

TRADE POLICY DEVELOPMENTS

CANADIAN TRADE DEVELOPMENTS

By: Brenda Swick-Martin
Fraser & Beatty, Toronto

Free Trade Legislation in Force

Bill C-2, the omnibus legislation implementing the *Canada-U.S. Free Trade Agreement* has been enacted by Parliament and was given Royal Assent on December 20, 1988. The Act was proclaimed in force on January 1, 1989, with the exception of the provisions to establish copyright licensing fees for cable company retransmissions of U.S. broadcasts and the agreed elimination of Canadian tariffs on certain grades of plywood and waferboard imported from the United States.

The plywood/waferboard move is a response to a U.S. delay in eliminating its own tariffs on Canadian particle board, waferboard and plywood in retaliation against refusals by Canada Mortgage and Housing Corporation to certify certain U.S. plywood grades for residential construction in Canada. The retransmission fees provisions are being delayed, according to the Department of Communications sources, pending establishment of the new Copyright Tribunal. Under the *Agreement* Canada need not implement a system for collecting these copyright licencing fees until January 1, 1990. The plywood dispute may be one of the first issues brought before the binational dispute resolution panels created by the *Agreement*.

Safeguard Petition

On October 17, 1988, the Tariff Board held a public hearing with respect to a petition for safeguard action concerning importations of musical instrument amplifiers from the Republic of Korea. The Board is now preparing its report to the Minister of Finance.

Sales to Corporate Affiliates

The Tariff Board recently held that when a manufacturer purportedly sells its goods to an affiliated retailer, the retail price set by the corporate retailer for the goods is the sale price used for the calculation of the manufacturer's federal sales tax liability.

Anti-dumping Investigations

Delicious Apples

The Deputy Minister of National Revenue, Customs and Excise has issued a preliminary determination of dumping with respect to the importation into Canada of fresh, whole Delicious, Red Delicious and Golden Delicious apples from the United States.

A public hearing into whether the dumped Delicious apples are causing material injury to Canadian producers will be held by the Canadian Import Tribunal on January 10, 1989.

Sour (Tart) Cherries

The Department of National Revenue, Customs and Excise has made a final determination of dumping with respect to sour cherries from the United States.

The decision follows an investigation that began June 21, 1988, as a result of a complaint filed by the Ontario Tender Fruit Producers Marketing Board, the B.C. Fruit Producers Marketing Board and the B.C. Fruit Growers Association.

A preliminary determination of dumping was made in September, 1988, and provisional antidumping duties have been applied to the imports since then.

The Canadian Import Tribunal will hold hearings beginning January 3, 1989, to determine if the dumping is causing injury to Canadian production.

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Wooden Clothes Hangers

The Department of National Revenue, Customs and Excise has issued a preliminary determination that imports of wooden clothes hangers from Taiwan and the United States are being dumped into Canada.

The decision comes after an investigation into a complaint from LWK Manufacturing Agencies Inc. of Downsview, Ontario. The Canadian Import Tribunal must now determine whether or not the dumping of the goods is causing material injury to Canadian production.

Termination of Investigation into Dumping of Batteries

On November 28, 1988, the Deputy Minister of National Revenue, Customs and Excise terminated the investigation into the alleged dumping of lead-acid automotive replacement batteries from the Republic of Korea. The Deputy Minister concluded that the evidence does not disclose a reasonable indication that the dumping of the subject batteries has caused, is causing, or is likely to cause, material injury.

Interested parties have until December 28, 1988, to refer to the question of injury to the Canadian Import Tribunal. If no referral is made, or if a referral is made and the Tribunal concurs with the Deputy Minister's decision, the investigation will be terminated.

If, however, the Tribunal receives a referral and concludes there is a reasonable indication of injury, a preliminary determination of dumping will be issued.

Initiation of Antidumping Investigation into Grinding Balls

The Deputy Minister of National Revenue, Customs and Excise initiated an antidumping investigation with respect to certain cast steel grinding balls exported from the United States and produced by, or on behalf of, Capital Castlings Inc.

On December 16, 1988, the Deputy Minister announced that he had accepted an undertaking from Capital Castlings Inc. respecting the investigation of the goods. The Deputy Minister is

of the opinion that the undertaking will eliminate the margin of dumping and has announced the suspension of the antidumping investigation.

Rescissions

The Canadian Import Tribunal has rescinded its earlier finding respecting the dumping of certain high voltage porcelain insulators from the U.S. and Japan. This decision was followed shortly by a rescission of the Tribunal's two earlier material injury findings respecting dumped recreational camping tents from the German Democratic Republic and of the People's Republic of China and dumped abrasion resistant steel pipe from the U.S.A.

Textile Labelling

The Department of National Revenue, Customs and Excise is currently considering the imposition of country of origin labelling requirements on a broader range of imported textile products and to Canadian made garments.

The application of country of origin labelling regulations to Canadian and imported textile products would assist Canadian consumers in their buying decisions.

Import Permits for Textiles and Clothing from the People's Republic of China

As a result of consultations between representatives of the governments of China and Canada, imports of fine silk suits from the People's Republic of China have been included on the Import Control List.

Import permits may be obtained for each shipment of fine silk provided that each permit application is accompanied by an export licence issued by the appropriate Chinese authority.

Import Permits for Sportswear, Bedsheets and Pillowcases from Romania

As a result of consultations between representatives of the governments of Romania and Canada, imports of sportswear, bedsheets and pillowcases from Romania have been included on the Import Control Lists.

Import permits may be obtained for each shipment of the subject imports provided that each permit application is accompanied by an export licence issued by the appropriate Romanian authority.

Request for Consultations for Import of Bedsheets and Pillowcases from Pakistan

The Government of Canada has requested bilateral consultations with the Government of Pakistan with a view of restraining shipments to Canada of bedsheets and pillowcases from Pakistan.

In accordance with the Canada-Pakistan Agreement on Textiles, imports of bedsheets and pillowcases from Pakistan will be subject to quantitative restrictions during the 90-day period from November 10, 1988, to February 8, 1989.

CANADIAN INTERNATIONAL TRADE TRIBUNAL APPOINTMENTS

The new Canadian International Trade Tribunal (CITT) commenced operation on January 1, 1989. The new Tribunal is an amalgamation of the Canadian Import Tribunal, the Tariff Board and the Textile and Clothing Board. These bodies will finish completing cases in progress, but will take on no new cases after January 1, 1989.

To date the federal government has appointed John C. Coleman, (former Assistant Deputy Minister, International Trade and Finance, Department of Finance) as Chairman. Recently, the government announced the appointment of Mr. Robert Bertrand as Vice-Chairman of the CITT and Mr. Arthur Trudeau as member. Mr. Bertrand formerly held the position of Chairman of the Canadian Import Tribunal. Still to be appointed are one Vice-Chairman and 5 other permanent members. These appointments are expected to be made once the House of Commons reconvenes after the Christmas break.

Also appointed were the Secretary, Mr. Robert Martin of the Department of Finance and the Deputy Secretary, Mr. Rene Noel, formerly Secretary of the Tariff Board.

CANADIAN DISPUTE SETTLEMENT PANEL APPOINTINGS

International Trade Minister John C. Crosbie announced on December 30, 1988, the appointment of a roster to serve as panelists for the binational dispute settlement mechanisms established under Chapter 19 of the *Free Trade Agreement* which deals with antidumping and countervail duty disputes.

Dispute resolution panels will consist of 5 members - each government chooses two panelists and the governments jointly choose the fifth. The majority of panelists must be lawyers.

At the same time a roster of five retired judges was named from which members will be selected to serve on extraordinary challenge committees established under the *Agreement*. The roster is:

Arthur Gordon Cooper
Jules Deschènes
Willard Zebedee Estey
Gregory Thomas Evans
Nathaniel Theodore Nemetz

Either government can invoke this challenge procedure involving a panel of three former judges to determine allegations by one of the countries that a panel member was guilty of gross misconduct, bias, or serious conflict of interest, that the panel seriously departed from a fundamental rule of procedure, or that the panel exceeded its powers, authority, or jurisdiction. A challenge panel can appoint a new dispute resolution panel if it so finds.

"TRANSITION" IN THE U.S. ADMINISTRATION

By: Gary N. Horlick
O'Melveny & Myers, Washington, D.C.

The United States government is currently undergoing a process known as "transition," after which virtually all of the major trade officials will be different. The U.S. process in general is much

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more sweeping than that of other democracies, for two reasons:

- there is no requirement that Cabinet ministers be members of Congress - in fact, they never are - so that the number of people campaigning for various Cabinet posts is much higher; and
- the level of political appointments can go as many as five or six layers down in a department (eg., to Deputy Assistant Secretary, or Office Director). Consequently, as many as 5,000 jobs are at the disposal of the new President.

Even though a Republican (Vice President Bush) is succeeding another Republican (President Reagan), there is still the likelihood of a very high turnover: President-elect Bush has announced that he expects to fill 90% of the slots with new people.

None of this is particularly novel, and thus many people have announced officially or informally that they are leaving. At the office of the U.S. Trade Representative, (USTR), U.S. Trade Representative Clayton Yeutter has stated that he plans to return to the private sector. President-elect Bush named Carla Hills, a prominent Washington lawyer, as his replacement. Deputy USTR, Michael Smith has already left, Deputy USTR Alan Holmer and General Counsel Judith Hippler Bello are expected to leave before the inauguration on January 20, 1989. A similar turnover should occur at the Commerce Department's International Trade Administration. The State Department is the exception to this general rule, as most ambassadors and high level appointees up to the Assistant Secretary level are career foreign service officers, (including U.S. Ambassador to Canada, Tom Niles), although ambassadors are frequently political appointees.

The transition process exemplifies both the strengths and weaknesses of the U.S. political system. It is unquestionably very disruptive to replace large numbers of senior personnel at one time. In addition, the prospect of 5,000 open positions invites a flood of resumes from campaign workers, many of whom seek jobs for which they have no previous experience. One result is that, in many areas, there is a 3-6 month hiatus while the new officials become acquainted with their new responsibilities - and each other. This is a traditional practice, and thus many able people in

the private sector, including many with intimate knowledge of U.S. trade policy and problems, understand that working on a successful Presidential campaign is a prerequisite to moving into high level government service. One result is that some of the abler people in the country are brought into government, while increasing the opportunities for career civil servants to move out (and sometimes back in) - the so-called "revolving door."

Through November, 1988, the Bush transition was run with a very low-profile style. This was a marked contrast to the Reagan transition in 1980 when ideologically committed groups, such as the Heritage Foundation, were perceived as having a great deal of influence, not only in advising on new personnel, but also in helping to set policy (although there is considerable debate as to whether the transition groups set new policies, or simply proposed policies that would have been implemented by the new, conservative Republican regime in any event).

The top appointees (through the Assistant Secretary level) are required to undergo confirmation by the Senate, a process which, added on top of the necessary security and personal checks, can make the appointment process last as long as 3-6 months.

CANADA-U.S. FREE TRADE AGREEMENT

Brian Mulroney's November 21, 1988, election victory will almost certainly ensure ratification of the *Canada-U.S. Free Trade Agreement (FTA)*. The *Agreement*, which came into effect on January 1, 1989, will phase out remaining tariffs and certain non-tariff barriers between the two countries over a period of ten years and will form the world's largest two-way trading relationship, with bilateral commercial exchanges exceeding \$130 billion a year.

The *FTA*, which in addition to trade in goods, addresses trade in services, trade related investment, and intellectual property protection, may also act as a model in the Uruguay Round of negotiations under the *General Agreements of*

Tariffs and Trade (GATT). The trade ministers of 96 nations gathered in Montréal on December 5, 1988, to discuss a liberalization of global commerce. Had the Canadians rejected the pact, U.S. plans to use the *FTA* language as a model would have been set back.

U.S. officials say the pact will help both the U.S. and Canada meet intensified competition from East Asia and Europe. The 12 nations of the European Community (EC) intend to drop all internal trade barriers by 1992. According to U.S. Trade Representative Clayton Yeutter, the *FTA* will make "both U.S. and Canadian firms more competitive with other foreign trading partners" and "will bring prosperity to both countries for years to come."

G.N.H.

U.S. TRADE LAW ACTION

Steel Rails (AD)

The International Trade Commission (ITC) determined, on November 23, 1988, that imports of steel rail, except light rail, materially injure, or threaten material injury, to a U.S. industry. The Department of Commerce will issue its preliminary determination on or before March 6, 1989.

Cephalexin Capsules

On November 23, 1988, the Department of Commerce announced its initiation of an antidumping duty investigation of generic cephalixin capsules. The ITC will make its preliminary determination on or before December 12, 1988. Commerce will issue its preliminary determination on or before April 5, 1989.

Paving Equipment

The Department of Commerce published, on October 11, 1988, the preliminary results of its antidumping administrative review of replacement parts for self-propelled bituminous paving equipment. Commerce found the dumping margin for the period September 1, 1986, through August 31, 1987, to be 1.33% for two producers.

The Department of Commerce announced, on November 22, 1988, that it is initiating another administrative review of paving equipment replacement parts. The review will cover the period from September 1, 1987 to August 31, 1988. Commerce plans to issue the final results of the review by November 30, 1989.

Steel Rails (CVD)

On October 21, 1988, the Department of Commerce initiated a countervailing duty investigation of new steel rail, except light rail, from Canada. Commerce will issue its preliminary determination on or before December 20, 1988.

Thermostatic Appliance Plugs

The Department of Commerce announced, on September 28, 1988, its preliminary determination that thermostatically controlled appliance plugs and internal probe thermostats are being, or are likely to be, sold at less than fair value. Commerce is expected to publish its final injury determination by December 10, 1988. The ITC will make its final injury determination by January 25, 1989.

Live Swine

On September 27, 1988, the Department of Commerce announced that it was conducting a countervailing duty administrative review of live swine. The review will cover the period April 1, 1987, through March 31, 1988. Commerce intends to issue the final results of these reviews no later than September 30, 1989.

G.N.H.