

TRADE POLICY DEVELOPMENTS

CANADIAN TRADE UPDATE

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Canada - U.S. Trade

Canadian Pork Subject to U.S. Countervailing Duties

In late August of this year, the U.S. International Trade Commission (ITC) ruled that American pork producers are threatened with material injury from subsidized imports of fresh, chilled, or frozen pork from Canada. The decision comes one month after the final ruling issued by the U.S. Department of Commerce (DOC) that imports of Canadian pork were being subsidized in the amount of approximately eight cents per kilogram.

In its decision the ITC considered a number of economic factors in assessing the threat of material injury. In assessing the nature of the subsidies found by DOC, the ITC held that there were eighteen federal and provincial subsidy programs which offered benefits to Canadian pork producers. The ITC found that these subsidies generally had the effect of decreasing the cost of producing hogs and, therefore, pork. The ITC concluded that, to the extent that these subsidies increased production in Canada and because Canadian production is largely dependent on export sales to the United States, the effect of these subsidies would soon enhance the likelihood of increased subsidized imports to the U.S. market. The ITC also found that there was a likelihood of future subsidized imports of Canadian pork by virtue of the underutilization of Canadian production capacity. The threat of an increase in market penetration ratios to an injurious level was also a significant factor in the ITC decision. This was so

in spite of the fact that market penetration ratios had shown a modest decline during the most recent period under investigation. The ITC concluded its determination by holding the pork market to be price sensitive and that the likely increase in imports would have a price suppressing effect.

As a result of the ITC's injury finding, countervailing duties of approximately eight cents per kilogram will now be imposed on Canadian exports of pork to the American market. Although the duty will add only approximately 4% to the cost of exported pork, it is estimated that its application will cut the approximately \$500 million worth of Canadian pork exports to the United States by tens of millions of dollars.

The federal government, in concert with the Canadian Pork Council, the Canadian Meat Council and the government of Alberta have requested the establishment of a panel under Chapter 19 of the *Canada-U.S. Free Trade Agreement* to review the decision of the DOC that Canadian pork exporters are benefitting from countervailable subsidies. The Canadian government and industry have announced that they will dispute the method used by DOC to determine the alleged subsidy on Canadian pork exports. They also reject the Commerce Department's view that the Canadian National Tri-Partite Hog Stabilization Program is a countervailable subsidy.

The panel will have approximately ten months to prepare its final decision. In the meantime, the federal government will also be initiating dispute settlement procedures under the *GATT* with respect to whether the method used to determine the alleged subsidy is consistent with the requirements of the *GATT*. The focus will be on the consistency of the Department of Commerce ruling that stabilization payments to pork producers were automatically passed to the final product.

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Canadian Steel Rails Subject to U.S. Countervailing Duty

In late July of this year, the U.S. Department of Commerce (DOC) issued a final countervailing subsidy determination of 113.56% *ad valorem* for exports of steel rails by Sydney Steel Corporation of Sydney, Nova Scotia. This final subsidy determination is higher than the preliminary determination of 103.55% issued by DOC late last year.

Although DOC has found that steel rails produced by Algoma Steel Corporation of Sault Ste. Marie, Ontario are not subsidized, it has increased the dumping margin against Algoma's steel rail exports from 2.72% in the preliminary determination to 38.79% in the final determination of dumping.

On September 20, 1989 the International Trade Commission (ITC) ruled that dumped and/or subsidized imports of steel rails from Canada are threatening to cause material injury to American steel rail producers. The ITC's injury finding may be appealed by the Canadian government to a bi-national panel under the *Canada-U.S. Free Trade Agreement*.

Accelerated Tariff Elimination Request

The *FTA* provides for the elimination, by January 1, 1998, of all tariffs on Canadian and U.S. goods traded between the two countries. Tariffs on some products were eliminated on January 1, 1989 and the remainder are to be phased out in five or ten equal annual stages.

Article 401.5 of the *FTA* provides for accelerated elimination of the tariff on specific items of each country. Many requests for early tariff elimination were received by the Canadian and United States governments and the list of these items was recently published in Part 1 of the *Canada Gazette* on July 15, 1989. The requests were for the elimination of tariffs in respect of an estimated \$12 billion in exports from the U.S. Both Canadian and American submissions covered over two thousand tariff categories. Approximately four hundred interested parties made submissions for the accelerated removal of tariffs on items such as machinery, electrical and agricultural products,

furniture, metals, wood and paper products, chemicals, plastics and rubber.

The Canadian government is reviewing the submissions and hopes to begin negotiations with the U.S. on those requests which enjoy broadly based support in the industry concerned. It is hoped that an agreed-upon list of requests can be implemented by both countries on January 1, 1990.

Chairman Appointed to the FTA Working Groups on Subsidies and Trade Remedies

The federal government recently announced the appointment of A. L. (Tony) Halliday as Canadian chairman of the subsidies and trade remedies working group established under Article 1907 of the *Canada-U.S. Free Trade Agreement*.

The working group is responsible for developing new rules for subsidies and countervailing and anti-dumping duties over a period of five to seven years.

The new chairman is expected to seek advice from many Canadian business and labour groups on how negotiations should proceed with the United States on a subsidies code.

FTA Dispute Settlement Panels

More Panelists Named

International Trade Minister, John Crosbie appointed ten more members as panelists to the bi-national dispute settlement mechanisms pursuant to Chapter 18 of the *Free Trade Agreement*. The most recent appointees, who bring the Chapter roster to 25, are: J. Gordon Coleman (lawyer), Richard D. Deerdon (lawyer), John Knebel (lawyer), Bernard Laundry (professor), Pierre Lauren (businessman), Richard Lipsey (professor), Chris Lemink (consultant), Claude Simard (businessman), Ethie Triantafilopoulos (lawyer), and Charles White (lawyer).

Red Raspberries and Self-Propelled Bituminous Paving Equipment

Under Chapter 19 of the *Free Trade Agreement*, judicial review of final determinations by domestic

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courts in countervailing and anti-dumping duties cases is replaced with a review by five member panels comprised of Canadian and Americans. The Canadian government has appointed the Canadian panelists for the first two cases under the dispute settlement procedures of Chapter 19 of the *Free Trade Agreement*. The panel has been established at the request of Canadian exporters seeking a review of the decisions made by the U.S. Department of Commerce with respect to Canadian imports of red raspberries and self-propelled bituminous paving equipment.

West Coast Salmon and Herring Panel

In March, 1988, the GATT council adopted a panel report which found that Canada's prohibitions on the export of unprocessed British Columbia salmon and herring were contrary to Article XI of the GATT which prohibits export prohibitions between contracting parties.

Following the GATT panel report, the Canadian government announced that it would remove the GATT-inconsistent measures and approved regulations which were consistent with GATT but also required all British Columbia salmon and herring to be landed at provincially licensed stations for sorting, counting and biological sampling. The U.S. trade representative has now initiated the FTA dispute settlement proceedings with respect to the Canadian landing requirements for West Coast salmon and herring. The panel will consider whether Canada's landing requirements are compatible with Article XI of the GATT, and whether these landing requirements are exempt from the requirements under Article XX of the GATT because they are measures relating to the conservation of an exhaustible natural resource.

FTA Auto Panel

The Automotive Select Panel was established by Canada and the United States under the FTA to assess the state of the North American automotive industry and to propose public policy measures and private initiatives to improve its competitiveness in domestic and foreign markets. The panel is scheduled to submit its final report to the governments by June 1, 1991.

The panel is made up of fifteen members from

each country and members cover a broad spectrum of Canadian and American interests. Recently the federal government announced two new appointments to the panel. The new Canadian members are Harry Bowler, President of Budd Canada and Chairman of the Autoparts Manufacturers Association of Canada and Mr. Koji Kadowaki, President of Honda Canada.

Supreme Court of Canada to Rule on Subsidized Grain Corn from the United States

In 1987, the Canadian Import Tribunal held that subsidized imports of grain corn from the United States were causing material injury to domestic corn producers.

An application to review the Tribunal's decision was dismissed by the Federal Court of Appeal. This case will now be heard before the Supreme Court of Canada. Two of the issues to be decided are whether or not the Federal Court of Appeal erred in failing to interpret the *Special Import Measures Act (SIMA)* in a manner consistent with Canada's international obligations under the GATT, and in concluding that SIMA was clear and unambiguous thereby preventing resort to the GATT to interpret the SIMA.

Two further issues raised on the facts by the appellant, the American Farm Bureau of Federation, are: must the injury be caused by imports, and was the injury caused by subsidized imports? The appellant argues that the scheme of SIMA demonstrates that the injury caused to Canadian corn producers must be the result of subsidized imports of U.S. corn and not the result of a decline in the world price of corn.

Update on the GATT

Canada Takes Action Against U.S.A.'s Discriminatory Tax on Imported Oil

It was over two years ago, on June 17, 1987, that the GATT Council adopted a panel report which held that the imposition by the U.S. government of a discriminatory tax on imports of petroleum was inconsistent with the obligations under the GATT.

The impugned provision is section 512 of the *Superfund Amendment and Reauthorization Act of*

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1986 (the *Superfund Act*) which imposes a tax on petroleum at a rate of 11.7 cents (U.S.) per barrel on imported petroleum while domestic petroleum is subject to a lower tax rate of only 8.2 cents per barrel. Article III, paragraph 2 of the *General Agreement on Tariffs and Trade* provides that:

...the products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly to like domestic products. Moreover no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principal set forth in paragraph 1.

Paragraph 1 of Article III provides that internal taxes and charges should not be applied to imported products so as to afford protection to domestic production.

On January 20, 1987, Canada and the EC requested the establishment of a panel to examine the matter under Article XXIII of the *GATT*. The position of these parties was that the United States, in effect, had imposed an internal tax on imported products in excess of the tax provided to like domestic products and, therefore, had violated the national treatment requirement contained in paragraph 2 of Article III of the *GATT*. On page 140 of its report, the panel upheld the position of the petitioning parties "that the tax on petroleum was inconsistent with Article III.2 and consequently constituted a *prima facie* case of nullification and impairment." The panel, therefore, recommended that the United States bring the tax on petroleum in conformity with its *GATT* obligations.

Since the panel report was adopted by the *GATT* Council in June, 1987, the United States government has failed to take action to remove the discriminatory nature of the tax. In March of this year the Canadian government took its first step toward retaliatory action and announced its intention to proceed under Article XXIII of the *GATT* to withdraw equivalent concessions from the U.S.A. Such retaliatory action would take the form of an increase in the tariff rates on a selection of imported products from the U.S.A.

The Canadian government recently released a final list of approximately thirty products on which it will seek *GATT* approval to apply a

surcharge of 2.5 percentage points to the existing tariffs on U.S. imports, including, for example, plastics, tubes, pipes and hoses, washing machines, and refrigerators, wooden and aluminium doors and window frames and prefabricated buildings.

Legislation has now been introduced in the United States which will either eliminate the discriminatory tax or provide Canada with compensation. In any event, it is not expected that the *GATT* will respond to Canada's request for retaliation until the end of this year.

GATT Ruling on Japanese Tariff on Canadian Dimension Lumber

On March 22, 1988, Canada successfully requested the *GATT* Council to establish a panel to consider its complaint about the application by the Japanese of a discriminatory 8% tariff on Canadian exports of spruce-pine-fir (SPF Dimension Lumber). In 1987, 200 million board feet of SPF Dimension Lumber to Japan was worth over \$80 million to Canadian exporters.

Canada's position was that Japan applies an 8% tariff on imports of SPF Dimension Lumber, mainly supplied by Canada, while providing duty free treatment to other species of Dimension Lumber, such as hemlock, supplied by the U.S. It was Canada's position that SPF Dimension Lumber is a "like product" and, therefore, should receive equal treatment under Article 1.1. of the *GATT* which provides for most-favoured-nation treatment. Article 1.1 states that with respect to customs duties and charges imposed on the importation of products, any advantage granted by a contracting party to any product originating in any other country shall be accorded immediately and unconditionally to the like product originating in all other contracting parties. The U.S. supported the Japanese position, while Canada's position was shared by Brazil, India, Australia, New Zealand and the Nordic countries.

On July 10, 1989, the council of the *GATT* adopted a panel finding that the 8% Japanese tariff on imports of Canadian SPF Dimension Lumber was not a discriminatory tax and therefore not contrary to Article 1.1 of the *GATT*.

The panel held the Dimension Lumber was not a product category used in international tariff

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classifications. It also noted that contracting parties have a wide discretion in regard to the structure of their national tariff and classification of goods. The panel report stated that countries who wish to challenge other contracting parties' tariff differentiations in regard to "like products" in Article 1.1 must show that such tariff differentiation is used as a means of discrimination in international trade. The panel concluded that "the Canadian concept of Dimension Lumber was not an appropriate basis for examining Canada's claim of violation." Therefore the tariff treatment of Canadian Dimension Lumber by Japan could not be regarded as inconsistent.

Recently Canada has expressed concern over the GATT panel report. Canada is concerned that the panel's interpretation might preclude a GATT member from pursuing its rights under Article 1.1 of the GATT for equal treatment of like products if the products involved are not specifically identified in the tariff classification system of the importing country.

The GATT Council is expected to review Canada's concerns at its next meeting.

U.S. Sugar Import Quotas

The GATT Council has ruled that American Sugar Import Quotas violate the GATT's international trade rules. The quotas restricted imports in 1989 to 1.25 million tons, or, approximately 8% of the 16.5 million tons consumed by Americans. The United States has announced that it intends to comply with the GATT Council decision and make the necessary adjustments to its quotas.

GATT Issues Ruling on Canada/U.S. Yoghurt and Ice Cream Dispute

In January, 1988, Canada added ice cream and yoghurt to the import control list in support of the national supply management program for industrial milk.

Article XI of the *General Agreement on Tariffs and Trades* provides for the general elimination of quantitative restrictions. Paragraph 1 of Article XI prohibits the use of quotas on the importation of any product of any other contracting party. Excluded from this general prohibition against

quantitative restrictions are import restrictions on agricultural products necessary to the enforcement of government measures which operate to restrict the quantities of the like domestic product permitted to be marketed or to remove a temporary surplus of the like domestic product. It is pursuant to these provisions that Canada has implemented import quotas on ice cream and yoghurt from the United States.

In December, 1988, the United States requested the formation of a GATT panel to examine the GATT consistency of Canada's action. The panel found that the restrictions limiting the quantity of ice cream and yoghurt allowed into Canada were not in conformity with Canada's GATT obligations.

The panel report has yet to be circulated to other GATT members. Under GATT procedures, the GATT panel reports are considered by the GATT Council. The first opportunity the Council will have to consider the report will be at its meeting of October 11.

The federal government has announced that this decision illustrates just how important it is for Canada to work with other trading partners in the Multilateral Trade Negotiations (MTN) to clarify the definition and use of GATT Article XI which is a fundamental support of Canadian supply and management programs.

Update on U.S. and EC Dispute over Hormone Treated Meats

Late last year, the United States imposed punitive tariffs on EC imports in retaliation to the EC ban that affected U.S. exports of hormone-treated meats.

The EC has requested the establishment of a dispute settlement panel on the U.S. increase in the rates and duty on certain products of the European Economic Community under Presidential Proclamation No. 5759 of the 24th of December, 1987.

The United States has been engaged in bilateral consultations with the Community over the past few months, and recently, it reached an agreement with the EC on an interim measure that would enable U.S. beef not treated with hormones to be shipped to the Community. To the extent that the U.S. shipments have been made, the U.S. has

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been reducing its counter measures. Recently, the United States removed sanctions on EC ham products worth \$300,000 U.S. The United States announced that a U.S./EC task force will continue to work on resolving this issue in the hope that a solution can be found to allow full resumption of trade in this area.

The Community has acknowledged the efforts that are being made independently of the GATT and that bilateral discussions have made progress. However, its request for a panel continues to stand.

Update on the MTN

MTN Timetable

The final ministerial meeting of the Uruguay Round of the Multilateral Trade Negotiations (MTN) will take place in Brussels in November of 1990. This will end four years of trade talks among officials from more than one hundred countries.

Three phases must be completed between now and the final meeting in November, 1990. Individual governments are expected to clarify their national priorities in negotiating positions between September and December of this year. Between January, 1990, and next summer, countries will negotiate concessions with their trading partners. From September, 1990, to the Brussels meeting, negotiators are to ensure that their results conform with the principles of the GATT.

Subsidies and Countervailing Proposal

Canada was the first country to present a proposal for reforming international rules on trade distorting subsidies and countervailing measures to the Subsidies and Countervailing Measures Negotiating Group of the current Uruguay Round of the Multilateral Trade Negotiations.

The Canadian proposal suggests that a multilateral body be established to advise governments on whether their perspective subsidization programs are prohibited, or, under which circumstances they could be allowed. The proposal also suggests the establishment of a minimal level of subsidization below which

countervailing duties would not be imposed. Dispute settlement is also addressed and includes a recommendation that countries be able to request rulings on whether or not another government is using prohibited subsidies and safeguard procedures.

Canadian Textile Inquiry

In June, 1989, the Canadian International Trade Tribunal (CITT) held the first public hearing in its *inquiry concerning reductions in tariffs for textile products*. The inquiry is being conducted following a reference dated February 6, 1989, from the Minister of Finance requesting the CITT to assess the economic impact of reductions in tariffs on textiles products and to make recommendations on their ultimate level and pace of reduction. This reference followed an earlier announcement by the federal government that tariffs on textile products would be reduced over a ten year period starting on April 1, 1990, to the level of those in other industrialized countries, in particular, the United States.

The purpose of the public hearing in June was to provide the Tribunal with evidence on how textile producers and users might be affected by changes in tariffs on textile products. The Tribunal heard testimony from the main associations representing the producers and users of textile products, such as the Canadian Textile Institute, the Canadian Apparel Manufacturers Institute, the B.C. Needle and Fashion Association, the Canadian Council of Furniture Manufacturers, and the Feather and Down Association.

The Tribunal is scheduled to hold a second public hearing on October 16, 1989, to consider the staff report prepared by the CITT Research Branch. The CITT is scheduled to submit its report to the Minister of Finance by September 31, 1989.

Canadian Anti-Dumping/Countervailing Duty Investigations

Mini-Refrigerators from Poland

On July 18, 1989, the Deputy Minister of National Revenue for Customs and Excise issued a final determination of dumping with respect to

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electrically powered absorption type refrigerators, with a refrigeration capacity of two cubic feet or less, originating in, or exported from, Poland.

On August 15, 1989, the Canadian International Trade Tribunal held that the dumping in Canada of the aforementioned goods from Poland has not caused, is not causing, and is not likely to cause, material injury to the production in Canada of like goods.

Plastisol from the U.S.A.

The Deputy Minister of National Revenue, Customs and Excise has initiated an investigation into the dumping of plastisol by Plast-O-Meric Inc. of the United States. Dumping occurs when goods are sold to importers in Canada at prices which are lower than their normal values in the foreign domestic market or at prices lower than full costs. Plastisol is the main raw material used to manufacture soft-trim auto parts.

If the investigation reveals that imports of plastisol have been dumped, a preliminary determination of dumping will be made in October, 1989. Thereafter, the Canadian International Trade Tribunal will determine whether or not dumped imports of plastisol are causing material injury to the Canadian plastisol industry.

Landing Nets from the U.S.A.

On July 17, 1989, the Deputy Minister of National Revenue, Customs and Excise initiated an investigation into the injurious dumping of landing nets produced by J.F. Pepper Company Inc. from the United States of America.

On August 14, 1989, the Canadian International Trade Tribunal received, from Browning Sales Agencies, on behalf of J.F. Pepper Company Inc., a referral under Section 34 of the *Special Import Measures Act*. The referral is on the question as to whether or not the evidence before the Deputy Minister discloses a reasonable indication that the dumping of landing nets has caused, is causing, or is likely to cause, material injury to the production in Canada of like goods.

The CITT has advised that the evidence before the Deputy Minister does disclose a reasonable indication that the dumping of landing nets is causing material injury to Canadian production.

The Department of National Revenue will now proceed with its investigation towards issuing a preliminary determination of dumping by October 10, 1989. If the Department does issue a preliminary determination of dumping, the CITT will conduct an inquiry into the question of material injury to the Canadian production of like goods as a result of the dumped imports. Subsequent to the final determination of dumping, the CITT will hold a public hearing and then issue its finding.

Footwear from Brazil, China, Taiwan, Poland, Romania and Yugoslavia

The Deputy Minister of National Revenue, Customs and Excise has initiated an investigation into the dumping of women's leather and non-leather boots and shoes from Brazil, China, Taiwan, Romania, Yugoslavia, and Poland. An investigation has also been initiated into the subsidization of women's leather boots and shoes from Brazil.

The Deputy Minister referred to the CITT the question of whether the evidence disclosed a reasonable indication that the allegedly dumped or subsidized goods have caused, are causing, or are likely to cause, material injury.

On September 24, 1989, the CITT advised the Deputy Minister that the evidence discloses a reasonable indication that the allegedly dumped or subsidized goods are causing material injury to Canadian production. The Deputy Minister must now proceed with the investigation and issue a preliminary determination of dumping and/or subsidization by November 23, 1989. If the preliminary determination is positive, the question of material injury to the production of like goods in Canada will be referred to the CITT. The CITT will issue its decision by March 23, 1990.

Brass Replacement Key Blanks from Italy

On March 17, 1989, the Deputy Minister of National Revenue for Customs and Excise initiated an investigation into the dumping of certain brass replacement key blanks from Italy.

A preliminary determination of dumping was made by the Deputy Minister on June 15, 1989, and the dumped goods have been subject to that duty since that date.

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Further to the receipt of the notice of preliminary determination of dumping from the Department of National Revenue, Customs and Excise, the Canadian International Trade Tribunal initiated an inquiry to determine whether the dumping of the above-mentioned goods has caused, is causing, or is likely to cause, material injury to the production in Canada of like goods. The Tribunal held a public hearing on September 18, 1989, five days after the Deputy Minister announced that a final determination of dumping on the subject goods had been made. The Tribunal's decision is expected on or before October 13, 1989. If it is found that these importations are causing injury to Canadian production, further imports will be subject to an anti-dumping duty.

Transit Concrete Mixers

On August 4, 1989, the Deputy Minister of National Revenue, Customs and Excise, initiated an anti-dumping investigation with respect to certain transit concrete mixers from the United States. The Department will now conduct an investigation to determine whether or not these goods are being dumped into the Canadian market. Dumping will be found if the concrete mixers are being sold to importers in Canada at prices which are lower than their full cost of production in the American market.

The Deputy Minister is scheduled to release a preliminary determination on whether or not concrete mixers are being dumped into Canada by November 2, 1989.

Carbon Steel Wire

The CITT will be reviewing an earlier finding of the anti-dumping Tribunal that imports of certain brass coated carbon steel wire from Belgium and Spain are causing injury to Canadian production of the same goods.

The Tribunal is reviewing the decision in light of the fact that the sole Canadian producer of the goods has announced that it ceased production of them on July 1, 1989.

A review of the finding is conducted pursuant to Section 76 of the *Special Imports Measures Act* which allows the Tribunal, on completion of their review, to rescind the finding or to continue it with or without amendments.

STUDY REVEALS CANADIAN AND U.S. INDUSTRIAL SUBSIDIES LOW

Article 19.07 of the *Free Trade Agreement* provides for the establishment of the Canada/U.S. Subsidies and Trade Remedies Working Group. This group is responsible for developing new rules and disciplines for subsidies and countervailing and anti-dumping duties over a period of five to seven years. A recent study by the Institute for Research and Public Policy (IRPP) suggests that it should be possible to negotiate a subsidy agreement with the United States because both U. S. and Canadian industrial subsidies are relatively small and have little trade-distorting impact.

The study, prepared by Jean-Francois Bence and Murray G. Smith of the IRPP, reviews the federal subsidy and assistance programs for the non-agricultural sectors in the United States and Canada. It relies on 1984 data and the measures covered include grants, direct loans, loan guarantees and duty remission programs. The study concentrates on 83 non-agricultural industries because both countries provide massive subsidies support for agricultural products.

The study estimates that, in 1984, the average rate of subsidies for non-agricultural industries in the United States was 0.5%. In Canada, the average rate of federal subsidies for non-agricultural industries was estimated to be twice as high at approximately 1%. The data also indicates that only four industries in Canada and in the United States received subsidy rates greater than 5%, and that an additional six industries in each country fell in the one to five percent subsidy range. The industry with the highest subsidy rate in Canada was found to be fisheries with a measured subsidy rate of 23.7%, and forestry in the United States with a comparatively lower measured subsidy rate of 11.93%.

The study also found evidence of concentration in the allocation of subsidies among industries. In the United States, the petroleum and gas industry and the transportation industry were the most heavily subsidized. In Canada, the heavily subsidized industries were shown to be communications, transportation and the oil and gas industry. Most of the programs directed to

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the oil and gas industry have now been dismantled.

Only thirteen industries in the United States and eleven industries in Canada were found to have a subsidy rate above 1%. The study states: "In general, subsidies less than 1% of production costs are unlikely to affect international trade or domestic production significantly."

The study concludes that "Since direct federal subsidies in the non-agricultural sectors of both economies average less than 1% of the value of production and have a modest affect on bilateral trade, it should prove possible to develop bilateral rules for subsidies and countervailing duties."

B.S.W.

CANADA FIRST TO PROPOSE NEW GATT SUBSIDY COUNTERVAIL RULES

On June 28, 1989, the first comprehensive proposal for reforming international rules or procedures on trade-distorting subsidies and countervailing measures was tabled by Canadian negotiators in Geneva. The existing GATT agreement on Subsidies and Countervailing Measures contains imprecise language that has not been adopted by all GATT members. This, in turn, has created uncertainty and numerous bilateral disputes or unilateral trade actions.

The proposal itself is based on the framework for negotiations which trade ministers agreed to at the mid-term review of the Multilateral Trade Negotiations (MTN) in Montreal in December, 1988.

Section 1 of the proposal discusses prohibited subsidies and suggests the extension of the existing prohibition on industrial export subsidies, in the GATT and Article 9 of the Subsidies Code, to primary products such as agricultural, fish and forest products. The purpose of this extension is to remove the artificial distinction between primary and non-primary products. Also proposed is the development of a "List of Prohibited Export Subsidies," the violation of which would constitute a *prima facie* case of nullification and impairment.

The proposal also recommends that subsidies which are contingent upon export performance or upon the use of domestic over imported goods be explicitly prohibited under the GATT. Procedures

are recommended to allow signatories to request multilateral rulings on whether other signatories are using prohibited practices.

Section 2 of the proposal makes recommendations for strengthening multilateral rules on the use of countervailable or otherwise actionable subsidies. The proposal suggests that a basic condition for countervailability should be the existence of a financial contribution by government and a specificity requirement which has the effect of limiting access to a subsidy to a particular industry.

The proposal also suggests tests for imposing countervailing duties in the importing country and recommends the establishment of a tighter injury standard for the application of countervail and the introduction of a *de minimis* standard establishing a minimum level of subsidy below which countervail would not apply. Where a domestic industry in a country seeking countervail action is itself receiving a government subsidy, the proposal recommends a requirement to deduct the subsidy received by its own industry in calculating the amount of subsidy for countervail purposes.

The proposal also recommends a number of amendments to the countervail investigation procedures including classification of the definition of industry, the standing of petitioners, the use of a sunset clause and the use of undertakings. Also recommended is the introduction of a reasonable time period following the initiation of an investigation to allow exporters and importers to respond to allegations by petitioners.

Section 3 of the proposal recommends the development of a category of non-actionable subsidies for those practices which are non-distorting. For example, programmes which offer regional development assistance, worker adjustment, assistance to research and development, or, are generally available to industries within designated geographic areas, would be considered non-actionable subsidies. The proposal recommends that a special safeguard procedure be established to provide recourse to a multilateral panel for ruling on whether a subsidy in a countervail investigation is a non-actionable subsidy.

By deciding on which types of subsidies are trade-distorting, the current MTN subsidy and

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countervail negotiations can help to ensure that exporters in all trading nations can act with greater certainty in world markets. In addition, progress in the MTN in this area should help guide forthcoming negotiations between Canada and the United States under the *Free Trade Agreement* on bilateral subsidy and countervail rules.

B.S.W.

STEEL VOLUNTARY RESTRAINT AGREEMENTS RENEWED

By: Gary N. Horlick and Michael A. Meyer
O'Melveny and Myers, Washington

On July 25, 1989, President Bush announced his decision to renew the Voluntary Restraint Agreements (VRAs) on steel initiated by President Reagan in 1984. The program, set to expire on September 30, 1989, will be extended for a two-and-one-half year period through March 31, 1992. The President added that U.S. negotiators will work toward a multilateral steel liberalization agreement in the Uruguay Round of the *General Agreement on Tariffs and Trade (GATT)* during the extension period. He expressed hope that, through the multilateral negotiations, free trade in steel can be achieved while the two-and-one-half year extension will allow domestic producers to prepare for a more competitive market.

The present VRAs limit the importation of steel from VRA countries into the United States to 18.4 percent of the U.S. market (non-VRA countries currently have 5 to 6 percent of the U.S. market; of these, Canada has over 3 percent). Currently twenty-nine countries are signatories to the agreements.

The renewal of the steel VRAs will have little or no direct effect on the Canadian steel industry. Unlike 1984, when the current steel VRAs were imposed, Canada has not been considered in the VRA discussion. The *Canada-U.S. Free Trade Agreement* has created an atmosphere in Washington in which Canada-U.S. trade problems, including steel, are dealt with mainly within the *FTA* context.

Bilateral negotiations have begun with the five major steel exporters to the United States: Japan, EC, Korea, Brazil and Mexico, as well as Australia. The U.S. has presented these trade partners with a sweeping proposal calling for the end of non-tariff market access barriers and the removal of most subsidies. United States Trade Representative, Carla Hills, indicated that a country's cooperation in the multilateral negotiations and the utilization of its previous quota will be factors in determining the reallocation of the quotas.

The reaction to the extension of the steel VRAs has been mixed. U.S. steel producers had urged the administration to extend the VRAs for an additional five years, but were nevertheless pleased with the President's determination to achieve a multilateral steel liberalization agreement. Steel importers and users have praised the proposal as being a well-balanced and reasonable compromise that should gradually phase out the VRAs and therefore reduce shortages and lower prices.

Bush's plan has also been received with great skepticism from several sources. There is doubt as to whether the USTR can successfully negotiate any VRAs by September 30. Even more doubtful is the government's ability to negotiate a multilateral agreement before the VRAs expire. Senator John Heinz (R-Pa) expressed his concern saying, "The President's negotiators have only 30 months to achieve a goal that has eluded us for 20 years."

The mechanics of negotiations may prove difficult, as some countries (Australia, Korea, Japan) have little or no history of subsidization, while some European and South American countries have been found by the U.S. to be heavily subsidized in steel countervailing duty cases. Indeed, the U.S. itself is claimed to have given billions of dollars, and substantial trade protection, to its steel companies in the 1980s.

CANADA-U.S. FREE TRADE AGREEMENT

The debate continues between U.S. and Canadian officials over how to verify Canada's

CANADIAN COMPETITION POLICY RECORD

compliance with the *FTA* concerning duty-remission programs for automobiles. Canada has refused to grant access to the actual memoranda-of-understanding between the Canadian government and foreign car companies requested by the United States. The U.S. has balked on Canada's proposal to have an independent examiner review the public and confidential records and make a determination of compliance.

Canada announced that it will request immediate review under the *FTA*'s Chapter 19 dispute settlement provisions in response to the Commerce Department's July 17, 1989, finding that Canadian pork exports are subsidized. Commerce assessed a countervailing duty of 3.6 cents per pound on Canadian exports of fresh, frozen and chilled pork. Insisting that the National Tripartite Hog Stabilization Program is not a subsidy, Canadian Trade Minister John Crosbie said, "The Commerce decision wrongly assumed that subsidies paid to farmers are fully passed through to producers." The Canadian government plans to bring the issue to the *General Agreement on Tariffs and Trade* if the International Trade Commission finds that imports of pork are injuring the U.S. swine industry.

The United States Trade Representative has published notice in the Federal Register calling for comments on a list of 2,800 products proposed by the U.S. and Canada for tariff reduction under the *FTA*. The list represents a substantial portion of the 20 to 25 percent of goods that are not yet duty-free but are scheduled for tariff reduction over the next ten years. U.S. implementing

legislation allows for the President to accelerate the tariff reduction program.

AD/CVD Cases

Limousines

Antidumping and countervailing duty cases have been filed against Canadian limousine imports by Southampton Coachworks Ltd. The Canadian producer is allegedly dumping by margins of 19.37 to 24.35 percent. The petition is the second trade case filed against Canada since the implementation of the *FTA*.

New Steel Rails

On July 27, 1989, the Commerce Department announced its determination that new steel rails from Canada are being subsidized and sold at less than fair value. The subsidy rates range from 0.24 to 113.56 percent for Algoma Steel Corporation and Sydney Steel Corporations, respectively. The weighted-average dumping margin for all exporters is 38.79 percent.

Choline Chloride

The International Trade Administration has published the preliminary results of an administrative review of choline chloride from Canada. The review covers the period from November 17, 1986 through January 8, 1988. A *de minimis* margin of 0.0008 percent *ad valorem* was found and the Department issued a notice of its intent to revoke the order pending a final determination.

G.N.H.