TRADE POLICY DEVELOPMENTS

FREE TRADE LEGISLATION INTRODUCED

By: Debra P. Steger
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After considerable procedural wrangling, Bill C-130, the *Canada-U.S. Free Trade Agreement Implementation Act*, was introduced in the House of Commons on May 24, 1988. Second Reading debate is expected to commence in late June and continue into early July. The House of Commons recently adopted a motion to extend its sittings through the summer to facilitate consideration of this major piece of legislation. The U.S. free trade implementing legislation is also expected to be introduced in Congress before the end of June.

The latest predictions are that the review of the Canadian legislation will be completed in the House by the mid August, after which it is expected to receive a long and tortuous ride in the Senate. It is impossible to predict at this stage exactly what reception Bill C-130 will get in the Senate and, indeed, if it will be passed at all. There is some speculation that the government may be forced to call an election early in the fall on the free trade issue if the Senate is unduly obstructionist.

Bill C-130 is an omnibus statute containing provisions effecting the general implementation of the *Canada-U.S. Free Trade Agreement* (*FTA*), establishing a Procurement Review Board, amending the *Special Import Measures Act* (*SIMA*) to establish the binational panel review mechanisms for review of final antidumping and countervailing duty decisions, amending *SIMA* and the *Customs Tariff* to reflect the substantive changes made to safeguards actions, and amending 26 other existing statutes to bring them into conformity with the *FTA*.

Bill C-130 represents a clever strategy on the part of the federal government to implement only those provisions of the *FTA* which require legislative changes prior to the *FTA* coming into force on January 1, 1989. Strictly speaking, under Canadian constitutional law, only those aspects of an international agreement or treaty which require changes in existing legislation, mandate the expenditure of public monies or affect the private rights of citizens are required to be implemented by domestic legislation. Other aspects of an international agreement may be given effect by executive action or may not require implementation into domestic law at all. Some aspects merely exist as international legal obligations to be respected by signatory countries. By taking a minimalist approach, the federal government has avoided a possible confrontation with the provinces on some of the more controversial aspects of the *FTA*, especially those contained in the chapters on investment, services and energy. The obligations in these areas in the *FTA* are forward looking only, and the federal government saw no need for legislation on them at this time.

Part I is perhaps the most interesting, and also the most controversial, part of Bill C-130. It approves in principle the *FTA* and provides that the *FTA* and the *Act* take precedence over any existing inconsistent federal legislation, regulations or government practices. Private causes of action are prohibited, except as expressly provided in the *Act*. The Attorney General of Canada is specified as the only party having the right to take action to enforce or determine any right or obligation arising out of the *FTA*.

The most controversial provision of the bill is contained in section 9 which provides the Governor-in-Council with residual regulatory powers to enact regulations necessary for the purpose of implementing the provisions of Chapter 8 of the *FTA* concerning wine and distilled spirits in circumstances where a province refuses to comply with the *Agreement*. The federal government's regulatory powers, however, are limited only to circumstances where a particular province has enacted provisions or is carrying on

practices which contravene Chapter 8. The Minister of International Trade is required to consult with the province or provinces concerned before taking such action, and where a regulation is passed, it must deal only with the particular province or provinces concerned and be limited in time to remedy only the particular contravention. Any regulation promulgated by the federal government under the authority of section 9 is binding on the provincial government(s) concerned.

Another controversial provision, section 6, specifically preserves the right of Parliament to enact further legislation, if required in future, to implement any provision of the *FTA* or to fulfill any of the obligations of the government of Canada under the *Agreement*. The concern here is with tying any future legislation required by the *FTA* to Bill C-130 to ensure that the future legislation is justified as an exercise of the federal government's general trade and commerce power. If section 6 were not included in Bill C-130, it might be argued that future amendments to implement provisions or obligations of the *FTA* were not within the legislative competence of Parliament.

Part I contains sections providing for the establishment of a Canada-U.S. Trade Commission and the appointment of Canadian representatives to that binational agency. It also provides authorization within the External Affairs budget for expenditures incurred by, or on behalf of, the Commission.

A new Procurement Review Board will be established under Part II. Its function will be to consider procurement practices of federal government departments to ensure that they are consistent with the provisions of the *GATT* Government Procurement Code and Chapter 13 of the *FTA*. The establishment of a Procurement Review Board is necessary, in particular, to give effect to the new bid-challenge procedures required under Chapter 13 of the *FTA*.

Part III contains extensive, detailed amendments to the *Special Import Measures Act* to give effect to Chapter 19 of the *FTA* which provides for the establishment of a new binational panel mechanism for review of final antidumping and countervailing duty orders. Consequential amendments to *SIMA* are required to establish the new procedural mechanisms and to define what is a final order in Canadian law. Substantive changes to Canada's safeguards laws contained in *SIMA* and the *Customs Tariff* are also proposed in Part III to establish the exceptional circumstances in which the Government of Canada will be entitled in future to impose emergency safeguards measures to restrict imports from the United States where they are causing serious injury to a Canadian industry.

Part IV contains related and consequential amendments to 26 other existing statutes to bring them into conformity with the *FTA*. Obligations in the *FTA* chapters on product standards and agriculture will be implemented by amendments to the *Canada Agricultural Product Standards Act*, the *Department of Agriculture Act*, the *Canadian Wheat Board Act*, the *Canadian Grain Act*, the *Meat Import Act*, the *Meat Inspection Act*, the *Standards Council of Canada Act* and the *Seeds Act*. Changes to import and export restrictions are contained in the *Export and Import Permits Act*, the *Textile and Clothing Board Act*, the *Western Grain Transportation Act*, the *Meat Import Act*, and the *National Energy Board Act*. The elimination of foreign ownership restrictions, as they apply to U.S. investors, requires amendments to the *Bank Act*, the *Canadian and British Insurance Companies Act*, the *Investment Companies Act*, the *Loan Companies Act* and the *Trust Companies Act*. Changes in the thresholds for Investment Canada review of acquisitions by U.S. investors will be made in amendments to the *Investment Canada Act*.

Tariff reductions and rules of origin required under the *FTA* will be implemented by establishing a new U.S. Tariff Rate and amending provisions of the *Customs Act*, the *Customs Tariff*, the *Excise Tax Act* and the *Income Tax Act*. Consequential amendments are also required to the *Copyright Act* to establish a new retransmission right and renumeration system for foreign broadcast copyright owners. Bill C-130 also includes amendments to the *Importation of Intoxicating Liquors Act* and the *Statistics Act*.

Part V contains transitional provisions. There are particular transitional provisions for Bill C-60, an *Act to amend the Copyright Act*, which has now received Royal Assent, and Bill C-110, an *Act*

to establish the Canadian International Trade Tribunal, which has received Second Reading in the House of Commons. The *Canada-U.S. Free Trade Implementation Act* is to come into force upon proclamation by the Governor-in-Council. The bill contains a special provision that the *Act* is not to be proclaimed unless the Governor-in-Council is satisfied that the government of the United States has taken satisfactory steps to implement the *FTA*.

Although Bill C-130 may pass the House of Commons by the end of this summer, it is expected that it will receive a lengthy and difficult reception in the Senate. If the Senate chooses to be obstructionist, the fate of the free trade implementing legislation and therefore the *Agreement* itself will be uncertain.

UPDATE ON PROGRESS OF BILL C-110

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Bill C-110, the federal bill proposing the amalgamation of the Canadian Import Tribunal, the Tariff Board and the Textile and Clothing Board into one entity, has finished clause-by-clause review in Legislative Committee, was reported with amendments on June 1, 1988, and is awaiting Report Stage debate in the House of Commons. The Legislative Committee heard several submissions including those of the Canadian Importers Association (CIA) and the Canadian Manufacturers Association (CMA) during its review of the bill.

In its submission to the Committee, the CIA stated that it agreed in principle with the primary objective of Bill C-110 which is to amalgamate the three federal agencies responsible for international trade matters. The CIA's principal concern, however, was with respect to the new procedural right to be given to domestic producers to complain directly to the new Canadian International Trade Tribunal (the Tribunal) about increased imports in order to obtain safeguards remedies. The CIA expressed some doubts about whether the safeguards provisions of Bill C-110 are in conformity with Article XIX of the *GATT*. The CIA recommended that a careful review be undertaken by the federal government to ensure that the proposed safeguards petition provisions conform to the provisions of Article XIX.

The CIA also expressed some concerns about the procedural aspects of Bill C-110. In its submission, the CIA recommended that explicit time limits be established for all matters coming before the new Tribunal. It also suggested that provisions be included in the bill permitting the release of confidential information to interested parties, as well as to the Tribunal and its staff. The CIA proposed that draft rules of procedure and other regulatory provisions be circulated for discussion along with Bill C-110.

Unlike the CIA, the CMA supported the proposed safeguards provisions in Bill C-110. It recommended that the Tribunal's investigative and reporting mechanisms be made more responsive to a Canadian industry's complaint. As reported in the last edition of the *CCPR*, although Bill C-110 would establish a private complaints procedure for initiating safeguards investigations, there are no rules specifying what is to be contained in a report of the Tribunal to the Governor-in-Council, giving the Tribunal powers to make recommendations, or requiring the Governor-in-Council to take action in certain circumstances. The CMA proposed that the Tribunal be directed to make recommendations for proposed action to the Governor-in-Council, and that the Governor-in-Council be required to respond to the Tribunal's report within a prescribed period of time.

The CMA also expressed its concern that small manufacturers be assured of their rights to appeal Revenue Canada decisions as the procedures of the new Tribunal become more formal and legalistic.

As a result of the recent procedural ruling by the Speaker of the House of Commons on Bill C-130, the *Canada-U.S. Free Trade Agreement Implementing Act*, Bill C-110 has been linked to the passage of the free trade implementing legislation. Officials have suggested that the impact of this ruling will be to accelerate the passage of Bill C-110, given the high priority attached by the government to the enactment of

the free trade legislation this session. It is expected, however, that delays will occur in the Senate's consideration of these bills. The outcome for both bills is extremely uncertain. Officials hope to have Bill C-110 enacted, and the Canadian International Trade Tribunal fully operational, by early November, in time for the commencement of the Textile and Apparel Inquiry.

REGIONAL ANTI-DUMPING INJURY DETERMINATIONS

By: Brenda Swick
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The Canadian Import Tribunal may issue a determination that the dumping into Canada of certain goods has caused, is causing, or is likely to cause, material injury to the production of like goods in a particular region of Canada. Regional anti-dumping findings were previously discussed in the *CCPR* in an article by Peter Clark on "Regional Anti-dumping Injury Determinations under the *Special Import Measures Act*". (*CCPR*, Vol. 8, No. 3, September, 1987).

In light of Canada's expanding trade relationship with the United States, it is of interest to examine the provisions in U.S. trade legislation which apply to regional industry anti-dumping injury determinations.

The International Trade Commission (ITC) may issue a finding that dumped imports are causing material injury to the producers in a particular region if the producers meet requirements specified in paragraph 771(4)(c) of the *Tariff Act* of 1930, as amended. Paragraph 771(4)(c) requires that to qualify as a regional industry:

- the producers within the region must sell all or almost all of their production in the region;
- demand must not be supplied, to any substantial degree, by producers located outside the region; and
- there must be a concentration of imports into the region.

ITC determinations have found that there are no fixed percentages that can automatically be applied in all investigations, but suggest that roughly 80 to 85 per cent of regional production must remain within the region in order to satisfy the "all or almost all" criterion. The maximum threshold for satisfying the requirement appears to be 1.5 to 2 per cent. The concentration ratio can be shown either by comparison of import penetration figures for the region and the nation, or by comparing the percentage of all imports consumed in the region with the region's percentage of national consumption. In summary, imports are concentrated in a region if they have a disproportionate presence in the region.

On many occasions, the ITC has emphasized the discretionary nature of making a regional determination. There have been cases where the Commission has exercised its discretion against finding the existence of a regional industry even though the statutory criteria are met.

DIRECTOR OF INVESTIGATION AND RESEARCH APPEARS BEFORE CANADIAN IMPORT TRIBUNAL IN HYUNDAI CASE

By: C.J. Michael Flavell
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For only the second time, the Director of Investigation and Research has appeared in an anti-dumping case. The occasion was the Canadian Import Tribunal hearing in the Hyundai Motor case, which culminated in a no-injury finding on March 23, 1988. (The only previous intervention had been in the 1984 *Refined Sugar* case).

The Director intervened pursuant to his statutory power to do so, as set out in Section 97 of the *Competition Act*:

> 97.1 The Director, at the request of any federal board, commission or other tribunal or on his own initiative, may, and on direction from the Minister shall, make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever, such representations are, or evidence is, relevant to a matter before the

board, commission or other tribunal, and to the factors that the board, commission or tribunal is entitled to take into consideration in determining the matter.

Basing his intervention on the premise that Hyundai was a "positive influence in the Canadian automobile market," the Director also emphasized the mandate described in Section 1.1 of the *Competition Act*:

> 1.1 The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

The Director noted, as well, that the *GATT* Anti-dumping Code, in the chapter dealing with Determination of Injury, points to the matter of competition and trade practices as being relevant to the inquiry.

The essential arguments made by the Director at the hearing can be found summarized in his written submissions, filed during the proceedings. A few highlights follow:

> The Director's mandate, at the Tribunal is, in part, to participate so as to emphasize to the adjudicators the importance of maintaining and encouraging competition in Canada's automobile industry, including foreign competition, so as to promote the efficiency and adaptability of the Canadian economy and to provide consumers with competitive prices and product choices.
>
> The Director views Hyundai as a positive influence in maintaining competition in the Canadian automobile market. It is important to ensure that such competitive influence is not nullified by the unnecessary or inappropriate application of trade restrictions. Bearing in mind the statutory mandate of the Director, he intends to participate in order to supplement the information before the Tribunal to ensure that the record is as complete as possible and in this regard intends to bring forward his perspective and opinions, in particular in respect of factors other than dumping which may be causing any injuries which may be claimed by complainants.
>
> If one measures the impact of Hyundai sales on the segments of the market into which the Hyundai imports fit, it is suggested that few "Canadian" cars in these segments are actually produced in Canada; the Director suggests that the purpose of anti-dumping legislation is, where appropriate, to protect domestic producers, not domestic importers. Given the above, it is suggested that the Canadian producers are less concerned with injury to Canadian production than with the Hyundai challenge to their ability to profitably sell imported cars.
>
> There is evidence that consumer preferences are shifting
>
> - towards smaller more fuel efficient passenger vehicles and away from traditional North American models;
> - towards light trucks and vans at the expense of the passenger car market.
>
> Given the relationship of Ford with KIA (of Korea) and of GM with Daewoo (of Korea), in both cases with the purpose of obtaining a supply of Korean-built small cars, the Director is concerned that a valuable competitive influence may be nullified by the inappropriate application of trade laws. He would like to explore the allegation made in the press by a Hyundai official that "what they (GM and Ford) are trying to do is make our Korean cars more expensive than their Korean cars.

Clearly essential to the Tribunal's decision was the issue of whether there was, in Canada, a viable production of like goods to those exported by Hyundai. Hyundai had exported the Pony model, followed by the Stellar, and later the Excel. The GM/Ford position was that the relevant portions of the market were those segments described as mini-car, basic small, lower middle and upper middle. Pony and Excel fell into the mini-car or basic small segment while Stellar occupied the lower middle range and competed, it was alleged, by overlap into the upper middle range.

GM and Ford, mainly because of rationalization of the automobile industry pursuant to the Auto Pact, do not produce most small-size models in Canada and, in fact, import the considerable majority of cars in this segment from the United States or other countries. Inasmuch as the *Special Import Measures Act (SIMA)*, a codification of Canada's anti-dumping and subsidy obligations under the *GATT*, requires not only that there be dumping but that the dumping be shown to, "have caused, be causing or likely to cause material injury to the production in Canada of like goods," the lack of Canadian production at the small-car

end was a serious *lacuna* in the case presented by the Canadian complainants.

Though there was some evidence to suggest that the Auto Pact rationalization was somehow unfair to complainants, it is hard to feel excessively sorry for them. The Auto Pact has served the Canadian producers well and is, by no means, imposed on them against their will. Thus, if rationalization leads to the concentration in Canada of production of larger cars, it should wound no one's sense of justice to accept the proposition that recourse to anti-dumping measures for small car production simply is not available under the current *GATT* system.

The Canadian producers were thus left in the rather untenable position of having to admit that General Motors had not produced small cars in Canada for some years and that Ford's only production in this range was the Escort, discontinued in 1987, and the Tempo/Topaz entry in the lower middle field.

The Tribunal did not miss this point in its finding (at page 28):

> The Tribunal recognizes the rationale, benefits and implications of the Auto Pact, but it must be concerned with the requirements of *SIMA*. It must focus on the issue of material injury to domestic production, and, in this case, more precisely on material injury to <u>domestic production for domestic consumption.</u>

As if the lack of production of like goods wasn't enough, the complaint lost further ground as it became evident that whatever production there was in Canada of small cars was, to a very major degree, exported to the United States. The Tribunal has rightly taken the position that what matters in analyzing injury in Canada is production of goods in Canada for consumption in Canada since obviously one cannot presume that the effects of the goods dumped into Canada can be measured in markets other than Canada. Put another way, if most of the like goods made in Canada are exported to, for example, the United States, the production and sale of the goods exported cannot be suffering injury from the dumping of the goods into Canada. Thus, the Canadian producers were left with really only two (2) models to argue about: Ford Escort (until 1987) and Tempo/Topaz, only 10-20% of the production of which was sold in this country. This gave credence to the position taken by Hyundai and the Director that GM and Ford were really using a non-tariff barrier to combat competition by Hyundai imports against their own imports.

Moreover, such losses [alleged by the Canadians] must be considered in light of domestic sales emanating from domestic production which have been less than 15 per cent since 1984. In other words, Ford Canada has exported more than 85 per cent of its production of Escort/Lynx. It has also imported more than 60 per cent of its requirements. (page 20 of the Tribunal finding).

In concluding that the complainants had not demonstrated material injury, the Tribunal leaned heavily on the lack of Canadian production. As demonstrated by the excerpts that follow the Tribunal also reached other conclusions of fact which militated against an injury finding:

> From the evidence, the Tribunal concludes that Hyundai's imports are but one of many factors operating in a very dynamic environment, particularly at the lower end of the market. While the movements in the like goods market indicate that Ford Canada did lose market share to Hyundai, market share losses attributable to domestic sales from domestic production have not been sufficient to cause material injury to domestic production for domestic consumption. (page 28)
>
> The Tribunal accepts that the activities of Hyundai have some suppressive effects on prices and may have contributed somewhat to the increase in marketing incentives by the complainants. No doubt the dumping contributed to Hyundai's pricing policies, however, given the intense competition from other participants in the market, notably among the Big Three, the Tribunal is not persuaded that the price suppression that can solely be attributed to the dumping was significant. Hyundai has been but one of many contributors to the price competition that exits in the marketplace. (pages 28-29)
>
> The Tribunal accepts that the complainants suffered price suppression in responding to the low prices prevailing in that market. However, it is not persuaded that this price suppression was primarily attributable to the dumped imports because the cars from Hyundai were but one of a number of contributors to that price suppression. (page 26 of the Tribunal finding)

However, the issue of lack of production in Canada of like goods was clearly the determining

factor. In its two page "Summary and Conclusions," the Tribunal refers seven times to the issue of "domestic production for domestic consumption" or "domestic sales from domestic production." It could not have given a clearer message that the lack of production in Canada of like goods from domestic consumption was a fatal defect in the GM/Ford position.

The Tribunal thus found no injury across the board. Complainants have filed notice to protect their "appeal" rights before the Federal Court of Appeal but have not yet indicated whether the matter will proceed.

U.S. TRADE LAW UPDATE - *OMNIBUS TRADE ACT*

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The House and Senate passed the *Omnibus Trade Act* (H. R. 3) on May 4 and April 27, 1988, respectively. President Reagan vetoed the bill on May 24, however, and the vote in the Senate was just shy of the two-thirds majority required to override a veto. Passage into law in its current form is, therefore, unlikely.

The Administration's two main objections to H.R. 3 are:

(1) a provision which gives employees a sixty-day notice of planned plant closing; and
(2) a provision which restricts Alaskan oil exports.

The President has said that he would sign the bill if those two provisions were removed, indicating a willingness to overlook all other objectionable provisions. In a modified form, or perhaps next year, before a new President, the bill – a product of three years' labour – is likely to eventually pass. Several key changes presently contained in the bill will, therefore, probably become law.

Trade Negotiating Authority

In its present form, H.R. 3 authorizes the President to negotiate all types of trade agreements until May 31, 1993. No implementing legislation is required for certain multilateral tariff agreements, e.g., those reducing tariffs by 50% or less. Bilateral tariff and all non-tariff agreements continue to require implementing legislation, to be achieved by the Congressional "fast track" procedure. Congress reserves the power to terminate the "fast track" system by passing separate House and Senate disapproval resolutions.

Antidumping and Countervailing Duties

Specific Amendments

The bill provides several amendments to the current antidumping and countervailing duty (CVD) laws. These amendments are significantly watered down versions of the original proposals which were designed to facilitate antidumping and countervailing duty petitions and which were opposed by the Administration.

A proposed expansion of the definition of "domestic subsidy" was limited to a clarification that includes assistance given to specific industries or groups. H.R. 3 further requires:

- the Commerce Department to take into account subsidies provided to members of international consortia; and
- that subsidies for raw agricultural products be treated as subsidies for processed products in certain circumstances – a codification of current Department of Commerce practice.

Finally, H.R. 3 authorizes the USTR to revoke the injury test for any country in violation of its Subsidies Code commitment.

Dumping provisions were amended in several respects, including:

- providing means for determining "foreign market value" for imports and nonmarket economies; and
- allowing U.S. industries injured by third-country dumping to request USTR to seek action by that third country.

Several provisions which the Administration opposed as inviting retaliatory measures from trading partners were excised altogether. An amendment to ease the criteria for private remedy for persistent dumping, as proposed in the earlier House version of the bill, was removed. The House proposal to make CVD law applicable to

nonmarket economies was killed in conference. The Senate amendment to adjust the calculation of exporter's sale price was also dropped.

Section 301 (Retaliation)

Many of the earlier proposals that would have forced the Administration to take 301 action in certain circumstances have been discarded. While H.R. 3 does transfer some Section 301 decision-making power from the President to the USTR, it mandates response only in cases involving violations of foreign trade agreements or other "unjustifiable practices", with the form of that response left to the USTR's discretion. The Gephardt amendment, mandating reduced access to U. S. markets for foreign nations engaged in unfair trade practices, was eliminated, and H.R. 3 targets no specific country for 301 action. Instead, the bill spells out as actionable offenses:

- export targeting, where a government has taken action to improve exports in a specific industry;
- denial of internationally recognized worker rights; and
- denial of market opportunities to U. S. goods.

H.R. 3 imposes new time deadlines for USTR action. As under the present law, once the USTR has decided that a practice is actionable and initiates an investigation, it must begin consultations with the foreign government, unless preparation time is required. Under H.R. 3, if the consultations are not concluded within five months, the USTR must request dispute settlement proceedings. In any case, after initiating an investigation, the USTR has 12 months in cases involving subsidies and non-trade agreements (18 months in all other cases, except that such is not to exceed 30 days after the conclusion of dispute settlement proceedings) to decide what, if any, action it should take. Present law limits the time for USTR recommendations to the President to 7 months for export subsidy cases, 8 months for other subsidies, and 12 months for all others, with the same 30 day exception for cases heard at dispute settlement proceedings. These deadlines have frequently been extended in practice. In addition, H.R. 3 specifies a preference for tariff over quota retaliation.

Section 301 (Import Relief)

Under H.R. 3, the President is given greater power in determining what measures, if any, are appropriate for aiding U.S. industries injured by imports. Earlier proposals for mandatory action in certain cases have been dropped. Even where the International Trade Commission (ITC) has found substantial injury, the President may refrain from action that he thinks would result in greater economic and social costs than benefit. While the President is required to take into account the likely effectiveness of adjustment, as well as national economic and security interests, and to take action within 60 days of the ITC report, the President is not limited to imposing quotas and/or tariffs. He is free to choose from a broad arsenal of powers how best to help the troubled industry.

The new bill also provides for temporary emergency relief for perishable agricultural products or where other critical circumstances exist. In addition, H.R. 3 specifies several factors designed to clarify the ITC inquiry.

Trade Adjustment Assistance

While the Administration maintains its general opposition to continuing the Trade Adjustment Assistance program (TAA), H.R. 3 renews the program until September 30, 1993. In addition, the bill expands TAA eligibility to secondary industries, i.e, to workers or firms that supply "essential" goods or services to industries hurt by imports. Eligibility is also specifically extended to workers in oil and gas industries (excluded under the interpretation of the current law). Moreover, H.R. 3 provides for expedited treatment of TAA petitions before the ITC.

Foreign Investment and Take-Overs

H.R. 3 extends to the President the expressed authority to suspend or prohibit acquisitions, mergers or takeovers of American firms by foreigners, which he finds would impair national security. The President's action must be based on certain criteria, supported by credible evidence,

and must be reported in detail to Congress.

The House bill provision requiring foreigners to register significant, controlling or major portfolio investment in American companies was not adopted.

U.S.-CANADA FREE TRADE AGREEMENT, IMPLEMENTING LEGISLATION

Although legislation implementing the *U.S.-Canada Free Trade Agreement* (*FTA*) has not been formally introduced into Congress, Congressional committees are already working on it. Under the special fast-track procedure, the legislation, once submitted, cannot be amended and it must be passed or rejected within 90 legislative days. Therefore, Congress and the Administration are working out mutually-agreeable provisions and language beforehand. It is hoped that work on the bill will be completed and the bill formally introduced in early June and passed before the August recess.

On May 17, 1988, the House Ways and Means Committee concluded a one-day summary consideration of the Administration's proposal for the bill, while the Senate Finance Committee found the White House version more problematic and continued deliberation, preparing several amendments and recommendations. A collective presentation of Congress' recommendations to the Administration awaits the work of several other Congressional committees as well. Thus far, the recommendations are many and varied, but do not include changes to the *FTA*.

On U.S. domestic issues, the Senate Finance Committee proposed a requirement (known as the Heinz amendment) that U.S. members of the binational dispute resolution panel be confirmed by the Senate. The Administration voiced strong opposition to this idea, as did several committee members. The Administration and Congress also have clashed over how to make up tariff revenues lost under the *FTA*. In addition, there was strong debate within the Committee over whether it is necessary to include a statutory provision that the *FTA* supersedes all conflicting state law. These and other controversial recommendations (e.g. measures affecting New England potato and lobster industries) could slow introduction of the bill, and perhaps its ultimate passage.

G.N.H./M.H.

U.S. TRADE LAW ACTIONS

Softwood Lumber

On April 6, 1988, U.S. officials agreed to a reduction of Canadian export tax on softwood lumber from 15% to 8%. The 15% tax had been established in December, 1986, in exchange for the U.S. lifting a 15% countervailing duty. The CVD had been imposed when the Commerce Department ruled preliminarily in favour of a U.S. softwood complaint in October, 1986.

Live Swine

On March 22, 1988, the U.S. Court of International Trade (CIT) upheld the remand decisions of the ITC of the investigation of live pork and swine imports from Canada. On remand, the Commerce Department had found countervailable subsidies, and the ITC had found injury to the U.S. industry. The CIT held that the econometric basis created from using aggregate data on both pork and swine imports was quantifiable and unsubstantial and that such data were the best information available.

Thermostatic Appliance Plugs

The ITC recently launched dumping and CVD investigations of thermostatically controlled appliance plugs and probe thermostats imported from Canada and other countries.

Steel Pipes and Tubes

On February 24, 1988, the CIT upheld the ITC finding that Canadian imports of heavy-walled rectangular welded carbon steel pipes and tubes do not injure a U.S. industry. The CIT approved the ITC's use of dumping margins as a factor in its injury analysis. In addition, the CIT upheld the ITC's discretion to give evidence of underselling little or no weight. *G.N.H./M.H.*