

# TRADE POLICY DEVELOPMENTS

## CANADIAN TRADE UPDATE

By: Brenda Swick-Martin  
Fraser & Beatty, Ottawa

### Canada-U.S. Trade

#### U.S. Trade Action against Canadian Beer

The American government is proceeding with an investigation of Canadian beer marketing practices pursuant to s. 301 of the U.S. *Trade Act*. Under Section 301, the United States trade representative is authorized to respond to any act, policy or practice of a foreign government that is unjustifiable, unreasonable or discriminatory and that burdens or restricts U.S. commerce. Foreign actions complained of under s. 301 must be in the nature of foreign government conduct, as distinct from purely private activity. The U.S. Trade Representative is authorized to take several types of retaliatory action including the imposition of duties or other import restrictions on the goods of, or restrictions on the services of, the foreign country. In this case the petition filed alleges that Canadian beer regulations are hampering American breweries access to the Canadian beer market. This action comes after the Canadian government's commitment to comply with the 1987 GATT Panel Ruling on provincial liquor board marketing practices.

#### Ice Cream and Yoghurt Update

Late last year, a GATT panel ruled that Canada's quota restrictions on ice cream and yoghurt were inconsistent with Article XI of the GATT. Canada has not yet implemented the panel's decision and the United States has asked the Canadian government for a report on the progress of its implementation. If Canada does not proceed with implementation in the near future, the United States intends to seek

authorization from the Council to suspend concessions to Canada.

#### FTA Dispute Panel on Pork Orders Remand

A bi-national dispute panel under the *Free Trade Agreement* has ruled that the threat of injury determination issued by the U.S. International Trade Commission (ITC) against imports of Canadian pork is not supported by the evidence on the record. Consequently, the Panel has remanded the issue to the U.S. for ITC reconsideration. The Commission has until October 23, 1990 to provide the Panel with the results of the remand.

#### FTA Automotive Select Panel Issues Recommendation

The Automotive Select Panel is a bi-national private sector advisory group established under the Canada-U.S. *Free Trade Agreement*. Its mandate is to assess the state of the North American auto industry and to propose measures which will improve the industry's competitiveness in the North American and foreign markets. Recently, the Panel issued a recommendation to increase the rule of origin under the *Free Trade Agreement* from 50% to 60%. The federal government has responded that it will not implement the Panel's recommendation because of its conclusion that the cost of increasing the content rule will fall on Canada while most of the benefit will be held by the United States.

#### FTA Panel Rules on Steel Rails Appeal

In February 1989, the U.S. Commerce Department imposed a 106% countervail duty on steel rails exported by Sydney Steel Corp. of Sydney, Nova Scotia. The tariff was later reduced to 94%. The decision of the Commerce Department was appealed to a bi-national panel set up under

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the Canada-U.S. *Free Trade Agreement*. Recently, the panel issued its decision which upheld the 94% countervailing duty.

Sydney Steel Corporation has traditionally exported \$3 million worth of steel rails to the U.S. per year. The impact of this ruling on the shipments of steel rails to the U.S. is yet to be determined.

### Canadian Furniture Manufacturers Hit by FTA

The *Free Trade Agreement* (FTA) is apparently causing hardship for the Canadian furniture industry. Since the implementation of the FTA, there have been 24 bankruptcies declared by Canadian furniture manufacturers. In addition to this figure, 32 companies had to either halt manufacturing or shut down operations.

The Canadian International Trade Tribunal (CITT) has been requested by the Minister of Finance to examine tariff phase-outs for the parts and material used in the manufacture of furniture. Furniture manufacturers have subsequently been asked by the CITT to make written submissions concerning the impact of increasing furniture imports under the FTA.

The inquiry comes after a recent statement by the Canadian Council of Furniture Manufacturers predicting that furniture manufacturers will eventually go bankrupt without federal government assistance.

### Update on the GATT

#### GATT Examines Canada's Trade and Economic Policy

The GATT Secretariat is currently examining Canada's trade policy under the Trade Policy Review Mechanism (TPRM). The TPRM provides for the review of the trade policies of contracting parties. Its objectives are:

- to enhance transparencies with the multilateral trading system by improving the GATT's ability to monitor and assess its members' trade policies; and
- to enhance the credibility of the GATT by improving its surveillance of the world trading system.

The trade policies of Canada, the U.S., the EC and Japan will have been reviewed by the end of 1990. Canada's review was held on July 30, 1990.

The report on Canada endorses Canadian trade and economic policy initiatives at making Canada more competitive in world markets. The report will be published by the Secretariat for public consumption in the near future.

It is hoped that the TPRM reviews will assist domestic policy makers in assessing the international trade implications of domestic policies.

#### GATT Panel Rules against EC Duties on Screwdriver Assembly Products

Article 1310 of the EC Council Regulation 2432/88 is aimed at preventing the circumvention of anti-dumping duties. Under the regulation, anti-dumping duties may be imposed on an EC-assembled product if,

- it was assembled by a company related to a manufacturer whose exports were subject to the anti-dumping duties;
- it is produced at a substantially higher level after the initiation of an anti-dumping investigation; and
- if it uses parts originating in the country subject to the original anti-dumping duties, whose value exceeded all parts and materials used by at least 50%.

In 1988, Japan filed a complaint with the Council claiming that the EC regulation was inconsistent with a number of articles of the GATT, particularly Articles I, II and III.

The EC's rationale behind adopting the regulation is based on complaints from EC producers that low cost screwdriver assembly operations in the EC circumvent the original anti-dumping duties imposed on certain foreign final products. The GATT Council established a panel to look into the matter in October 1988. The panel submitted its report to the parties concerned in 1990. Interestingly, this dispute was the first case lodged by Japan and the GATT since becoming a contracting party in 1955.

The panel ruled that EC anti-dumping duties on screwdriver assembly products were not

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consistent with *GATT* provisions. In particular, the panel ruled that the anti-dumping circumvention duties on EC-assembled finished products were not customs duties within the meanings of Article II, but internal charges within the meaning of Article III. The Council has now adopted the panel report. The Commission has accepted the adoption of the report and will wait until the Uruguay Round is complete before the implementing the panel's recommendation.

The panel report has been criticized for failing to give any indication of how the problem of circumvention of anti-dumping duties should be resolved. Presently, Canada does not have a circumvention provision in its anti-dumping legislation.

### Dairy Farmers Threatened by *GATT*

The attempt by *GATT* negotiators to increase the free flow of agricultural products throughout the world is one of the stumbling blocks in the current round of *GATT* negotiations. In Canada, dairy farmers buy a quota to produce a pre-determined amount of milk. This amount of milk is then guaranteed by the government. To make this objective possible, the government restricts, and if need be, prohibits the importation of less expensive dairy products from other countries. If these products were freely allowed into Canada, this would upset the balance of supply and demand imposed under the present quota regime on Canadian dairy products.

The import restrictions imposed under the present quota regime for Canadian dairy products draw adverse reaction from Canada's trading partners who demand equal access to the Canadian market. Consumer groups would also like to see the Canadian market opened up due to the inflated prices of, for example, dairy products, poultry and eggs. In addition, food processors complain that high input costs force retailers to increase prices of other bi-products.

The federal government has announced that these barriers will remain in place at least until the current round of *GATT* negotiations are complete.

### *GATT* Report Released

Recently, *GATT* officials released a comprehensive report on Canadian trade policy. The 164-page report was prepared in cooperation with Canadian officials and is the first independent examination of Canadian trade policies to date.

The report points out that Canadian agriculture has traditionally received a great deal of government support, but that this support is beginning to decline. The recent trend has been for governments to reduce the assistance given to farmers and alternatively transfer these funds to other industries. The report states that the financial aid provided to the agriculture industry has fallen by more than 25% within the past three years. Meanwhile, assistance provided to other industries has nearly doubled.

### Canada's Export Control Policy Reduces Requirement for Export Permits

The federal government has introduced changes to Canada's export control list which will reduce the number of export permits required by Canadian businesses in trading with Eastern Block countries.

Restrictions have been substantially removed on exports of high technology to the Eastern European block and the Soviet Union, most personal computers, many electronic components and most telecommunications equipment. Restrictions will remain on image and signal processing systems and wide area networks. With respect to telecommunications equipment, restrictions will be dropped on small public branch exchanges (PBXs) and central office switches that meet certain performance restrictions.

Restrictions have also been lifted on 25 other items which have been removed from the export control list. These include electric furnaces, electric arc devices, manufacturing equipment for fiberoptic connectors, special equipment for the processing of quartz crystals, special equipment for the monitoring of acoustic emissions in airborne or underwater vehicles, thyristors, transistors, steel alloys, special thermal insulating materials, polycarbonate sheets and cathode ray tubes.

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The second important change to Canada's export control system is the introduction of a new general export permit applicable for trade between Canada and other COCOM member countries. The new permit will enable exporters to ship most controlled industrial goods to COCOM member countries without an individual export permit. Instead, a simple declaration on export documents will be required stating that goods subject to Canada's export controls are being exported and a similar declaration from the importer acknowledging receipt of the goods.

Canada has played a key role in the Coordinating Committee for Multilateral Strategic Export Controls (COCOM) which led to these changes and has been a strong proponent of more liberalized trade with Eastern Block countries and the U.S.S.R.

### Update on the Multilateral Trade Negotiations

Time is running short for negotiators at the MTN as the final phase of negotiations will begin in Geneva on Monday, October 8. The purpose will be to approve the final package of agreements.

In a recent speech presented to the Trade Negotiations Committee, Mr. Dunkel outlined the issues to be resolved and pressed for an early resolution of the outstanding issues.

He stressed the need for careful preparation as Ministers will be asked to adopt legal agreements which will often involve changes in national legislation and, these, almost invariably, in politically sensitive areas.

### EC/Canada Relations

With Europe 1992 fast approaching, it is seems appropriate to examine EC-Canada relations in a broader context. In 1974, in order to foster the development of long-term commercial and economic relations, Canada and the EC entered into an *EC/Canada Framework Agreement* for commercial and economic cooperation. The main features of the *Framework Agreement* are that:

- Canada formally recognizes the EC as having GATT most-favoured nation status which is reciprocated by the EC.
- Both sides agree to encourage increased and broader economic commercial cooperation

through all available means and mechanisms.

- The establishment of a Joint Cooperation Committee to supervise the further development of the EC-Canada relationship.

Under the *Framework Agreement*, the Commission and Canada have established an array of structures with consultation mechanisms to exchange information on developments. The *Framework Agreement* has provided the impulse behind cooperative endeavours in numerous sectors including metals and mineral products, wood and paper products, processed food, uranium, energy conservation equipment and processes, environmental technologies and telecommunications.

The EC has evolved into Canada's second largest trading partner. Canada's trade with the EC totalled \$26.1 billion in 1989. The majority of trade between the EC and Canada takes place without problem, however, some trade irritants do exist. Some of these include a Canadian countervailing duty on Community beef and, on the other hand, a reduced EC quota for Canadian newsprint and reduced access to the EC market for Canadian grains due to the EC's common agricultural policy.

Without doubt, Europe 1992 will have an impact on EC/Canada relations. The harmonization or in some cases, mutual recognition of technical standards within the EC will automatically benefit third countries, such as Canada, and should expand trade.

### Canada Hopes to Join U.S.-Mexico Trade Deal Negotiations

Mexico is Canada's largest trading partner in Latin America and is one of Canada's top 20 partners in global trade. Preliminary statistics for 1989 show that trade between Canada and Mexico increased approximately 25% over 1988 to Cdn \$2.28 billion. It is expected to continue growing in the short term and could reach Cdn \$5 billion by the year 2000. Canadian exports such as grains and oil seeds, automotive and telecommunications equipment to Mexico totalled \$600 million in 1989. Canadian imports from Mexico in 1989 totalled \$1.68 billion Canadian and were comprised mostly of manufactured goods

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and agricultural products. Given these trade statistics, it is not surprising that Canada wants to participate in trilateral talks with the United States and Mexico in their attempts to negotiate a free trade arrangement.

From the Mexican perspective, a free trade agreement with the U.S. is needed to protect its access to the U.S. market. As well, Mexico is looking to Canada to assist it in expanding its agricultural and forestry production capabilities, and for goods and services related to the energy and tourism sectors. Of major interest to Mexico are goods and services to expand their telecommunications infrastructure.

The Canada-U.S. FTA gives Canadian products privileged access to the U.S. market. Mexico, with 85 percent of its manufactured exports designed for the U.S. market, is directly affected by this arrangement. However, any Mexico-U.S. free trade agreement will affect Canada's advantage in the U.S. market as well.

Canada's decision to participate in the trade talks could lead to the establishment of a Canada-U.S.-Mexico market with a GNP of \$7 trillion (U.S.). Such a large market would be in a strong position to compete against the European Community's output of \$5.6 trillion.

### **CITT launches Enquiries in Canadian Horticultural Industry**

The Canadian International Trade Tribunal (CITT) is currently preparing to embark on an enquiry into the competitiveness of the Canadian fresh processed food and vegetable industry. The enquiry is in response to a letter of reference issued by the Governor in Council directing the Tribunal:

- to develop a representative profile of the domestic industry on a regional and national basis, including trends and conditions respecting the structure of the industry, production, consumption, marketing and trade patterns;
- to conduct an examination of Canadian-U.S. government intervention which has a direct impact on the competitive conditions for the fresh and processed fruit and vegetable industry, including regulations, production and trade programs and tax legislation at the federal and sub-federal levels;

- to determine factors which contribute to the differences in the competitive position of the Canadian and foreign production both in the Canadian market and EC export markets, particularly with respect to the U.S. market; and
- to provide an overall assessment, based on the above, of the challenges and opportunities facing the industry in the coming years including the identification of factors which may improve the viability of the sector.

A hearing is scheduled for September 24, 1990 to determine the procedures which will govern the public hearing into the matter. Thereafter, public hearings will be held across Canada from November 1990 to March 1991. The Tribunal has to submit its report to the Governor in Council by December 1991.

### **Anti-dumping/Countervail Update**

#### **Four-Wheel Drive Tractors from Germany**

A preliminary determination of dumping respecting municipal tractors from the Federal Republic of Germany has been issued by the Deputy Minister of National Revenue, Customs and Excise (Deputy Minister). The investigation follows a complaint filed by Trackless Vehicles of Courtland, Ontario.

The CITT will now determine whether the dumping is causing material injury to Canadian production.

#### **Stainless Steel Pipes**

The CITT will review the finding of the Canadian Import Tribunal concerning certain stainless steel pipes from Japan, the United Kingdom and Sweden. The CITT will also review the findings with respect to imported stainless steel from the United States, the Federal Republic of Germany and the Republic of Korea.

#### **Charcoal Briquettes**

The CITT issued a notice of expiry on December 19, 1989 relating to charcoal briquettes. The CITT, having received no representations in support of a review, will allow the finding to expire.

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## Refill Paper from Brazil

On June 6, 1990, the CITT issued a decision stating that imports of dumped and subsidized refill paper from Brazil had caused, were causing, or were likely to cause, material injury to production of like goods. The Tribunal agreed the Canadian refill paper production was materially injured through price suppression as a result of the presence, in the market, of the low-price Brazilian refill paper and through the loss of sales to a major customer during the 1989 season. The Tribunal also found the likelihood of material injury to Canadian production of the product.

## Stainless Steel Bars from India

The Deputy Minister has issued a preliminary determination with respect to the dumping of certain stainless steel bars from India. The CITT will now examine the issue of whether the dumped imports are causing material injury to domestic production.

The stainless steel bars are currently subject to a provisional duty calculated at 61.42% of the export price of the goods.

Self-adhesive Photo Albums and  
Self-adhesive Leaves

The Deputy Minister has issued a preliminary determination of dumping respecting self-adhesive leaves and photo albums with self-adhesive leaves from Thailand, Indonesia and the Philippines. The CITT will now conduct an inquiry into the question of material injury to the production of like goods in Canada.

## Lint Rollers

The Deputy Minister has initiated an investigation into the dumping of lint rollers, lint roller refills, lint brushes and fabric combs from the United States. The Deputy Minister must decide whether or not to make a preliminary determination of dumping before October 1990.

Expiration of Undertakings for Certain  
Station Post Insulators

In July 1987, the Deputy Minister accepted undertakings from Japan and the Federal Republic of Germany with respect to the dumping of certain high voltage porcelain station post insulators. Under the *Special Import Measures Act (SIMA)*, written undertakings to revise the selling price of goods imported into Canada can be submitted by foreign exporters to the Deputy Minister before preliminary determination is issued. To be acceptable, the undertaking must either completely eliminate the subject dumping or must eliminate the injury to Canadian production. Once undertakings are accepted by the Deputy Minister, all proceedings in the investigation are suspended. As long as undertakings are enforced, no duties are collected.

On July 6, 1990, the undertakings for the subject post insulators were allowed to expire and all proceedings under the *SIMA* are now terminated.

## Reviews

The CITT has rescinded the following findings:

- certain alloy, steel bars, plates and forgings from Brazil, the Federal Republic of Germany and Japan in enquiry No. ADT-2-83; and from Austria, the Republic of Korea, Sweden and the United Kingdom in enquiry No. ADT-8-85;
- expanded vinyl-coated knitted products from the Republic of Korea in enquiry No. ADT-14-83;
- certain carbon steel welded pipes from the Republic of Korea in enquiry No. ADT-6-83;
- certain hydraulic turbines for electric power generation in the U.S.S.R. in enquiry No. ADT-4-76;
- certain alternating current electric generators from Japan in enquiry No. ADT-11-79;
- certain alternating current electric generators from Italy in enquiry No. ADT-8-83; and
- certain hydraulic turbines or original equipment proponents thereof from Japan and the Republic of Korea in enquiry No. ADT-9-84.

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**URUGUAY ROUND PROGRESS**

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

The Trade Negotiations Committee (TNC) of the *General Agreement on Tariffs and Trade (GATT)* met in late July to assess the results of the past three and a half years of the Uruguay Round negotiations. While most of the negotiating groups presented draft papers to the TNC, very few areas have reached substantial agreements. In an effort to bring the talks closer to their final form, Director General Dunkel established an accelerated timetable and new procedures for completing the talks. The pressure to create a successful agreement is mounting and the personal participation of the Director General will be necessary to force compromises and move the talks forward.

Dunkel established the new timetable and procedures to try to ensure that the trade ministers from the participating countries would have the "barest minimum" of policy decisions to make at the final Uruguay Round meeting set for December 3 in Brussels. Mr. Dunkel has asked all negotiating groups to meet from the last week of August to the first week of October to resolve any outstanding difficulties. From October 8 to the first week in December, senior negotiators must meet in Geneva "with the full power to negotiate and conclude agreements," in Dunkel's words.

Director General Dunkel also issued his assessment of each of the negotiating groups and suggestions for overcoming existing impasses.

**Market Access Negotiations**

Dunkel has asked all parties to improve their offers on both tariff and non-tariff measures. Participating countries must table their final offers by October 15. "To reduce uncertainties as to where offers should be discussed," Mr. Dunkel has asked the negotiating groups on Tariffs, Non-Tariff Measures, Natural Resource-Based Products and Tropical Products to hold joint meetings. The United States has recently criticized the tariff negotiators for reaching less than half of the 33% tariff reduction goal set by the TNC.

**Tropical Products**

The tropical products negotiations have been closely linked to the agricultural talks with similar divisions between the developed and the developing countries. In order to expedite the progress of the tropical products talks, the Director General has suggested that timely submissions in the agriculture group would facilitate these talks.

**Rules of Origin and Preshipment Inspection**

The Director General has requested that the drafting groups on Rules of Origin in Preshipment Inspection identify compromise solutions by October 15.

**Textiles and Clothing**

The developing countries have rejected attempts by the EC to prolong the *Multifiber Arrangement (MFA)* to integrate textiles agreement into the *GATT*. The U.S. proposal to establish global quotas that would be gradually reduced has also received criticism. Dunkel has identified the problem of integrating the *MFA* into the *GATT* as the most urgent question before the group.

**Agriculture**

Often referred to as the key to the success of the Uruguay Round, the agriculture group (specifically the U.S. and the EC) is still split over the degree and means of reducing agriculture supports. Group members have agreed to accept the Chairman's paper as a basis for negotiations. As many as 50 countries have pledged to "walk out" of the Round if the agriculture talks fail. The Director General has urged the negotiators to submit country lists as soon as possible in order to accelerate the talks.

**GATT Articles**

Mr. Dunkel praised the "encouraging progress" made by the *GATT* articles group. He identified the use of measures for balance-of-payment purposes as the one area that has not been negotiated and called on participants to determine whether or not they will pursue this issue.

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### MTN Agreements and Arrangements

The MTN negotiations include customs valuation, government procurement, technical barriers to trade, import licensing procedures and antidumping. All areas are proceeding on the basis of specific texts with the exception of antidumping; the original draft text submitted by the Chairman was rejected by the participants. A second text has only recently been submitted to the parties and no official comments were available at the time of this writing.

### Safeguards

Director General Dunkel has stated that "[t]he single most critical issue is whether or not Article XI actions should be permitted on a selective basis." He has called upon parties proposing selective action to demonstrate circumstances that would justify selective action.

### Subsidies and Countervailing Measures

Progress has been minimal in the subsidies talks and the Director General has urged early progress on a revised version of the Chairman's text.

### Trade Related Intellectual Property Rights (TRIPS)

The United States stands alone from most countries in many areas under negotiation. A major issue raised by the EC that is stalling the talks is the U.S. insistence on excluding certain sectors, such as aviation, from the agreement (a result of domestic lobbying). The vast majority, however, supports universal application of the agreement. The Director General has noted that a consensus on the coverage of the framework is necessary to proceed successfully.

### Functioning of the GATT System (FOGS)

It is likely that the issues before the FOGS group will be hammered out before the trade ministers meet in December. Important issues

include strengthening the relationship between the GATT and the IMF and World Bank and the establishment of a World Trade Organization.

The Uruguay Round has reached its most crucial stage as it nears its scheduled close in December. General support still exists for strengthening the GATT and the fear of protectionism that could arise if the talks fail seems to be pushing the participants (although slowly) toward some agreement.

### U.S. - Canada Free Trade Agreement

#### New Steel Rails From Canada

In a 4-1 vote, a bi-national panel established under Article 19 of the U.S.-Canada *Free Trade Agreement* upheld the U.S. International Trade Commission (ITC) finding that new steel rails from Canada threaten injury to the U.S. industry. The challenge was brought to the panel by Algoma Steel Corporation and the Sydney Steel Corporation (Sysco), both from Canada.

Last month, the panel issued a decision in favour of Sysco that certain loan programs were not subsidies and remanded the issue to the International Trade Administration (ITA). On remand, the ITA lowered Sysco's countervailing duty margin. Another panel, considering Algoma's challenge to antidumping duty of 34 percent, affirmed the ITA finding in its August 30, 1990 decision.

### United States Trade Laws

#### Later Developed Products – Scope Ruling on Portable Electric Typewriters (PETs) from Japan

The United States International Trade Administration has issued its preliminary determination that certain later-developed portable typewriters are within the scope of the antidumping duty order on PETs from Japan. The determination found that the addition of a LCD, LED or CRT display and expanded or removable text memory does not necessarily remove a PET from the dumping order. The ITA considered the characteristics, expectations of purchasers, end uses, channels of sale and

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advertising methods in determining that some, but not all, of the later-developed machines fell within the scope of the dumping order.

#### Leather from Argentina

The ITA has preliminarily determined that leather imports from Argentina are no longer subsidized. The ITA issued a countervailing duty order in 1989 but has since found that Argentina has phased out and indefinitely suspended certain subsidy programs. The United States Customs Service will not require a cash deposit or bond on leather imports from Argentina. The total 1989 imports were valued at \$143.6 million.

#### Sweaters from Hong Kong, Taiwan and Korea

The ITA has issued its final determination that sweaters from Hong Kong, Taiwan and Korea are being sold in the United States at less than fair value. The ITA found dumping margins ranging from zero to 115.15 percent and an average rate of 25.41 percent for Hong Kong companies, zero to 24.02 percent (average 19.72 percent) for Taiwanese companies. A final affirmative determination of injury by the ITC would allow for the imposition of antidumping duties equal to the dumping margins.

#### Flat Panel Displays from Japan

Both the ITA and the ITC have initiated antidumping duty investigations of Flat Panel Displays (FPDs) from Japan. FPDs are electronic devices designed to display information when integrated into electronics systems (such as laptop computers). In a 4-0 vote, the ITC issued its preliminary determination that imports of FPDs injure the U.S. market. The petition was filed by the Advance Display Manufacturers Association of Washington, D.C. alleging that FPDs from Japan are sold at less than fair value.

## INTERNATIONAL TRADE LAW

*The following articles are taken from "Update", a newsletter published by the International Bar Association's Business Law Section (Committee on Antitrust and International Trade Law).*

### AUSTRALIA

#### Abolition of Antidumping Duties Between Australia and New Zealand

The Australian government has introduced legislation for the abolition of anti-dumping duties in respect of goods of New Zealand origin that are sold into Australia effective July 1, 1990.

Instead of anti-dumping duties, the trade practices (competition) legislation of each of the countries will be amended.

#### Australian Law Reform Commission Review of Customs Legislation

The Australian Law Reform Commission's review of the *Customs Act* is proceeding. The Law Reform Commission has issued numerous discussion papers or working papers on topics including:

- refunds, remissions and rebates of customs duty and recovery of overpaid monies;
- customs prosecutions, customs jurisdiction and administrative penalties;
- seizure and forfeiture of goods;
- binding customs rulings.

The Law Reform Commission is due to report by December 31, 1990.

The Law Reform Commission has been criticized for not reviewing the extremely complicated and contorted provisions of the *Customs Act* dealing with valuation. These provisions were substantially amended by Parliament after the Law Reform Commission received its reference.

#### OEM'S Court Action Admissible

The EC Court of Justice held that OEM importers may bring action against a regulation imposing anti-dumping duties on products found

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to have been dumped by the exporters. The two plaintiffs, Nashua and Gestetner, were found to be directly and individually concerned by a regulation imposing duties on photocopiers manufactured by their suppliers, Ricoh and Mita. The relationship between the manufacturer/exporter of the product and the OEM importer, who sells the products under its own brand, was found to be a "special" one, making OEM importers individually concerned. However, both cases were dismissed on the merits.

### New Anti-Dumping Measures

Final anti-dumping duties have been imposed on mini-ballbearings from Thailand. This was accompanied by the acceptance of an undertaking by the Thai government in the parallel anti-subsidy proceedings concerning the same product. Final duties were also imposed on small screen, colour televisions from Korea.

### GATT

#### Countdown in the Uruguay Round

Negotiations have been highly charged in recent meetings of the Uruguay Round. In textiles, an association of developing countries has proposed rapid integration of world textile trade in the GATT. Meanwhile in dispute settlement, several proposals have been floated calling for the addition of an appeal mechanism in panel cases. In the services negotiations, delegates have continued testing the waters of sectoral services agreements, and working groups have been established to conduct informal consultations in the following services sectors: financial services, telecommunications, transportation, construction and engineering, professional services and tourism. Consultations will also take place on the issue of labour mobility.

#### History in GATT Council

The Soviet Union made history in the May meeting of the GATT Council as the contracting parties approved the USSR's request for observer status. The Council chairman said the Soviet

observer status could presage a "truly unified economy on a planetary scale".

### JAPAN

#### Trade Secret Protection Reinforced

The *Unfair Competition Prevention Law* of Japan was amended allowing injunction proceedings aimed at protection of trade secrets. Many enterprises had long accused Japan of its lack of effective protection of secrets. The new injunction proceedings are expected to be effective to protect trade secrets in Japan as they are in the U.S. and European countries.

#### Large Scale Retail Stores Law

According to the final report of the Strategic Impediments Initiative announced June 29, 1990, the government will submit to the Diet a bill to amend the Large Scale Retail Stores Law, thereby shortening the notorious waiting period from about ten years to one year. This amendment is expected to eventually expedite importation of goods from foreign countries.

### NEW ZEALAND

The Minister of Justice has identified the need for a trans-Tasman judicial institution to handle disputes arising out of the *Closer Economic Relations Agreement* (CER) between Australia and New Zealand. With effect from July 1, 1990, the CER establishes to a large degree an "Australasian Common Market". The Minister noted that in the age of common markets and trading blocs, international higher courts are a necessary part of the judicial infrastructure, citing the European Court of Human Rights and the Court of Justice of the European Community.

As noted, with effect from July 1, 1990, the CER between New Zealand and Australia has been significantly broadened. The Prime Ministers of Australia and New Zealand have recently met to explore the expansion of CER to services.

The agreements reached between New Zealand and Australia as a result of the Prime Ministerial meetings deal with aviation, a services protocol,

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shipping, telecommunications, global tariffs and investment.

### UNITED STATES

As it pursued the Uruguay Round talks – its highest trade priority – the U.S. administration took other actions that will have far-reaching effects on U.S. trade relations with other countries, in both bilateral and multilateral contexts.

#### Structural Impediments Initiative

The U.S. and Japan announced an agreement on the so-called Structural Impediments Initiative (SII). This is an extraordinary agreement in that it seeks to address the perceived underlying economic causes of the stubborn U.S. trade deficit with Japan. Japan promised a substantial increase in public infrastructure investment, land use reform, changes in the Japanese distribution system, stronger antitrust enforcement, opening of the “keiretsu” system of corporate networks, and efforts to reverse the pattern of higher prices for goods in Japan. The U.S. made commitments to take actions to improve U.S. savings and investment patterns (including its domestic “top priority” of reducing the federal budget deficit), strengthen the competitiveness of U.S. industry (e.g. with antitrust and product liability reform), support improved corporate investment, accelerate government deregulation of industry (especially reduction of export controls), support research and development, promote exports, and assist work force education and training. The performance of the two governments under this agreement, and the relationship between these efforts and the bilateral trade balance, will be difficult to measure.

### “Super 301”

The U.S. suspended its investigations of the trade practices of Japan identified as priority items in the Super 301 investigation, having reached bilateral agreements on improved market access in Japan for satellites, supercomputers and wood products. The U.S. decided not to retaliate against India, the only country left on the Super 301 list, announcing it will seek to resolve its problems with India in the Uruguay Round.

#### Free Trade Area for the Western Hemisphere

President Bush announced his intention to seek the creation of a free trade area embracing North, Central, and South America. This followed his joint announcement with President Salinas de Gortari to seek a U.S.-Mexico free trade area. The proposal was greeted warmly by South American leaders. It can be explained in part as a reaction to the move toward a single European market, but perhaps most significantly as a move by the U.S. to support and encourage the current democratic, market-oriented reform being attempted in much of Latin America.

#### Trade with the People’s Republic of China

President Bush elected to renew the U.S.-PRC trade agreement and thus to maintain MFN treatment by the U.S. for the PRC. He was under pressure to renounce MFN treatment because of the events of June 1989. He made his choice based on his reading of the applicable U.S. law (the “Jackson-Vanik Amendment” of the *Trade Act* of 1974, which prohibits MFN treatment by the U.S. for countries with restrictive emigration policies laws) and his judgment that termination of the agreement would do more harm than good.