

CANADIAN COMPETITION POLICY RECORD

TRADE POLICY DEVELOPMENTS

THE POLITICS OF NORTH AMERICAN FREE TRADE

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

The United States, Canada and Mexico are now finalizing the North American Free Trade Agreement ("NAFTA"). As the negotiators haggle over the final details of the text, the U.S. administration is preparing for the political maelstrom it must now endure.

With little to no progress seen in the successful outcome of the Uruguay Round of multilateral trade talks, the importance of regional trade negotiations is becoming more apparent. The United States, Canada and Mexico embarked on an ambitious schedule of negotiations some 14 months ago to create a "free trade" area in North America. On August 12, President Bush announced that the NAFTA negotiations were completed but that the draft text would not be finished until September. Negotiators have reported that final agreement is near. The NAFTA will cover numerous sectors, including auto trade, textiles, energy, agriculture, tariff reduction, intellectual property rights, services and investment. The Agreement is also expected to contain provisions for dispute settlement that resemble Chapters 18 and 19 of the *U.S.-Canada Free Trade Agreement* as well as provisions designed to control the environmental impact of increased trade.

Under United States law, the completed Agreement must be presented to both Houses of Congress 90 days before the agreement is to be signed. This "waiting period" gives Congress a last opportunity to pressure for changes to the document. Following the signing of the NAFTA, the House of Representatives and the Senate will have 90 legislative days to adopt the text and its implementing legislation. Congress will be limited

to a "yes or no" vote on the agreement and will have no opportunity to amend it.

Members of Congress have closely monitored the NAFTA negotiations and many have expressed concerns over the labour and environmental provisions of the text. On August 6, the House of Representatives overwhelmingly passed a non-binding resolution warning the administration that it would not accept any agreement that did not protect U.S. health, safety, labour and environmental laws. The resolution was instigated by the July 27 announcement by House Majority Leader Richard Gephardt (D-MO) outlining provisions that needed to be included in the NAFTA in order for the Agreement to gain congressional approval.

Congress and the President could have a difficult time "selling" the agreement to the American people. The United States economy has seen little sign of improvement from a persistent recession. Although the NAFTA is expected to create a net gain of 175,000 jobs, any prospect of job loss resulting from the agreement will likely be met with public opposition. Furthermore, the United States is involved in several high profile trade disputes with Canada over steel, lumber and beer, and with Mexico over steel and cement. It will be difficult for U.S. politicians to promote the merits of NAFTA while in the same breath calling one or another party an unfair trader.

Public sentiment will play a particularly important role in the approval of the NAFTA since this is an election year. Even if the Agreement were concluded in August, the document could not be signed prior to the November election. In any event, congressional consideration of the text would not be completed until sometime in early 1993, after a new Congress has been elected.

Both candidates have already seized the opportunity to use the NAFTA to their political advantage. Administration insiders have commented that the Republican National Convention at the end of August was a major

CANADIAN COMPETITION POLICY RECORD

motivation behind completing the Agreement. The President highlighted the benefits of the Agreement in his acceptance speech. Governor Clinton has also recently spoken out on the NAFTA. Although a supporter of the Agreement, the Governor has joined Congressional Democrats in expressing reservations about the effect on labour and environmental standards.

In the words of a U.S. negotiator, from the administration's perspective, the timing for completion of the NAFTA "could have been better." If the Agreement had been completed last January, as once rumoured, the political fighting would be completed by now. The administration now faces the difficult task of selling the agreement to Congress and the American people at a time when much more is at stake.

FREE TRADE FROM MANITOBA TO MEXICO...

By: Sonia Yung
Fraser & Beatty, Ottawa

On August 12, 1992, Michael Wilson, Minister of Industry, Science and Technology and Minister for International Trade, announced in Washington that Canada had successfully reached a North American Free Trade Agreement (NAFTA) with the United States and Mexico.

Mr. Wilson claimed:

We have improved parts of the FTA (*Canada - U.S. Free Trade Agreement*) without giving up any of the gains we already achieved under that agreement. With the preferential market access we will now have to both the United States and Mexico, Canada will be even more attractive to potential investors."

Canada's primary objectives at the NAFTA negotiations were to secure better access to the Mexican market, safeguard and improve the gains made in the FTA, and maintain Canada as an attractive investment location in North America.

Of the items agreed upon, the phasing out of tariffs over the next ten years is a primary one. Mexico has also agreed to eliminate import licences. The tariff reductions will either be immediate or through equal annual cuts over five or ten years. Mexico will provide immediate duty-

free access for such Canadian exports as fish items, some grains, fertilizers and sulphur, certain wood and paper items, most telecommunications equipment, as well as many types of machinery manufactured in Canada including health and medical equipment.

Canada's tariffs on key import-sensitive sectors will also be phased out over ten years including such areas as apparel, most footwear, toys, plastic articles and other miscellaneous manufactured articles. Special tariffs will be imposed by Canada to prevent sudden surges of imports of certain fresh, frozen or prepared fruits and vegetables and cut flowers.

Tariff cuts to Mexico's import-sensitive sectors will also be phased in over ten years, including furniture, pharmaceuticals, certain grains, some wood products and some finished metal products. Both Canada and Mexico have the right to take safeguard measures that allow them to reimpose duties to protect producers from surges of imports.

The Auto Pact, a main concern of Canadian auto parts-makers, is preserved by NAFTA. The Mexican market, which was largely closed due to the restrictive Auto Decree, will be opened to Canadian auto exports. Canadian manufacturers will receive immediate access into Mexico for medium and heavy-duty trucks and buses. The North American content requirement for light vehicles, including cars and light trucks, to qualify for duty-free treatment has been raised to 62.5 percent in two stages over eight years. New plants will have five years to reach the new content level. Major plant refits will have two years. Another change to the Auto Pact is the extension of duty drawback for two years beyond the FTA expiry in 1994, and a new duty refund system thereafter.

Textiles and apparel, a source of a great deal of concern for both Canadian and American producers and manufacturers, will be subject to stricter rules of origin requiring greater sourcing in North America. For apparel, the new rules require that yarns and fabrics in a garment be made in North America to qualify under the Agreement. For textile fabrics, the rules remain largely unchanged. For yarns, the fibres must originate in North America. These new rules have been offset to a degree by increased "tariff rate quotas" which provide preferential access for

CANADIAN COMPETITION POLICY RECORD

Canadian producers to the U.S. market.

NAFTA also limits Mexico's use of restrictive trade practices in the energy sector. Mexico will be prohibited from applying discriminatory border restrictions and export taxes. The Agreement also attempts to clarify the rules regarding energy regulators to avoid discriminatory actions and to minimize disruption of contractual arrangements. Mexico's constraints on private ownership in its energy sector created a unique situation. While Mexico did not agree to security of supply provisions, neither did it obtain security of supply for its imports or security of access for its exports.

In the crucial area of services, NAFTA covers areas not previously dealt with by the *FTA*. Specialty air services have been included in the new Agreement and the trucking industry has been opened to allow greater freedom for trucks carrying cargo from Canada to the U.S. and onward to Mexico. Both Canada and Mexico have agreed to maintain their relatively open international maritime shipping market.

In addition, Mexico has agreed to open its market to business and professional services. There will be simplified temporary entry procedures for business persons and fewer restrictions on professionals. Mexico has also agreed to provide full access to its financial services market. Canadian banks, trust companies, securities brokers and insurance companies will be able to open subsidiaries, invest in, and acquire ownership of financial institutions in Mexico. Moreover, NAFTA establishes principles to which all countries must adhere, including equal treatment for foreign-owned and domestic firms. Also, for the first time, this sector will be subject to dispute settlement provisions.

The dispute settlement provisions of the *FTA* have been strengthened by NAFTA. The binational panel review system will continue to function as it has for the past four years under the *FTA*. Under NAFTA, Canadian exporters will also have access to binational panel review of Mexican anti-dumping and countervailing duty determinations instead of judicial review by Mexican courts. Further, an additional safeguard has been added to ensure that panels are established and their decisions implemented.

The dispute settlement mechanism of NAFTA

also includes provisions for a special committee to safeguard the panel process. A country may request a special committee to determine if the panel process is subverted by the application of one country's domestic law. If that is found to be the case, that country's benefits under the NAFTA could be suspended by the special committee.

The Minister stated that the NAFTA deal was "*FTA-plus*".

It improves on the *FTA* by providing clearer, more precise rules for determining whether goods manufactured in Canada are eligible for the reduced and eventually eliminated duties into the United States and Mexico under the NAFTA. This will ensure that Canada remains a competitive location for investment.

Mr. Wilson went on to claim that all the gains made by Canada in the *FTA* with the United States would be kept.

Our system of settling trade disputes — which has been very successful — will be maintained and strengthened. In addition, our cultural industries will continue to be exempt, while our supply management system for agriculture won't be touched.

The principles and main elements agreed upon by Mr. Wilson, Mexico's Trade Minister Jaime Serra Puche and U.S. Trade Representative Carla Hills will be drafted into legal text and presented for ratification by each of the three countries. The Agreement is expected to come into force on January 1, 1994. In the meantime the three governments will have to sell the NAFTA package to their respective countries. President Carlos Salinas de Gortari of Mexico is apparently being hailed as a hero by some in his country, but for George Bush and Brian Mulroney upcoming elections complicate matters. President Bush has said that he will sign the deal even if he is defeated, while Governor Bill Clinton is waiting until the full details of the pact is public before taking a stance. In Canada, the federal government has invested \$2 million in an ad campaign which began August 31 to promote NAFTA. Advertisements are being broadcast in English and French in up to 70 markets. Brian Jones, president of the Radio Marketing Bureau, says it is the largest federal media buy ever recorded in the radio industry.

With the NAFTA negotiations successfully concluded, Mr. Wilson said that Canada and all

CANADIAN COMPETITION POLICY RECORD

its trading partners must redouble their efforts to reach a successful conclusion soon to the Uruguay Round of GATT talks.

Highlights of the North American Free Trade Agreement (NAFTA)

Barrier-Free Access to Mexico

- ❑ phase out of tariffs for virtually all Canadian exports to Mexico over ten years
- ❑ elimination of Mexican import licensing requirements for goods
- ❑ opportunities to bid for major Mexican government procurement contracts
- ❑ Canadian financial services companies will be able to open subsidiaries, invest in, and acquire financial institutions in Mexico
- ❑ major liberalization of the restrictive Mexican investment regime
- ❑ liberalization of the Mexican services market, including land transport, specialty air services, professional services, and enhanced telecommunications

FTA Benefits Plus Improvements

- ❑ the Auto Pact remains
- ❑ protection of Canadian cultural industries
- ❑ social services and health services are protected
- ❑ Canada's supply management import quotas for egg, dairy and poultry products are not affected
- ❑ unlike the *Canada-U.S. Free Trade Agreement*, transportation services and intellectual property rights are included
- ❑ clearer North American content rules, including those for autos, reducing the risk of unilateral interpretations by customs officials
- ❑ impact of the new rules of origin for textiles and apparel is offset by increases in the quotas giving preferential access to the U.S. market for Canadian goods that do not meet the rules of origin
- ❑ extension for two years duty drawback beyond the FTA expiry in 1994. This will be replaced in 1996 by a permanent duty refund

system that will reduce input costs for Canadian manufacturers who still pay duties on goods in other NAFTA countries

- ❑ clearer disciplines on energy regulators to avoid discriminatory actions against contractual arrangements, benefitting Canadian gas exporters
- ❑ more stringent discipline on the United States for imposing border restrictions against imports from Canada
- ❑ improved dispute settlement procedures.

THE URUGUAY ROUND — FALLEN BY THE WAYSIDE

By: Sonia Yung
Fraser & Beatty, Ottawa

"Fatigue, frustration, disenchantment" is how Arthur Dunkel, Director-General of the General Agreement on Tariffs and Trade (GATT) Secretariat has described the mood in the Uruguay Round. This round of multilateral trade talks is entering its seventh year and work in all areas of the talks has effectively been halted pending a solution to the European Community (EC) — United States agricultural dispute. There persists a wide gap between the two countries regarding agricultural subsidies which the U.S. perceives as unfair support given by the Community to European farmers. Leaders at the G7 summit in Munich this summer also failed to break the deadlock between the U.S. and the EC.

Meanwhile, the European Community farm ministers have formalized a radical reform of EC Common Agricultural Policy (CAP). The CAP agreement is to allow the EC member states to present a "more unified position" on world agricultural issues. Washington, however, remains unconvinced that the reforms, which include significant cuts in cereals prices, and taking land out of production, will be enough to resolve the dispute over farm subsidies. U.S. Treasury Secretary Nicholas Brady said that the reform did not effect a significant enough reduction in tariffs and subsidies to satisfy the United States. EC farm commissioner Ray MacSharry promised in writing to keep compensation

CANADIAN COMPETITION POLICY RECORD

payments to farmers to offset reduced incomes out of a GATT subsidy-reduction package. Washington wants these payments included in the package.

Some argue though that solidifying domestic agricultural reform may actually constrain the EC from making further concessions in Uruguay Round negotiations. This criticism has, in part, been borne out by the strong reaction by the farmers already. In France, farmers have been staging violent protests against the prospect of lower farm prices and reduced incomes. Italy wants to be able to produce more milk than is provided for under the reform package while France is demanding a shopping list of concessions to pacify its farmers. The situation in France is further complicated by the upcoming referendum in late September on the Maastricht Treaty on closer monetary and political union in Europe. For French President François Mitterand, it is a critical time and he stands to lose political support from irate farmers if he compromises too much on a GATT deal.

The scope and level of the CAP reforms may not enable the EC to comply with the proposed Dunkel text of the GATT final agreement. The proposal calls for reducing budgetary outlays for export subsidies and the volume of subsidized exports by 36 percent and 24 percent respectively, and for reducing domestic support by 20 percent. The proposed text also calls for the lifting of market access restrictions. The United States and the Cairns Group, along with other nations, have accepted the Dunkel test as a basis for breaking the current agricultural deadlock but the Europeans are having great difficulty in making any further concessions.

The agricultural impasse has also taken a turn for the worse with the recent announcement by U.S. President George Bush of the sale of American subsidized wheat. Bush announced on the campaign trail that the United States will sell more than 27 million tonnes of subsidized wheat to 28 countries. The program is an obvious attempt by the U.S. to take on the EC's wheat subsidies. The European Commission expressed fear that such a deal—the largest ever—could disrupt world markets.

Other areas of the Uruguay Round talks are

progressing to the point where now the Director-General of GATT feels that while a conclusion has not yet been reached, talks are close enough to provide the basis for an agreement which will greatly benefit world trade. In his forward to GATT's annual Activities Report issued in late August, Dunkel noted that it is expected the goal of an average one-third reduction in tariffs will be reached. In addition, many non-tariff barriers are to be dismantled. Further concessions to developing countries in the area of marketing their tropical products, including in processed or semi-processed form, is expected to become part of the completed deal. In the areas of safeguards and rule-making, the Uruguay Round negotiators have been successful and on the question of intellectual property and the proposed General Agreement on Trade in Services (GATS), Dunkel feels that "negotiators have done their job". Another major accomplishment is the proposed phasing out of the Multi-Fibre Arrangement governing textiles and clothing and placing that industry back under the auspices of GATT.

Currently the draft text deals with the manipulation of technical standards, subsidies and protection against them, government procurement, manipulation of import licences and rules on the origin of goods, discriminatory behaviour of custom officials; restrictions on inward investment that interfere with trade, protection of intellectual property, and anti-dumping actions. One stumbling block to the completion of the talks continues to be the Americans' approach to negotiations. The United States wants to see more concessions from other governments. This holdout is due in part to the fact that many Americans feel that they can manage without the GATT and rely instead on Section 301 remedies and the North American Free Trade Agreement (NAFTA).

Finally, there has been conflict within the GATT over the common market group recently formed by Argentina, Brazil, Paraguay and Uruguay. The members of the trade bloc, known as Mercosur, say that their free trade arrangement should be considered under GATT's "enabling clause". This clause allows notification of the GATT's committee on trade and development of any preferential trade deals between developing

CANADIAN COMPETITION POLICY RECORD

countries. Such notification effectively protects them from challenges by other GATT members. However, at a GATT council meeting July 2, 1992, the United States called for a working party on Mercosur under Article 24 of the GATT which deals with free trade areas and custom unions. The U.S. argued that the size and potential importance of Mercosur merited a detailed examination by trading partners to ensure its consistency with the GATT rules. Mercosur encompasses a trade area with a population of 200 million and an annual GNP of US\$500 billion. The European Commission proposed a compromise under which Mercosur would be examined by a working party set up by the committee on trade and development.

It is unlikely that any new agreement will be implemented in the immediate future. In the United States, elections are imminent and the recently completed NAFTA negotiations had taken a priority while in the European Community, the Maastricht crisis and conflict in Yugoslavia have effectively diverted the attention of the European leaders. The issue of the Uruguay Round negotiations has fallen on the agenda of both Americans and Europeans, and until the two Contracting Parties resolve their differences over agricultural subsidies, the Uruguay Round is stalled.

CANADA-U.S. BEER WAR RESUMES

By: Paul K. Lepsoe
Fraser & Beatty, Ottawa

The victory for consumers in the Canada-U.S. beer war, tentatively announced in the last issue of the C.C.P.R.,¹ appears to have been illusory. The war has escalated again.

Articles in recent issues have outlined twin GATT complaints made by Canada and the United States concerning the marketing practices of the other with respect to imported beer, the concurrent move toward free trade in beer within Canada, and a Canadian dumping action against U.S. beer.² In the spring, the parties made some progress toward agreeing to implement the GATT

panel reports that had impugned the practices of each.

However, alleged foot-dragging by Ontario, and particularly the "environmental levy" on beer cans introduced in the Ontario budget on April 30, led to warnings of retaliation from the Americans. American beer is generally sold in cans in Canada, in part because beer monopolies controlled by the provincial governments effectively do not allow out-of-province access to the bottle distribution system.

On July 24, 1992, the United States announced a special 50 percent duty on imported Canadian beer brewed in Ontario. The Canadian government claimed that the U.S. had no right under the GATT to take such unilateral action. On July 27, Canada instituted a retaliatory tariff of 50 percent on American beer imported into Ontario.

Meanwhile, in August, two Free Trade Agreement Binational Panels ruled on challenges to Canadian decisions about the dumping of U.S. beer into the B.C. market.³ Both the dumping finding of Revenue Canada and the material injury finding of the Canadian International Trade Tribunal were upheld.

Notes

¹ P.K. Lepsoe, "Canada-U.S. Beer Wars Lead to Victory for Consumers" (1992) 13:2 C.C.P.R. 18.

² *Ibid*; P.K. Lepsoe and S.M. Hutton, "Beer, Canada, The Provinces, the United States, The GATT, and..." (1992) 13:1 C.C.P.R. 26; P.K. Lepsoe, "CITT finds U.S. beer cause injury, but not too much" (1991) 12:4 C.C.P.R. 26; "CITT hearing into dumping of U.S. beer" (1991) 12:3 C.C.P.R. 21; S.M. Brown, "GATT beer panel update" 12:3 C.C.P.R. 22.

³ In the matter of Certain Beer Originating in or Exported from the United States of America (6 August 1992), no. CDA-91-1904-01; (26 August 1992), No. CDA-91-1904-02.

CANADIAN COMPETITION POLICY RECORD

TRADE ACTION BY U.S. STEEL PRODUCERS AGAINST 20 COUNTRIES

By: Sonia Yung
Fraser & Beatty, Ottawa

On June 30, 1992, 84 petitions were filed with the United States International Trade Commission ("ITC") and with the U.S. Department of Commerce by twelve American steel producers. The petitions requested countervailing and anti-dumping investigations of steel products from 21 countries. Among those countries targeted was Canada.

The American action began three months after the breakdown of global multilateral steel talks and the expiration of import restrictions against foreign steel manufacturers. The complaint affects 6.5 million tons of imported flat-rolled steel worth approximately \$2.5 billion. On August 10, following a preliminary investigation, the ITC ruled that there was sufficient indication of improper steel importing by the countries in several categories of specialty steel. The Commission referred 72 of the 84 cases to the U.S. Department of Commerce. The remaining twelve cases were terminated as a result of negative rulings by the ITC. Taiwan was dropped from the proceedings as the ITC found that imports from that country were not causing economic harm to the U.S. steel industry.

The four categories of steel at issue in the American action are hot-rolled carbon steel flat products, cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate. Rulings by the U.S. Department of Commerce on the countervailing duty cases are not expected before late November 1992 while results of the anti-dumping cases will be available in late January 1993.

Canada had not expected to be named in the complaints in light of the close integration of the Canadian and U.S. steel markets. The Canadian products included in the U.S. petitions announced account for close to one-third of Canada's total steel exports to the United States. In 1991, Canada shipped over \$1.5 billion worth of steel to

the U.S. This accounts for 3.3 percent of the U.S. market which is in contrast to imports of American steel which account for 16.3 percent of the Canadian market.

In response to the petitions, the Canadian steel industry filed a complaint with Revenue Canada regarding the dumping of U.S. steel products into the Canadian market and on August 24, Revenue Canada began its own dumping investigations. Canadian companies also want Revenue Canada to begin two new investigations of the American dumping of cold-rolled sheet and strip steel, as well as galvanized steel products. Furthermore, the Canadian steel industry may also seek countervailing investigations by Revenue Canada against U.S. steel producers. However, such a move could lead to similar investigations by the U.S. ITC and Department of Commerce. This would leave Algoma Steel Corp. Ltd. of Sault Ste. Marie open to attack because of the financial assistance it has received from the Ontario government for restructuring.

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**Tariff Concessions**

The Australian government recently introduced legislation into the Parliament to give effect to most of the Industry Commission's recommendations made last year. The effect of the legislation on the substantive side is to make concessional entry more readily available without affecting assistance given to local industry, and improve the openness, clarity and consistency of the tariff concession system. The legislation tightens up considerably on the procedural side, by introducing strict time limits, specifying grounds for appeal and allowing merit review by the Administrative Appeals Tribunal.

CANADIAN COMPETITION POLICY RECORD

Antidumping

The government's proposed changes to antidumping procedures will shorten the time allowed to the Australian Customs Service to make preliminary findings. It will extend the life of dumping notices from three years after issue to five years after issue. Dumping notices can be extended longer than five years if the ADA holds an enquiry and reaches appropriate conclusions.

Rules of Origin

The Federal Department of Industry, Technology and Commerce has had extensive consultations on a possible change to Australia's customs rules of origin. Although this was done in the context of New Zealand, any changes would apply to other countries as well. The main issue is whether the existing "last process of manufacture" test should be replaced with some "substantial transformation" requirement. Present indications are that New Zealand is not agreeable to any change and the relevant Department is not now giving the matter priority attention.

EUROPEAN COMMUNITIES

European Economic Area

After the European Court of Justice ("ECJ") had declared certain aspects of the European Economic Area Treaty between the EC and the EFTA inconsistent with the Treaty of Rome, negotiations between the EC Commission and the EFTA lead to changes in the agreement. The ECJ was asked for its opinion as to the compatibility of the changed provisions with the EEC Treaty and this time declared compatibility. On May 2, 1992, the EEA Treaty was signed. It will come into force on January 1, 1993 provided all EFTA and EEC countries have ratified it by then.

EEC/ECSC - CSFR/Hungary/Poland

In February 1992, the Council adopted decisions on the conclusion of the Interim Agreements on trade and trade related matters

between the EEC/ECSAC and the Czech and Slovak Republic, Hungary and Poland. The agreements aim toward the gradual establishment of a free trade area between the EEC and these east European countries.

Antidumping

An antidumping case was initiated with respect to certain refined antimony trioxide from China. A regional antidumping case was initiated on imports into Spain of certain portland cement from Turkey, Romania and Tunisia and fluorspar from China.

Provisional duties have been imposed on car radios from South Korea, certain semi-finished products of alloy steel from Turkey and Brazil, silicon metal from Brazil and potassium chloride from Belarus, Russia and Ukraine. Provisional duties were extended on cotton yarn from Brazil, Egypt and Turkey as well as on polyester yarn from Taiwan, Indonesia, India, China and Turkey.

Definitive antidumping duties were imposed on compact disk players from Japan and Korea, cotton yarn from Turkey and Brazil and on certain thermal paper from Japan.

A review of antidumping measures has been commenced on binder and baler twine from Brazil and Mexico, plain paper photocopiers from Japan, certain nuts of iron or steel from Taiwan, gas-fuelled non-refillable pocket lighters from China and ferro-silicon from Russia, Iceland, Norway, Sweden, Venezuela, Yugoslavia and Brazil. A partial review was initiated on certain types of electronic microcircuits (known as DRAMs). The Commission intends to conduct a review of outboard motors from Japan.

Duties have been repealed on certain iron or steel sheets and plates from Mexico.

An undertaking was accepted from a Japanese producer in connection with the proceeding concerning thermal paper from Japan. Proceedings were terminated on audio tapes on reels from Japan, Korea and Hong Kong, dihydrostreptomycin from Japan and merchant bars and rods of alloy steel from Turkey.

Measures are to expire on housed bearing units from Japan, standardized multi-phase electric motors from Yugoslavia and ferro-silicon from Russia.

CANADIAN COMPETITION POLICY RECORD

European Court of Justice

The ECJ rejected several appeals brought by seven Japanese manufacturers of photocopiers against the Council's antidumping regulation imposing definitive duties on plain paper photocopiers (Japanese Photocopier Cases - March 10, 1992). The Court did not agree with the Japanese complaints that the Commission had miscalculated the export price and normal value for the products in question and the levels of the antidumping duty.

The ECJ has rejected an appeal made by the European subsidiaries of the Nippon Bearing Group (NBM) against Commission decisions to dismiss part of the application for refund of antidumping duties on ball-bearings levied in 1985-86 (NMV v. Commission - March 10, 1992). The subsidiaries had complained that the Commission did not increase the EC resale price of the products by an amount equal to the dumping margin when constructing the products' export price to determine whether a duty refund was due.

JAPAN

Wrapping Makers Cartel

The Fair Trade Commission of Japan brought criminal charges to the Public Prosecutor General against eight vinyl chloride wrapping makers and eight of their managers in November and seven of their superiors in December 1991 for forming a cartel in violation of the Anti-Monopoly Law. It had been 17 years since the last criminal charge was filed by the FTC. The eight makers are suspected of agreeing on price-fixing and simultaneously raising the price of their products twice. The Tokyo High Prosecutors Office indicted them on December 20, 1991 and prosecution has begun.

Also, as an administrative measure, in December the FTC ordered these makers not to form any further cartels in the future. All eight of the companies agreed to comply with this order, and the FTC ordered on March 27, 1992 that these makers pay a surcharge totalling close to 450 million yen.

MEXICO

A great deal of domestic legislation is being revised in Mexico as a result of the NAFTA negotiations (for example, the General Corporations Law, the Navigation and Maritime Commerce Law, Electric Energy Law and Customs Code). It is anticipated that more legislation will be revised and amended. Most of the revisions are based on the deregulation policies of the current Administration. The proposed amendments to the General Corporations Law includes raising the minimum subscribed capital requirement to \$25,000,000 MexPs. (approximately US\$8,000) to form a "Sociedad Anonima", which is the Mexican equivalent to a limited liability corporation. In addition, the judicial approval requirement to form a corporation will be abolished. This requirement has been very much criticized for being extremely formalistic and causing unnecessary delays in creating a corporation.

Revisions of administrative and regulatory practices are also taking place. The most significant revisions have been in the telecommunications, energy, financial services and securities fields. More specifically, in Mexico, there will soon be open the possibility to negotiate and deal in the securities market with futures, options and warrants in accordance with recent regulations issued by the "Comision Nacional de Valores".

NEW ZEALAND

Dumping

Clothing and Footwear

An official review has addressed the effectiveness of New Zealand's antidumping legislation when applied to the clothing and footwear industries. The review has raised the issue, which is currently being considered by the Government, of whether specific rather than *ad valorem* duties would be more effective at combatting dumping in these industries. An investigation has been initiated into alleged dumping of men's footwear originating in China, Hong Kong, Indonesia, Korea, Taiwan and

CANADIAN COMPETITION POLICY RECORD

Thailand, and of women's footwear originating in China.

Kiwifruit

The U.S. Commerce Department has raised the duty on New Zealand kiwifruit exported to the U.S. from 78% to 98% for the coming season. The International Trade Commission was expected to deliver its final determination on material injury in late May.

Other

Antidumping duty has been imposed on motor vehicle batteries originating in the Philippines. Preliminary findings of dumping have been issued in respect of new car tires originating in Japan, Korea and Taiwan, and primary cell batteries originating in Korea. An investigation has been initiated into PVC cling film originating in Korea and Taiwan.

Intellectual Property

The Ministry of Commerce has issued a report on the reform of the *Patents Act*. The report proposes a 20 year patent term (up from 16 years) and to limit compulsory patent licensing to providing a remedy against anti-competitive conduct. In general, the report is in line with the draft GATT agreement on TRIPS.

Country of Origin Labelling

The Government has delayed the introduction of mandatory country of origin labelling for clothing and footwear from July 1, 1992 to January 1, 1993.

U.S.A.

Steel VRA's

The steel Voluntary Restraint Agreements on U.S. imports expired in March. At the same time, the Multilateral Steel Agreement negotiations broke down. In response, the U.S. steel industry has filed several antidumping and countervailing duty petitions involving various steel products

from several countries, and is preparing to file more. [ed. note: see p.3]

Export Controls and Trade Embargoes

In May, the Commerce Department removed individual validated licensing requirements on most commodities exported to COCOM-member countries as well as Austria, Finland, Ireland, Switzerland and Sweden. In addition, the Department eliminated most U.S. controls on reexports from these countries to non-COCOM countries.

In another development, the Nuclear Suppliers Group — which is comprised of 26 nations including the United States and Russia — has agreed to impose export controls on dual use equipment, i.e., equipment that has commercial uses but can also be used to manufacture nuclear weapons.

Finally, pursuant to executive order, the Office of Foreign Assets Control (OFAC) lifted the U.S. economic sanctions on Cambodia and issued regulations implementing U.S. sanctions against Haiti.

Eastern Europe and the Former Soviet Union

The United States extended permanent Most Favoured Nation status to Hungary, the Czech and Slovak Federal Republic (C.S.F.R.) and Ukraine. Previously, in a bilateral trade agreement with the United States, Hungary and the former republic of Czechoslovakia had received MFN treatment, which was conditioned upon adoption of liberal emigration policies pursuant to the *Trade Act of 1974*.