TRADE POLICY DEVELOPMENTS

THE COUNTERVAILING DUTY CASE INVOLVING U.S. GRAIN CORN

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On July 2, 1986, the Deputy Minister of National Revenue for Customs and Excise, pursuant to a complaint by the Ontario Corn Producers' Association (OCPA), initiated an investigation under the *Special Import Measures Act (SIMA)* in respect of the alleged injurious subsidization of grain corn imported from the United States.

This case was unique in several respects:

- It was the first countervailing duty case anywhere in the world involving U.S. exports;
- It was the largest, and most significant, Canadian countervailing duty case;
- The Canadian Import Tribunal (CIT) found injury on the basis of the effect of the alleged subsidy, irrespective of the volume of imports of the subject goods;
- It was the first case in which the Canadian Import Tribunal was required to consider any increase in the financial burden on a federal or provincial agricultural support program as an element of material injury;
- It involved the first effective use of the public interest provisions of *SIMA*.

The Complaint

It was alleged by the OCPA that the U.S. Feed Grain Program, and other agricultural assistance programs under the 1981 and 1985 U.S. Farm bills which benefit grain corn producers, had resulted in overproduction and high inventories of grain corn in the U.S. They argued that this had caused the U.S. price for grain corn to decline significantly which, in turn, had caused Canadian corn prices to decline below cost of production levels in Canada.

Alleged Subsidy

Under subsection 2(1) of *SIMA*, a subsidy is defined as:

> ...any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods as a result of any scheme, program, practice or thing done by a foreign government.

The Deputy Minister found that the principal element of subsidization was the basic U.S. price support program involving commodity loans, purchases and deficiency payments. The amount of the subsidy was found to be Cdn. $1.10 per bushel.

On receipt of the preliminary determination of subsidization from the Deputy Minister, the Canadian Import Tribunal commenced its inquiry to determine whether the domestic producers or group had suffered material injury or retardation as a consequence of the subsidization.

Material Injury

On March 6, 1987, the CIT found that subsidized U.S. grain corn had caused, was causing, and was likely to cause in future, material injury to production in Canada of like goods, and increased the financial burden on federal and provincial government agricultural support programs in Canada.

In so concluding, a majority of the CIT panel found that:

- U.S. grain corn production is greater than the total combined grain corn production of the rest of the world. The result of the dominant position of the United States is that U.S. production is the most significant factor influencing the world price for grain corn.
- The major factor contributing to the recent growth in U.S. stocks of grain corn was the agricultural policies in the 1981 Farm bill.

- The dramatic decline in the international price for grain corn was, in very large measure, a direct consequence of the provisions of the 1985 Farm bill.
- The predominant market price for grain corn in the United States is that set by the Chicago Board of Trade. The predominant market price for grain corn in Canada is the price set at Chatham, Ontario. The Chatham price follows the Chicago price very closely, the difference being mainly attributable to transportation costs and the local Ontario supply and demand situation.
- Canadian prices for grain corn had declined substantially since 1985. The price declines experienced by Canadian grain corn producers were of such a magnitude as to constitute material injury, whether borne by the farmer directly in terms of reduced income, or indirectly by increased burden on government support programs.
- The injury to Canadian producers was caused in a significant measure by the U.S. subsidization of grain corn production.

Impact of Exports on Injury

The majority of the CIT panel ruled that, for the past, it sufficed to find that the Canadian price for grain corn was affected by the subsidy, without reference to the volume and price of actual imports of grain corn. For the past and the future, the majority considered that imports from the U.S. would have increased substantially in the absence of a price response by Canadian domestic producers to subsidized U.S. corn. Given the openness of the Canadian market, much higher levels of imports would have been likely for the future.

The minority view, expressed in the dissenting opinion of A.C. Bisonnette, was that, under *SIMA*, injury must relate to the volume and price of subsidized imports. Due to a continuous decline of U.S. imports since the early 1980s, he found no past or present injury. Insofar as the future was concerned, he concluded that since injury must relate to the presence in Canada of subsidized imports, it would be sheer speculation and conjecture to hold that, in the absence of a countervailing duty, subsidized imports would enter Canada in such volume as to cause material injury to Canadian producers.

Review of CIT Finding

An application was made by the Canadian Industrial Corn Users and other Canadian users of U.S. grain corn to the Federal Court of Appeal to set aside the CIT finding. A hearing on the question is expected this fall.

The Public Interest Hearing

The Canadian Industrial Corn Users and other interested parties applied, under section 45 of *SIMA*, for an opportunity to make representations to the CIT on the question of whether it should recommend that the imposition of countervailing duties in the full amount of $1.10 per bushel was not in the public interest. The CIT agreed to conduct a public hearing on the subject. In all, the CIT received 35 submissions, and heard from 35 witnesses, during six days of hearings.

In its report to the Minister of Finance, the CIT first considered the conditions justifying a section 45 review and the role of the CIT during such a review. It observed as follows:

- Section 45 is to be used in exceptional cases when, for instance, the imposition of duties will cause a substantial, and possibly unnecessary burden, to users (downstream producers) and consumers of the imported product.
- Consideration of the public interest does not necessarily require the CIT to choose between the private interests of parties with opposing concerns i.e. between users and consumers on the one hand and the producers on the other. Rather, the CIT should analyze and evaluate the consequences flowing from the application of the countervailing duty on all parties affected, and form an opinion on whether and how, on balance, the public interest can best be served.
- The CIT should merely advise the Minister of Finance about the consequences of applying the countervailing duty in whole or in part. The Minister should then be left to decide how to achieve a balance among the different domestic interests in the public interest.

- Even though the final decision rests with the Minister, the CIT appears to be required to offer the Minister its opinion on the question of apportioning the burden among interested parties in its report concerning the level of duty that ought to be imposed.

After due deliberation, the CIT reported to the Minister that it was of the opinion that the imposition of a countervailing duty on imports of grain corn from the U.S. in excess of Cdn. $0.30 per bushel, or the amount of the subsidy, whichever is less, would not be in the public interest. In its report, it considered the following:

- The price effect of the countervailing duty was considerably less than 100 per cent. Estimates of the price effect varied from $2.00 to $12.00 per tonne. The Tribunal concluded that the maximum average value of the premium that could be expected from the countervailing duty was $12.00 per tonne, or $0.30 per bushel.
- The modest price effect of the countervailing duty was caused by market forces such as the availability of substitute products which will always ensure that full premiums will not be obtained.
- The countervailing duty may stimulate the importation of corn by industrial users who export a sizeable volume of their output, relying on duty drawbacks to import corn from the U.S., and thus avoid any Canadian price premium. The result is an incentive for Canadian industrial users to import corn, caused by the countervailing duty.
- The imposition of a countervailing duty has hurt Canadian exports of corn.
- A countervailing duty which is greater than the price premium is superfluous in terms of enhancing long term prices, and also increases risk for Canadian users and uncertainty for domestic producers.

Weighing all of the foregoing factors, the CIT concluded that Canadian producers and users would both benefit from a reduction of the countervailing duty to the level of a market-generated price premium. The users would benefit, because of the reduced risk associated with a given maximum price. The producers would benefit from greater market stability and reasonable price expectations.

Decision of the Minister

The Minister of State for Finance, after considering the CIT's recommendations and hearing further representations from interested parties, announced that, effective February 4, 1986, the level of duty would be reduced to 46 cents per bushel.

In making his announcement, the Honourable Tom Hockin noted the Tribunal's conclusion that users in Canada were not being significantly affected by the countervailing duty of $1.10 per bushel. He added, however, that he shared the CIT's concern that maintaining the duty at its present level could create a great deal of uncertainty and unrealistic expectations for both producers and users of grain corn.

"By reducing the duty to 46 cents per bushel, market uncertainty will be greatly reduced and both users and producers will be better able to plan their activities," Mr. Hockin said. The Minister recalled that the Tribunal had proposed lowering the duty to 30 cents per bushel, but that the Tribunal had also noted some limitations regarding the methodology used in its analysis. He observed that further analysis of corn price movements showed that, after the countervailing duty was imposed, quarterly prices rose by as much as 46 cents per bushel above what they would otherwise have been. He added:

> I believe that setting the countervailing duty at its new level will permit producers to take greater advantage of the price benefits associated with the duty. I believe it will also ensure that Canadian corn producers continue to be protected from the negative effects of subsidized U.S. grain corn.

The Minister said that the analysis on which both the Tribunal and the government made their decisions was based on experience with the countervailing duty to date. He said that since conditions can change unexpectedly in the agricultural area, the government would be asking the CIT to review the public interest issues again in approximately 18 months.

Postscript

Recent drought conditions in the U.S. have sent corn prices up to U.S. $3.00 per bushel as compared to U.S. $1.65, the price prevailing at

the time of the CIT hearing. The current Canadian price is Cdn. $3.75, as compared to Cdn. $2.00 at the time of the hearing. At these prices, Canadian producers may now be earning profits. If these conditions persist, it would obviate the need for countervailing duty relief for Canadian producers.

BILL C-110: *CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT*

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The federal government's decision to amalgamate the three agencies responsible for international trade: Canadian Import Tribunal (CIT), the Tariff Board, and the Textile and Clothing Board was announced in the May 1985 Federal Budget. The stated rationale for amalgamation of these agencies was the government's desire to streamline and rationalize federal institutions and practices.

Bill C-110, an *Act to establish the Canadian International Trade Tribunal*, was introduced in the House of Commons by the Minister of State for Finance on February 12, 1988. The bill was referred to a House Committee which heard submissions from various interested parties and reported back to the House on June 1, 1988. It was passed by the House on July 18, 1988, and is expected to soon be approved by the Senate.

The CITT

The new Canadian International Trade Tribunal (CITT) will consist of nine board members including one Chairman, two Vice-Chairmen and up to six other permanent members. In addition, up to five temporary members holding office at any given time may be appointed by the Governor in Council. This represents a reduction from the fifteen members sitting on the three existing boards.

The CITT will exercise the functions currently exercised by the amalgamating boards. It will hear the appeals which are now heard by the Tariff Board, including appeals from determinations made by the Deputy Minister of Revenue Canada, Customs and Excise, pertaining to antidumping or countervailing duties, appeals from the Deputy Minister's determination of the tariff classification and value for duty of imported goods and appeals of federal sales and excise tax assessments.

Inquiries

Upon the request of the Governor in Council, the CITT will also conduct hearings to inquire into and report to the Governor in Council on (1) whether or not the importation of goods into Canada injures, threatens injury or retards the production of any goods in Canada, and (2) whether or not provision of services by non-residents injures, threatens injury or retards the provision of services by residents in Canada.

It is not known how a CITT report on the importation of goods will be used by the Governor in Council. It may use the report in deciding whether or not to include goods on the *Import Control List* for the purpose of imposing quota restrictions under the *Export and Import Permits Act* or imposing a surtax or tariff-rate quota on injurious imports under the *Customs Act*.

The legislation goes far beyond its stated purpose of streamlining and rationalizing Canada's import agencies by granting the CITT functions not presently exercised by any of the three existing boards. One of these new functions will be to inquire into, and report to the Governor in Council on matters relating to the economic, trade or commercial interests of Canada. This function is somewhat similar to the existing power of the Tariff Board to inquire into matters related to the trade and commerce of Canada. The CITT inquiry is designed to be broader than the Tariff Board inquiry and is intended to be used as an escape valve to divert potentially nasty border actions with other forms of relief. For example, this provision could be used to provide relief in the form of domestic assistance, such as subsidies, as an alternate remedy to border actions against imports.

Upon the request of the Minister of Finance, the CITT will also be required to inquire into, and report on, any tariff-related matter, including matters concerning the international rights or obligations of Canada. This function originates

from a provision in the *Tariff Board Act* which empowers the Tariff Board to inquire into matters involving goods which are subject to, or exempt from, customs duties, and into the effect that altering the rate of duty on a commodity might have upon an industry. An example of this function would include the General Preferential Tariff (GPT) safeguard investigations presently conducted by the Tariff Board. In these inquiries, Canadian producers can complain that imports from countries benefitting from the GPT rate are entering Canada in increased quantities and under such conditions as to cause or threaten serious injury to domestic production.

With respect to any of the above inquiries, the CITT will be required to prepare a report to the Governor in Council, and its report will be submitted to the House of Commons and the Senate by the Minister of Finance. Although the bill does not specifically grant the CITT the authority to make recommendations to the Minister or the Governor in Council, it does require that the Tribunal prepare its report "in accordance with the terms of reference established by the Governor in Council or Minister of Finance." At any stage during or after an inquiry, the Governor in Council or the Minister could request that the Tribunal make recommendations in its report.

Complaints by Domestic Producers in Safeguards Cases

In a surprising move, the federal government proposes to include a private right of access by Canadian producers to the CITT to conduct investigations into safeguards complaints. The bill allows domestic producers to petition the CITT directly by filing a complaint alleging that goods are being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic production. With the exception of the textile and apparel industry which can petition the Textile and Clothing Board (TCB) directly for a safeguards investigation, such inquiries can presently only be undertaken at the request of the government.

While this new right of direct access has been met with enthusiasm by domestic producers, importers have opposed its inclusion in the bill. In its submission to the Legislative Committee considering Bill C-110, the Canadian Importers' Association (CIA) expressed its concern that the private complaint provisions will lead to a flood of safeguards cases and increased confrontations with Canada's trading partners.

The CIA based its concern on the fact that the complaint provision is based on Article XIX of the *GATT*. That Article requires that any remedy imposed must be applied in a non-discriminatory fashion and that it must be applied against imports of the subject goods from all GATT member countries. This must be so even though the injury may be caused by imports from only one or two countries. Therefore, the CIA feels that any remedy imposed will be borne by major trading partners who may not be the significant contributors to the serious injury. These countries, in turn, are entitled to demand compensation or to retaliate.

Complaint Procedure

In general, the bill provides that the complaint must include the facts on which the allegations are based, an estimate of the total percentage of Canadian production of the like or directly competitive goods that are produced by the complainants, and such other representations as the complainants deem relevant. In its submission to the House Committee, the Canadian Apparel Manufacturing Institute (CAMI) unsuccessfully claimed that the requirements for a properly documented complaint were too onerous for the Apparel Industry and that there should be a less rigorous test of acceptability. CAMI's complaint lacked credibility because it had not accessed the direct petition remedy available to it through the TCB. Rather, it preferred to pursue its remedy under the provisions of the MultiFibre Arrangement which allows for the negotiation of bilateral restraint agreements with source countries of injurious imports.

The CITT must determine whether or not a complaint is properly documented within 21 days after receipt. Within 30 days after notice is given to the complainant that the complaint is properly documented, the Tribunal will commence an inquiry if:

a. the complaint 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 the like or directly competitive goods, and

b. the complaint is made by producers who produce "a major proportion of domestic production" of the like or directly competitive goods.

Bill C-110 originally required that the complaint be filed by producers who produce "a majority of domestic production."

It was later amended to read "a major proportion of domestic production" because of fear that the majority requirement would prevent industries with a large number of small and medium sized firms from petitioning for an inquiry. The 50 per cent rule would have been particularly problematic for the apparel industry where, according to the testimony of the Chairman of the Textile and Clothing Board before the House Committee, there is an "obvious lack of efficient associations." (The Chairman testified that there was never a hearing before the Textile and Clothing Board in which 50 per cent of the clothing industry was represented; 25 to 45 per cent was the normal level.) In amending this provision, the House Committee was cognizant of the fact that if the threshold for initiation was too low, there would be a flood of complaints from small groups of producers with the possible result that trading partners would consider Canada's safeguards system to be geared towards harassment of importers.

Principal Cause of Injury

Once an inquiry begins, the Tribunal must determine whether or not the goods are being imported in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof, to domestic producers.

A principal cause of serious injury exists if the Tribunal finds that the "increased importation of the goods is an important cause and not less important than any other cause." This is similar to the American provision in Section 201 of the *Trade Act of 1974* which requires imports to be "a substantial cause of serious injury" where "substantial cause" is defined as "a cause which is important and not less than any other cause."

During the Legislative Committee hearings, domestic producers objected to the principal cause test because producers would have to assign percentage values to various heads of injury, a difficult task in an interdependent economic environment. In addition, the Canadian Textile Institute (CTI) was concerned that a restriction of injury to that caused by increased imports overlooks the fact that imports can cause injury even though absolute import volumes are static or declining.

Against these complaints, the government has justified the principal cause test on the basis that it ensures that action is not taken where imports are not the important cause of the injury. This situation could arise where other causes, such as a failure on the part of the domestic industry to reinvest its profits or to invest in technology, gives rise to injury rather than increasing imports.

Perhaps the only conclusion to be drawn from the inclusion of the "onerous" principal cause test is that it balances against the direct complaint provision seen by some as protectionist.

Dumping and Subsidization

If, before commencing an inquiry or during an inquiry, it appears to the Tribunal that the injury is caused by dumping or subsidization, it will refer the complaint to the Deputy Minister of Revenue for consideration under *SIMA*. If the Deputy Minister does not initiate an investigation or initiates an investigation but later terminates it, the complainant(s) may apply to the Tribunal to commence or resume an inquiry, whichever the case may be, provided the time limits specified in the legislation are met.

Report

The CITT will prepare a report on the inquiry within 180 days after the inquiry begins. The Tribunal does not have the power to make recommendations in the report as it is the federal government that will determine the action to be

taken. If the Tribunal was granted the authority to make recommendations, it would do so in a vacuum, as it would not be able to assess the costs and benefits to various sectors of taking a particular course of action. However, the bill does contain a provision by which the Governor in Council can, during or after an inquiry, request the Tribunal to consider matters related to the inquiry. It is possible that this request could include an evaluation of the scope of government measures.

DURATION OF ANTIDUMPING DUTIES

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Article 9 of the *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade* (the Antidumping Code), which was signed in 1979, states:

> 1. An antidumping duty shall remain in force only as long as, and to the extent necessary to counteract the dumping which is causing injury.
> 2. The investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their initiative or if any interested party so requests and submits positive information substantiating the need for review.

Suprisingly neither Canadian nor U.S. antidumping legislation specifically defines how long an antidumping duty is to remain in force. With respect to the United States, one submission to the House Committee on Ways and Means on the introduction of the *Trade Agreements Act* of 1979 discussed the duration of antidumping duties as follows:

> Although we are not defending dumping, on the benefit side, dumping represents lower prices to consumers, results in more competition and improved industrial performance, and acts as an anti-inflationary mechanism of price control....
> Our submission is based on the premise that because trade policy must reflect the necessary balance between the free movement of goods, with its consequent benefits, and protection of domestic interests, dumping duties should be imposed only when material injury to the domestic industry has been found to exist. Thus, when that material injury no longer exists, dumping duties should no longer be necessary. Consequently, the (International Trade) Commission's task under Section 751 (of the *Tariff Act* of 1930, as amended) is to review the relevant facts and circumstances as they currently exist to determine whether an industry in the United States would suffer material injury or the threat thereof, or whether the establishment of an industry would be material or retarded, if the existing antidumping duty order were not in effect.

In Canada, subsection 76(4) of the *Special Import Measures Act (SIMA)* authorizes the Canadian Import Tribunal (the CIT) at any time after making a finding of injury, to review that finding, and rescind or continue it, with or without amendment, as the circumstances require. This provision provides the CIT with the legislative authority necessary to adjust an antidumping finding, or indeed, to rescind it when its continuation is no longer justified.

The duration of antidumping duties was discussed by the Chairman of the CIT in an address entitled "The Canadian Import Tribunal and Contingency Protection," dated May, 1987:

> As a matter of principle, the Tribunal is of the view that the application of anti-dumping and countervailing duties is a temporary measure to be applied for the purpose of counteracting injurious dumping and subsidization, and should be removed when no longer justified for that purpose. While neither Article 9 of the Antidumping Code nor paragraph 9 of Article 4 of the Subsidies Code, which deal with the duration of the respective duties, are incorporated into our statute, the Tribunal has felt that common sense dictates that the review power under this section (Section 31 of the previous *Antidumping Act*) be used to take into account changes and circumstances which occur, as time passes, which could affect the original finding. After all, consumer demands change, markets change and production performance changes....

The CIT, and its predecessor, the Antidumping Tribunal, has referred to Article 9 of the Antidumping Code in relatively few of their decisions. For example, in *Disposable Glass Culture Tubes from the U.S.A.* (Review Finding ADT-2B-73), the Canadian producer, while acknowledging its improved market position resulting from the 1973 Antidumping Tribunal

order, urged that the order imposing duties remain in place because of the Canadian producer's continued vulnerability to U.S. competition. The CIT dismissed the Canadian producer's claim as follows:

> While this may be so, the Tribunal does not believe that it is the intent of the *Antidumping Act* nor would it be consistent with Article 9 of the *GATT* Antidumping Code which provides general non-statutory assistance in applying the provisions of the *Act*, that a protective remedy, having been given to this industry in 1973 to counteract the ill effects of dumping, should be given quasi-permanence essentially on the basis of an allegation that this industry would be injured should dumping resume.

The CIT also discussed the duration of duties in *Vehicle Washing, Drying, Waxing, Polishing or Cleaning Equipment produced or exported on behalf of Hannah Carwash Equipment Company, Portland, Oregon, U.S.A.* (R-14-85). In this case, the CIT refused to rescind its 1981 finding because a recovery period of three years was not considered a reasonable period of recovery under the Antidumping Code. The CIT stated that:

> The resurgence of sales ... to late 1983, peaking in 1984, returned the industry to profitability for the first time since the finding. The period of economic recovery from injurious dumping has been brief. Consequently the impact of the finding has not been commensurate with the Antidumping Code which provides for a reasonable period of recovery for the industry following a finding of material injury.

Article 9 of the Antidumping Code was most recently considered in the Review Finding involving *Certain Stainless Steel Plates from the Republic of South Africa and Japan, Certain Steel Sheets from the Federal Republic of Germany and Japan, and Certain Stainless Steel Plates from Belgium, the Federal Republic of Germany, France, Italy, Sweden and the United Kingdom* (Review Finding, R-3-88). The CIT rescinded a finding which had been in place for approximately 10 years as that was considered abundant time for the domestic industry to recover from the injury suffered from dumping. The CIT held that the domestic industry was in good financial health because it had performed well in recent years, improved its efficiency and enhanced its competitiveness. In the CIT's view, the Canadian producer was strong enough to weather a possible downturn in the stainless steel market in the near future and was not highly vulnerable to import competition. The CIT stated at page 6 of its decision:

> Admittedly, to leave the finding in place until a year from now as counsel for Atlas (the complainant) recommended, should permit the dissipation of the current cloud of uncertainty about the scale and effects of any near-term correction in the market. Advantageous though such a delay might be, this advantage is outweighed by more important considerations. Atlas has already been afforded many years of protection against dumping. It has recovered and is now strong and healthy. In the words of Article 9 of the *GATT* Code, the findings have been in force "... as long as, and to the extent necessary to counteract dumping which is causing injury." They have served their purpose, and in the opinion of the Tribunal further antidumping protection is not necessary.

Perhaps the Antidumping Code and relevant provisions of *SIMA* are ambiguous on the duration of antidumping duties simply because it is difficult to quantify how long an antidumping order should be in place. Each case must be decided on its own facts. An order may be rescinded for a number of reasons, such as minimal dumping; lack of imports; improved financial performance, profitability, production, or capacity utilization on the part of domestic producers; increased domestic demand; or increased prices for Canadian producers. In a volatile and changing world economy, it is impossible to predict with any certainty as to when these events will occur and when a rescission should be granted.

UPDATE ON U.S. TRADE BILL

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President Reagan signed the *Omnibus Trade and Competitiveness Act* of 1988 (H.R. 4848) on August 23, 1988, a bill he admits having signed with some reservations. The Senate passed the trade bill on August 3, 1988, by an overwhelming 85-11 margin. On July 13, 1988, the House of Representatives passed an identical bill by a vote of 376-45.

The trade bill has been attacked by a number of America's trading partners including Japan,

South Korea, China and the EC, which called the bill protectionist and asked President Reagan to veto it.

Clayton Yeutter, the U.S. Trade Representative, said, however, that the trade bill has been stripped of its protectionist elements. The bill seeks to make the United States more competitive by giving the President broader power to retaliate against nations engaging in unfair trade practices. Those who praise H.R. 4848 say the bill will open markets rather than close them, because the mere threat of U.S. retaliation would be sufficient to force nations to relax their trade barriers, thereby ending unfair trade practices.

Trade Negotiating Authority (Section 1102)

Previous Law - Presidential authority to enter into tariff agreements and to proclaim changes in U.S. rates of duty expired in 1980. The President's authority to enter into bilateral trade agreements and to negotiate non-tariff reductions for implementation under the "fast track" Congressional approval procedure, expired in January 1988.

New Law - H.R. 4848 restores the President's authority to enter into multilateral tariff agreements through May 31, 1993. Tariff cuts would be limited to 50% with the exception of duties of 5% or under, which could be cut to zero. Tariff reductions would not have to be phased in if there is no competing domestic industry. The new law also extends bilateral and non-tariff (multilateral?) negotiating authority for five years, until May 31, 1993. "Fast track" authority will be extended to 1991 (and to 1993 if Congress were to pass a disapproval resolution).

Section 301 - Retaliation (Section 1301)

Previous Law There was no mandatory initiation requirement of a Section 301 investigation under previous law. A Section 301 investigation was self-initiated by the USTR, or initiated on petition by an interested party. The USTR then recommended to the President what action, if any, he should take. Based on the USTR investigation, the President determined if a foreign practice was unfair and what action he planned to take. The President could also take action on his own initiative. There was no deadline for retaliatory action.

New Law The new bill requires initiation of cases against violations of U.S. trade agreements or other "unjustifiable practices" - except if doing so would hurt U.S. national security or would have a substantially adverse impact on the U.S. economy. Decision making authority in 301 cases will be transferred from the President to the USTR. The rulings of the Trade Representative would, however, remain subject to the President's discretion. Retaliatory action would have to be initiated within 30 days of a case's initiation (and within 80 days in certain circumstances). In addition, the USTR would be required to identify and investigate unfair trade practices abroad and to seek to eliminate or compensate for these practices. The President would have a few retaliatory means at his disposal, such as the imposition of import quotas and tariffs. The USTR would have 12 months to decide on appropriate action but where trade agreements are violated, he would have 18 months to decide.

Section 201 - Import Relief (Section 1401)

Previous Law - In order to obtain import relief under previous law, a domestic industry had to prove that increasing imports were causing their industry serious injury. If the International Trade Commission (ITC) determined that an article was being imported into the U.S. in such increased quantities as to be a substantial cause of injury (or a threat) to the domestic industry producing an article "like or directly competitive with" the imported article, the President had authority to grant the import relief he deemed necessary to prevent or remedy the injury. He could do this through quotas, tariffs, quantitative restrictions, and orderly market agreements.

New Law Under the new law, the domestic industry must not only prove that it is seriously injured by increasing imports, but must also show that it can recover and become competitive again if it were to receive import relief. If the ITC makes an affirmative injury determination, as under the previous law, the President "shall take all appropriate and feasible action" which he

"determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs." H.R. 4848 also expands actions taken by the President to grant import relief to include auctioned quotas, international negotiations, and legislative proposals.

Other Antidumping Countervailing Duty (AD/CVD) Provisions

New Law H.R. 4848 adds new provisions relating to antidumping and countervailing laws for which no comparable provision existed under previous law. Among the new provisions is a requirement for expedited antidumping investigations of multiple offenders (those with two or more dumping violations in eight years) involving short life-cycle products (Section 1318), new procedures for the monitoring of imports of "downstream" products (i.e. products with components previously found to be subsidized or dumped) that can help identify potential diversionary practices resulting from AD/CVD duties on component parts (Section 1320), and authority for the Commerce Department to prevent circumvention of an AD/CVD order by shipments of merchandise to the U.S. through a third country (Section 1321).

Trade Adjustment Assistance (Section 1421)

Previous Law Under previous law, only workers directly affected by imports were covered by the Trade Adjustment Assistance (TAA) program. Training costs, job search, relocation allowances, and administrative costs were funded through discretionary appropriations. In order to receive certain cash benefits called Trade Readjustment Allowances (TRA), workers had to be enrolled in, or have completed, an approved job search program. The training program was not required and TRA funds for training were approved only if funds were available.

New Law The new law extends eligibility under the TAA to workers or firms that supply essential goods and services to firms producing articles like, or directly competitive with, increased imports. It is effective three years after enactment and only if an import fee is imposed to fund any program assisting adjustment to import competition. The President would be required to negotiate with trading partners to impose a small import fee (not more than 0.15%) on all U.S. imports. The fee would be used to fund TAA programs. If an import fee is not imposed by common agreement, then the President must decide whether unilateral imposition of the fee would be in the national interest. Under the new law, worker training would be a prerequisite for receiving TRA cash benefits unless training were not feasible. The termination date of the TAA program will be extended from September 30, 1991 to September 30, 1993.

Plant Closing Bill

After vetoing it as part of the earlier trade bill, President Reagan allowed the plant closing bill to pass as a separate piece of legislation on August 2, 1988. The bill, which was strongly supported by organized labor, went into effect at midnight on August 3, 1988.

The legislation, which would require companies to provide 60 days notice of plant closings or layoffs, was modified to affect only companies employing at least 100 full-time workers at one site. Notice would only be required if a third of the plant's work force or 500 workers (whichever is fewer) are affected by the layoff. Finally, if the notice would prevent the company from obtaining capital or business, or if the closing or layoff were caused by an unforeseeable circumstance (i.e. a drought or flood), then the company would be exempt from the requirement.

CANADA-U.S. FREE TRADE AGREEMENT

On August 9, 1988, the House approved legislation (H.R. 5090) to implement the *Canada-U.S. Free Trade Agreement (FTA)* by a vote of 366-40. The Senate will not vote on the bill (S. 2651) until it returns from the August recess. Although a few congressional objections remain, it is expected that the *FTA* will pass by a wide margin in the Senate. President Reagan has praised the

agreement, saying it will boost economic growth on both sides of the border and will bring together the two largest trading partners in the world.

A compromise was reached between the Administration and Sens. Max Baucus (D-Mont) and John Danforth (R-Mo) regarding the Canadian subsidy provision in the *FTA*. Canadian government officials had voiced concerns that the provision singled out Canada and would make it easier for U.S. companies to file AD/CVD suits against Canadian firms. The language agreed upon expanded the provision to include in the investigation other countries "that benefit from reductions in tariffs under future trade agreements," and makes clear that it does not change U.S. AD/CVD law.

The Administration also agreed to include tougher language regarding administrative action on auto trade. The House Ways and Means and Senate Finance Committees reached a compromise on changes regarding joint revenues, royalty payments, enforcement of the rules of origin, and the phase-out of duty remission programs. Left out of the bill was a provision to provide $1.75 billion in aid to the U.S. uranium industry, which could be harmed by competition from Canadian duty-free imports.

G.N.H.

U.S. TRADE LAW CASES

Thermostatic Appliance Plugs

On June 1, 1988, the International Trade Commission preliminarily determined that an industry in the United States is materially injured by imports of thermostatically controlled appliance plugs and probe thermostats from Canada. The Department of Commerce published a negative preliminary determination on June 22, 1988. Commerce will make its final determination by October 3, 1988.

Red Raspberries

The Department of Commerce published on June 2, 1988, the final results of its antidumping administrative review. Commerce found the dumping margin for the period December 18, 1984 through May 31, 1986, to be 7.65%, 0.28% and 0.002% for three producers. On July 25, 1988, Commerce published the preliminary determination of another administrative review of red raspberries. The review, which covered the period June 1, 1986 to May 31, 1987, indicated the existence of dumping margins of 7.83%, 4.45%, 8.33% and 9.92% for four Canadian producers.

Live Swine

On June 14, 1988, the Commerce Department published the preliminary results of its countervailing duty administrative review of live swine. The review, which covered the period April 3, 1985 through March 31, 1986, found the total bounty or grant to be *de minimis* for slaughter sows and bears, and Can. $0.22/lb. for all other live swine.

Saltfish

The Department of Commerce published, on August 30, 1988, an initiation of an antidumping administrative review of certain dried heavy salted codfish. The review will cover the period from July 1, 1987 to June 30, 1988. Commerce will publish the final results of this review no later than August 31, 1989.

G.N.H.