in further negotiations between the two parties. After having accepted the *GATT* ruling, the government of Canada could use an affirmative *GATT* panel investigation involving EC practices as a bargaining chip in developing its response to the *GATT* panel ruling affecting Canadian policies. The outcome of this bilateral dispute may result ultimately in the availability of a wider choice of European wines at lower prices for Canadian consumers. If the FTA is not implemented by January 1, 1989, there will also be increased pressure from the United States on Canada to act quickly to eliminate discriminatory provincial liquor board practices as a result of the *GATT* ruling.

D.P.S.

U.S. TRADE LAW PROPOSALS

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Two major items of trade legislation - the omnibus trade bill (HR 3) and the U.S- Canadian Free Trade Agreement - await congressional action during the current session. The Administration has agreed to a request by congressional leaders to delay submission of the FTA until June 1, 1988, thus avoiding scheduling conflicts with the omnibus trade bill which is to be taken up in the first half of the year.

The Trade Bill

Congress returned to Washington on January 25, 1988, and resumed work on the omnibus trade bill the week of February 15. Democratic leaders in both houses say passage of the bill is a top priority. They had hoped to finish conference committee work by late March or early April, with a bill on the President's desk before Easter. This was a very ambitious timetable, especially in view of the substantial differences and disputes to be resolved by the 17 subconference committees.

Provisions of the trade bill seek to ensure that countries with free access to U.S. markets provide open access to their own markets to U.S. goods and services. The bill also offers greater certainty of relief to domestic industries hurt by fairly and unfairly traded imports, and would force the Administration to examine unfair trade practices. The legislation includes some tangentially related provisions, such as mandatory disclosure of foreign ownership of U.S. businesses and investigation of foreign takeovers which are seen to harm national security.

Looming over all this, however, is the threat of a presidential veto, which has a good chance of being sustained in the Senate. Howard Baker, the White House Chief of Staff, said January 12 that Reagan would veto both the House and Senate versions of the bill as they stand. The Administration opposes key sections of the trade bill such as Section 301 and the Gephardt amendment, which limit presidential discretion.

Baker hopes that something "in between" can be worked out that the President will sign.

House-Senate Trade Conference

The House-Senate trade conference, comprised of 199 House and Senate members, has been divided into 17 subconferences to handle the large number of issues covered by the bill. As of February 1, 1988, only five of the subconferences had held any formal meetings.

Conferees have now laid out a timetable for consideration of the omnibus trade bill. In phase one, which will run from February 22 to March 4, conferees will try to reach compromises on national trade policy, miscellaneous trade law provisions, Section 337 of the *Tariff Act of 1930*, and Section 232 of the *Trade and Expansion Act of 1962*.

In phase two, which will run from March 7 to March 23, the more controversial issues of the bill will be considered including Section 301 of the *Trade Act of 1974* and provisions it encompasses such as the House-passed Gephardt amendment and the Senate-passed "Super 301." In addition, conferees will discuss Section 201 of the *Trade Act of 1974*, and provisions relating to antidumping and countervailing duties, trade adjustment assistance benefits, and intellectual property.

Antidumping and Countervailing Duty Provisions

On February 18, Deputy U.S. Trade Representative Alan Holmer, warned House and Senate conferees working on HR3 that the Administration has "very major problems" with House-passed provisions relating to antidumping and countervailing duties, and that much work needs to be done in order to find a compromise that will satisfy the Administration.

Provisions Opposed by the Administration

In the House bill, the Administration opposes:

- private right of action in dumping cases;
- expanding the definition of "domestic subsidy" beyond what the Administration thinks is fair and has been agreed to by its trading partners;
- broad scale monitoring of dumping (which would be costly and cumbersome);
- application of countervailing duties to non-market economies;
- examination of diversionary input dumping in third countries (which also raises concerns under the *GATT*);

The Administration is against the export sales price amendment in the Senate bill, which would change the way dumping margins are calculated when U.S. subsidiaries of foreign exporters sell their products in the United States. This provision requires certain expenses to be subtracted on the U.S. side, but would not require the same adjustment on the overseas market side.

The Administration is worried that these proposed changes would invite retaliatory measures by foreign trading partners.

Section 301 (Senate version)

The Administration told conferees on February 17, that if Congress could draft language making retaliation under Section 301 of the *Trade Act of 1974* "mandatory but not compulsory," White House objections to the Senate-passed revision of the measure could probably be worked out at the staff end.

Under present law, the president has great discretion in deciding whether to retaliate against foreign trade barriers and unfair trade practices. Because the Reagan administration failed to act against such barriers and practices in its first few years in office, both the House and Senate have revised Section 301 to ensure administrative action. Some presidential discretion would continue in these cases, but the president would be required to act more often.

The House bill transfers authority to decide whether unfair foreign practices have occurred and what the remedy should be from the president to the USTR. The USTR could retaliate if he found a violation of trade agreements or "unjustifiable" trade actions abroad. The president could waive retaliation if he found such an action to be opposed to national economic interests. Retaliation against lesser offenses (such as "unreasonable" or "discriminatory" practices) would be discretionary.

The Senate version of the bill requires the USTR to investigate all unfair foreign trade practices and recommend retaliatory measures. The president would have power to waive retaliation against "unjustifiable" foreign actions (i.e. violation of trade agreements) only for national security reasons. In the case of other offenses, he could waive retaliatory action that would harm the national economy.

Some conferees emphasize that the bill's provisions placing more 301 authority in the Office of the USTR are not intended to remove the president's authority to determine whether to retaliate, but rather to remove secretaries of other agencies from the decision-making process.

Section 301 (Gephardt amendment)

The Gephardt amendment, a House measure which has been called protectionist by both the Reagan administration and some Democrats, would reduce access to U.S. markets for foreign nations that use unfair trade practices, have "excessive and unwarranted" trade surpluses with the U.S., and refuse to reduce the surpluses through negotiation. The USTR would identify these countries and negotiate against a deadline to eliminate their unfair trade practices. If the country did not end the practices within one year, the USTR must impose tariffs and quotas to reduce the surpluses by 10 percent annually over a period of four years. If the country has serious debt problems, or if retaliation would badly hurt the U.S. economy - or that of the other country - the president could waive or moderate the retaliation.

The Gephardt amendment is expected to affect Japan, South Korea, Taiwan, West Germany, and Italy. Brazil would be exempted because of its large debt. Some Congressional Democrats worry that this amendment, if retained, will be seen as a sharp protectionist turn for the United States, possibly triggering a decline of the dollar and another stock market crash. Gephardt's proposal would lead to a certain veto of the trade bill by Reagan.

Section 201

Both the House and Senate proposals seek to limit the discretion available under Section 201 which allows the president to modify, adopt, or reject the recommendations of the International Trade Commission (ITC) on providing import relief to an industry injured by increased imports. While there are few major conflicts between the two bills, the technical differences may take some time to resolve.

The House bill would set new deadlines for ITC injury determinations, transfer the authority for determining the remedy from the president to the USTR and set short deadlines for USTR actions. It would require the USTR to grant relief to an industry that had been injured, unless the USTR determined that it would not be in the national interest to do so.

The Senate bill sets new deadlines for ITC injury rulings and requires the president to act according to new ITC deadlines regarding relief. In serious situations, the president would have to grant immediate relief while a Section 201 investigation was still in progress. Originally, this provision was strongly opposed by the Administration, but waivers recently added to the bill on the floor restored substantial presidential discretion.

Trade Adjustment Assistance (TAA)

Both the House and Senate proposals would expand the TAA program which gives workers and businesses injured by imports cash and other benefits.

The Senate bill would extend the program two years beyond its current September 30, 1991, expiration date. Benefits would be extended to "secondary" industries which provide goods and services to firms affected by imports, as well as to affected workers and businesses in the oil and gas industry. The House bill would provide TAA benefits to injured workers and firms within 48 hours of an injury determination.

The Administration opposes the continuation of the TAA program. It supports a new $980,000,000 discretionary "Worker Readjustment Program" (WRAP) for dislocated

workers, which is also authorized in the legislation. Congressional supporters of TAA would like to see both programs implemented, with WRAP being available to workers who are ineligible for TAA.

Foreign Investment and Takeover Provisions

Congressional aides have not yet worked out a compromise on a House provision (the Bryant amendment) that would require foreign investors to disclose financial information about their investments in U.S. firms. Conferees must now resolve the issue themselves. Senate leaders have indicated they may prefer to exclude the proposal from the final trade bill rather than risk a presidential veto of the entire package.

House and Senate staff have worked out a tentative compromise in a controversial provision allowing the president to block foreign investors from taking over U.S. industries if such takeovers could threaten the U.S. national security or "essential commerce." The staff agreement is expected to be approved by lawmakers in the next few weeks.

The staff compromise adds a provision that the Administration must begin an investigation within 30 days of a proposed takeover or forfeit its right to do so. Proposals in both versions of the bill calling on Commerce to examine mergers affecting the "essential commerce" of the United States were dropped from the compromise because the language was too vague.

U.S. - CANADIAN FREE TRADE AGREEMENT

The landmark trade pact between the United States and Canada was finally signed by President Reagan and Prime Minister Mulroney on January 2, 1988. The agreement would eliminate all bilateral tariffs by 1999, facilitate mutual investment opportunities, and create a dispute settlement mechanism to solve conflicts between the two countries.

The agreement is still subject to the approval of Congress and the Canadian Parliament. Treasury Secretary James Baker and U.S. Trade Representative Clayton Yeutter initially rejected the request of House Ways and Means Chairman Dan Rostenkowski (D-Ill) and Senate Finance Committee Chairman Lloyd Bentsen (D-Texas) to delay introduction of the FTA bill until June 1 of this year, arguing that such a delay could jeopardize hopes of a final vote on the pact in the 100th Congress.

After weeks of discussion, however, the Administration agreed, February 17, not to submit the implementing language for the FTA before June 1, 1988. In return, House and Senate leaders said they would vote on the pact before the end of the session and would make their best efforts to give the agreement an up or down vote before the August recess.

A substantial amount of work needs to be completed before the President submits the agreement to Congress. The Administration must prepare a draft implementing bill, attend closed "non-markup" sessions by the House Ways and Means and Senate Finance Committees, and prepare numerous explanatory statements.

G.N.H.

U.S. TRADE LAW ACTIONS

Color Picture Tubes

The International Trade Commission determined on December 22, 1987, that an industry in the United States is being materially injured by imports of color picture tubes from Canada. On January 7, 1988, the Department of Commerce amended its final determination in this case by changing the weighted-average dumping margin from 65% to 63%.

Sugars and Syrups

On January 7, 1988, the Department of Commerce announced the final results of the

antidumping duty administrative review and tentative determination to revoke in part the antidumping finding on sugars and syrups from Canada. The final results of the review were unchanged from those presented in the preliminary review.

Choline Chloride

On January 8, 1988, the Department of Commerce announced the preliminary results of its antidumping duty administrative review on choline chloride from Canada. The review found the dumping margin for the period November 1, 1985, through November 16, 1986, to be *de minimis* and Commerce intends to revoke the order with respect to the exported merchandise.

Potassium Chloride

On January 8, 1988, the Department of Commerce agreed to suspend the antidumping investigation on potassium chloride from Canada. The agreement calls for Canadian producers and exporters to eliminate sales of potassium chloride at less than fair value.

Red Raspberries

The Department of Commerce published on January 25, 1988, the preliminary results of its antidumping duty administrative review. Commerce found the dumping margin for the period December 18, 1984 through May 31, 1986, to be 7.65%.

Elemental Sulphur

The Department of Commerce published on February 3, 1988, the preliminary results of its antidumping duty administrative review on elemental sulphur from Canada. The review, which covers the period from December 1, 1985, through November 30, 1986, indicated the existence of dumping margins of 5.56% and 3.87% for two of the producers, and no dumping margins for five other producers of elemental sulphur.

Fabricated Structural Steel

The International Trade Commission determined by a vote of four to one, on February 22, 1988, that there is no reasonable indication that a U.S. industry is materially injured (or threatened with material injury) by imports of fabricated structural steel from Canada.

G.N.H