TRADE POLICY DEVELOPMENTS

GOVERNMENT ANNOUNCES QUOTA HEARING ON AGRICULTURAL PRODUCTS

By: Paul K. Lepsoe,
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The federal government has announced an inquiry into the method of allocating import quotas for agricultural products. The inquiry was instituted by Industry Minister Michael Wilson and Agriculture Minister Bill McKnight on August 14, using the power of Cabinet under section 18 of the *Canadian International Trade Tribunal Act* to require the CITT to inquire into "any matter in relation to the economic, trade or commercial interests of Canada with respect to any goods or services."

The principal agricultural products subject to import quotas are chicken, turkey, eggs, cheese, ice cream and yoghurt. At present, quotas are allocated under the *Export and Import Permits Act* by several different methods. The quotas exist in order to restrict the entry of agricultural imports that could otherwise flood the market and thereby undermine the various supply management programs for agricultural products in Canada.

Notably, the inquiry will be concerned only with the allocation of quotas among importers, and not with the more contentious overall levels of quota. Canadian food processors will therefore only have the opportunity to argue that existing rights to import should be shared differently, not that more imports should be allowed in order to lower their input prices. The CITT has indicated that it will consider "the impact different quota allocation methods have had or might have on the marketplace and on the competitive behaviour of its participants."

A preliminary hearing will be held in October 1991, with a main hearing in January 1992 and final arguments to be heard in June 1992. The CITT is to report by October 1992.

CITT HEARING INTO DUMPING OF U.S. BEER

By: Paul K. Lepsoe
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In June 1991, Revenue Canada made a preliminary determination that certain brands of American beer were being dumped into the British Columbia market. As required by the *Special Import Measures Act* (*SIMA*), the Canadian International Trade Tribunal (CITT) carried out an inquiry to determine whether the dumping of the goods has caused, is causing or is likely to cause material injury to production in Canada. Public hearings were held in September.

Just prior to the commencement of the hearing, Revenue Canada issued its final determination in the matter. It found that all of the product of the American brands (principally Old Milwaukee and Stroh) imported during the period under study had been dumped, at margins ranging from 8.3 percent to 36.7 percent. By federal and provincial law, the sole importer of beer into the province is the B.C. Liquor Distribution Branch.

The complaint was initiated by Labatt Breweries of B.C., Molson Breweries (B.C.) and Pacific Western Breweries. The record before the CITT showed that Labatt and Molson together account for about 95 percent of beer production in B.C., and about ninety percent of the beer consumed in the province.

Counsel for the Director of Investigation and Research under the *Competition Act* participated

in the hearing as an interested party (see p. 7 of this issue for an article on the resulting court challenge). The Director's submission was made in the context of the rarely used section 45 of *SIMA*, which allows the CITT to recommend that the imposition of anti-dumping duties would not be in the public interest. This was based on what the Director claimed were the special circumstances of the market for beer. He characterized it as a "regulated oligopoly," where "imported beer is constrained by substantial non-tariff barriers which are equivalent to imposing a tariff of over 50%." These barriers include differential markups on imported draft beer and restrictions on the listing of imported beer for retail sale. He urged the CITT to recognize "the positive economic impact" of the imported U.S. beer as a "significant source of competition in the B.C. market."

The decision of the CITT is due by October 2.

GATT BEER PANEL UPDATE

By: Susan M. Brown, Student-at-Law
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The *GATT* panel established on December 12, 1990 in response to the request of the United States to examine the listing, pricing and distribution practices of provincial liquor boards with respect to beer, reported on September 18, 1991. Although the report has been circulated to the parties to the panel, its contents will remain confidential until it is adopted by the *GATT* Council. The report is not expected to be on the Council's agenda until its meeting in the first week of December, at the earliest.

The other ongoing *GATT* panel on this subject, requested by Canada to examine a range of U.S. federal and state measures which allegedly discriminate against the sale of Canadian beer, will commence hearing oral submissions this month. The results of this panel can be expected by March or April 1992.

UNITED STATES-CANADA TRADE RELATIONS

By: Michael A. Meyer
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Corn Dispute

The United States and Canada have agreed to take a long-standing dispute over Canadian countervailing duties against U.S. corn exports to a panel established under the *General Agreement on Tariffs and Trade* (*GATT*). The dispute arises from a 1987 ruling by the Canadian International Trade Tribunal (CITT) that subsidized imports of U.S. corn injured the Canadian producers. U.S. corn exporters appealed the decision in Canadian courts where the duties were upheld. The United States claims that the CITT's injury determination was contrary to Canada's obligations under the *GATT*. Total exports of U.S. corn to Canada were valued at US$68 million in 1990.

Senators Protest Allegedly Subsidized Fertilizer Plant

On August 1, 1991, twenty-two U.S. senators requested that United States Trade Representative Carla Hills seek negotiations with Canada concerning the allegedly subsidized Saferco fertilizer plant in Saskatchewan. The senators claim that the plant, which is still under construction, is receiving approximately $64 million in equity financing and $305 million in loan guarantees from the government of Saskatchewan. Echoing the complaints of U.S. fertilizer producers, the senators expressed their dissatisfaction with U.S. countervailing duty remedies, since the law requires the showing of injury which cannot be proved until the plant begins to ship to the United States.

Antidumping Petition Against Nepheline Syenite from Canada

The Feldspar Corporation (TFC) filed a petition with the Department of Commerce and the International Trade Commission (ITC) alleging that nepheline syenite imports are being sold in

the United States at less than fair value and that those sales injure a regional industry. Nepheline syenite is a mineral used in the production of glass products and as fillers. TFC claims that imports of nepheline syenite (which is not mined in the United States) injure producers of feldspar, aplite and feldspathic sand located in the northeast/north-central United States. The Commerce Department initiated its investigation on August 1, 1991 and, in a unanimous vote, the ITC issued its preliminary affirmative determination on August 26, 1991.

Antidumping Petition Against Steel Wire Rope from Canada Thrown Out on Preliminary

The ITC unanimously determined that there is no reasonable indication of injury or threat of injury by imports of steel wire rope from Canada. The ITC preliminary determination terminates the antidumping duty investigation.

United States Trade Law

Lug Nuts from Taiwan

The International Trade Administration (ITA) has issued its final determination that chrome-plated lug nuts from Taiwan are being sold in the United States at less than fair value. The dumping margins ranged from 6.57 per cent to 11.57 per cent. The ITC must release its final injury determination by early September.

Microwave Ovens from Japan

The ITC determined that imports of microwave ovens from Japan do not injure or threaten injury to the U.S. industry. The negative preliminary determination terminates the investigation.

Silicon Metal from Brazil

In a unanimous vote, the ITC determined that imports of silicon metal from Brazil injure the U.S. industry. The final determination opens the door for antidumping duties ranging from 87.79 per cent to 93.20 per cent to be assessed against silicon metal imports from Brazil.

Flat Panel Displays from Japan

The ITA announced that two of four types of flat panel display screens are being sold at less than fair value by Japanese exporters. The ITA found margins of 7.02 per cent for electroluminescent displays and 62.67 per cent for active matrix liquid crystal displays. Gas plasma displays were found to have *de minimis* margins and the ITA stated that petitioners did not have standing to bring a case against passive matrix liquid crystal displays since there was no domestic producer of the product. In a three-to-one vote, the ITC issued a final affirmative determination on August 15, 1991. The antidumping duty order is expected to be published in early September.

Minivans from Japan

The ITC has found a reasonable indication that imports of minivans from Japan injure the U.S. minivan industry. The ITA will now conduct its investigation to determine whether or not the minivans are being sold at less than fair value. The case is the result of an antidumping duty petition filed by Ford, Chrysler and General Motors. The role of Chrysler's production in Canada is expected to be a major issue in any final injury investigation.

NORTH AMERICAN FREE TRADE NEGOTIATIONS BEGIN

By: Michael A. Meyer
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The substantive negotiations to create a free trade zone between the United States, Canada and Mexico began last month with the creation of 17 negotiating groups and subgroups, and the appointment of the chief negotiators for each group. The negotiating groups met three times in preparation for the second ministerial meeting held on August 19-20 in Seattle, Washington. While the initial discussions have demonstrated

that fundamental differences exist between the three countries, the respective trade ministers remain hopeful that the agreement can be concluded by the end of 1991.

The negotiations have been divided into six groups: market access, trade rules, services, investment, intellectual property, and dispute settlement. The market access group has been divided further into six subgroups: tariffs/nontariff barriers, rules of origin, government procurement, agriculture, automobiles, and other industrial sectors. The trade rules group consists of two subgroups: safeguards/subsidies/trade remedies and standards. The services group is divided into six subgroups: principles for services, financial, insurance, land transportation, telecommunications, and other services. The chief negotiators for each group have met twice to date and have reportedly made progress in some, but not all, areas.

One area in which early progress has been reported is in the rules of origin subgroup of the market access group. The negotiators have tentatively agreed to apply the normal rule that a product will be accorded duty-free treatment if it is transformed in a signatory country to the extent that it changes its Harmonized Tariff System classification. This origin policy is the basic rule underlying the rules of origin in the *U.S.-Canada Free Trade Agreement* (the *U.S.-Canada FTA*).

Although the fundamental provision has been tentatively agreed upon, it is believed that the origin rule for automobiles will be a contentious issue among the parties due to the local content requirement that will likely be included in the *North American Free Trade Agreement* (*NAFTA*) as it was in the *U.S.-Canada FTA*. Under the U.S. Canada agreement, a car must have fifty per cent local content in order to receive the benefits of the *FTA*. The U.S. administration promised Congress that it would seek a greater local content requirement in the *NAFTA* than exists in the *U.S.-Canada FTA*, and is reported to favour a sixty per cent requirement; however, some members of Congress are pressing for a rule as high as 75 per cent.

Another area of contention promises to be the safeguards/subsidies/trade remedies subgroup of the trade rules group. Mexico's proposal that the three countries discuss reforms to their unfair trade laws (particularly antidumping and countervailing duty laws) quickly met with opposition from the United States. The U.S. negotiating position remains that any revisions to antidumping and anti-subsidy laws must occur in the *GATT* Uruguay Round multilateral trade talks. Canada faced the same resistance from the United States when it sought to reform U.S. unfair trade laws during the *U.S.-Canada FTA* negotiations. The 1987 negotiations were nearly derailed when the United States refused to amend its antidumping and countervailing duty laws for Canadian products. The agreement was saved by the establishment of the binational panel dispute resolution system for review of the AD/CVD determinations of each country.

It remains unclear whether or not a dispute settlement provision for AD/CVD cases similar to that established in Chapter 19 of the *U.S.-Canada FTA* will be included in the *NAFTA*. The United States Department of Commerce has expressed its opposition to such a review process unless Mexico significantly reforms its procedures for administering its unfair trade laws and its judicial review system. As reasons for its apprehension, Commerce cited Mexico's limited judicial review and a lesser degree of transparency in its administrative procedures than in the United States and Canada.

Although Congress extended the President's authority to negotiate the *NAFTA* without the fear of congressional amendments, it may still face resistance in Congress. Several powerful members of Congress have expressed continued skepticism about the benefits of the *NAFTA*. Richard Gephardt (D-MO), majority leader of the House of Representatives, and Representative Sander Levin (D-MI) have requested three separate studies by the Congressional Research Service (CRS), the Office of Technology Assessment (OTA) and the General Accounting Office (GAO) respectively to assess the effects of a *NAFTA*. CRS will examine the performance of U.S. companies in Mexico and future market share trends, and OTA will review Mexican and Canadian health and safety standards. The GAO has been asked to report on the trade and investment flows between the United States and Mexico and other countries and the

potential effect the *NAFTA* will have on U.S. jobs and salaries. The studies reportedly have been requested in response to criticism of the accuracy of the data presented to Congress by the administration. Rep. Gephardt has stated that he would seek to amend the fast-track negotiating authority if the administration fails to deliver an agreement that protects U.S. interests.

Many have claimed that the goal of completing a *NAFTA* by the end of the year is overly ambitious, but the negotiations are currently moving faster than expected. The negotiators are expected to exchange further proposals in all groups this fall, and that is when the most difficult bargaining will begin. The uncertainty over the success of the Uruguay Round has underscored the need for a solid *NAFTA* and has prompted negotiators to make every effort to keep to their original deadlines.