REGULATORY AND TRADE DEVELOPMENTS

U.S.-GATT ANTI-DUMPING AND COUNTERVAILING DUTY IMPLEMENTING LEGISLATION: REFLECTING THE SPIRIT OF THE URUGUAY ROUND AGREEMENT?

By: Gary N. Horlick and Kristy L. Balsanek
O'Melveny & Myers, Washington, D.C.

On April 15, 1994, the trade ministers of 122 foreign governments gathered in Marrakesh, Morocco to sign the Uruguay Round Final Act under the General Agreement on Tariffs and Trade ("GATT"). Completed last December in Geneva after seven years of negotiations, the trade agreement aims to reduce tariffs and open global markets. Now that the Uruguay Round Agreement has been signed, the next process is for the signatory countries to put the treaty into effect by either January 1 or July 1, 1995.

In order for the Agreement to become effective in the United States, the Congress must pass implementing legislation which would amend existing U.S. trade law. Under fast-track approval, once the implementing legislation is introduced by the U.S. Administration, Congress has 90 legislative days to approve or reject the treaty without amendments. Unlike the North American Free Trade Agreement ("NAFTA") which provoked strong and emotional debates in Congress last year over its passage, there is a strong amount of Congressional support for the treaty. In the past, fast track approval has taken a month or two.

The Administration hopes to have a draft of the Uruguay Round implementing bill in June or July with the goal of enacting the bill by mid-August before the Congressional summer recess. By concluding the bill this year, the Administration is aiming to implement the Agreement's provisions on January 1, 1995. However, this will not be easy as Congress is also considering legislation this summer on important domestic issues such as health care and welfare reform.

While most of the noncontroversial provisions of the legislation have been drafted, much debate remains over the most controversial sections, in particular the anti-dumping and countervailing duty provisions. Two of the most important results of the Uruguay Round negotiations are the Agreement on the Implementation of Article VI of the GATT ("Anti-dumping Code") and the Agreement on Subsidies and Countervailing Measures ("Subsidies Code"). These Agreements provide GATT member countries the right to conduct anti-dumping and countervailing duty proceedings. They establish numerous rules for defining and categorizing subsidies and determining whether imports are sold at unfairly low prices and whether such imports cause or threaten to cause material injury to a domestic industry. The Agreements will be the basis of the anti-dumping and countervailing duty laws in all member countries of the World Trade Organization ("WTO").

Since the Anti-dumping and Subsidies Codes authorize countries to investigate anti-dumping and countervailing duty actions, U.S. implementing legislation must provide for how and to what degree these investigations should occur. Therein lies the debate among U.S. import-competing industries and exporters, with the U.S. Administration in the middle attempting to balance the interests of both groups.

U.S. producers are major users of U.S. anti-dumping and countervailing duty law as a means to compete in the U.S. marketplace. Therefore, they want to strengthen U.S. trade law in order to achieve what U.S. negotiators could not achieve in the Agreement. However, U.S. exporting firms are deeply concerned over any attempt to "strengthen" U.S. trade law for fear that other countries will adopt these laws in retaliation and use them against American exports. This conflict is most exemplified in the debate surrounding the draft anti-dumping and countervailing duty implementing bills which have been proposed by these various interests.

On February 1, 1994 Representative Ralph Regula (Republican-Ohio), Vice Chairman of the House Steel Caucus, submitted a series of proposals in order to "adequately" implement the GATT Anti-dumping and Subsidies Codes and preserve the "usefulness" of U.S. trade law. Regula's proposals address various issues which are common to both anti-dumping and countervailing duty investigations.

Specifically, his proposals include provisions for how the U.S. should implement the GATT's new rules on sunset provisions. Because many U.S. trading partners were concerned that over 10% of the United States' 300 outstanding dumping duties have been in place for close to twenty years, the Anti-dumping Code requires that an anti-dumping duty order expire after five years after the date of its imposition unless authorities initiate a review on their own initiative or upon request and find it likely that the expiration of the duty would lead to continued or renewed dumping or injury. Current U.S. law provides no statutory time limits for the validity of dumping findings. Therefore, U.S. implementing legislation must include procedures for conducting a sunset transition period for existing orders and findings to comply with the new five year sunset of duties.

Regula stated that, since domestic industries with outstanding orders were repeatedly told during the Uruguay Round negotiations that all orders would be treated as entered on the date the Agreement took effect, U.S. implementing legislation should reflect this commitment. Thus, any reviews of these orders should not begin until five years from that date. The review procedure for sunset of standing cases would be based on the level of margins in those cases. Thus, review would begin first for those cases with the smallest margins.

Additionally, Regula believes that U.S. companies which have successfully petitioned the U.S. government for anti-dumping duties should be able to use duties collected on foreign imports by the government in order to finance their business development. Thus, another proposal by Regula is to provide compensation awards to U.S. companies injured by dumping for up to seven years from the date of an affirmative anti-dumping determination. A "sunset" of orders after five years could be a major disincentive for capital intensive industries to reinvest because relief from illegally dumped products would be terminated. Therefore, Regula believes that these awards would compensate companies since the Uruguay Round Agreement would not give them the protection of an anti-

dumping order long enough to adjust and reinvest in their facilities. Regula's proposal would thus provide a two year protection period past sunset. These monies would be given to U.S. companies to be applied towards reinvestment and/or research and development.

Many of Regula's proposals were included in an implementing bill introduced on April 13, 1994 by both Regula and Representative Norman Mineta (Democrat-California) entitled the "*GATT Fair Trade Enforcement Act of 1994*". The bill is aimed at strengthening existing U.S. trade law and would therefore take steps to maintain U.S. industry's ability to bring and win anti-dumping cases. In a press release, the Congressmen stated that "[o]ur bill would amend current U.S. law to strengthen areas where implementation of the GATT could critically weaken U.S. industry's ability to compete with unfair foreign traders..." The bill proposes various changes to U.S. anti-dumping and countervailing duty laws. These provisions include Regula's compensation award proposal and specific procedures for conducting sunset reviews. Reviews of existing anti-dumping orders could not begin until July 1999, i.e. the fourth year of the Uruguay Round implementation. As a result the Mineta-Regula bill provides that no standing orders could be revoked until January or July 2000 (depending on which date the Uruguay Round Agreement takes effect). Also, the bill establishes parameters for reviews of existing and new orders under a new standard that injury be "reasonably foreseeable" rather than "real and imminent". Overall, the bill provides the desired changes for industries that frequently use trade remedy laws against imports.

One organization which is calling for similar proposals is the Committee to Support U.S. Trade Law (CSUSTL). Its membership includes various U.S. companies, trade associations and labor organizations. CSUSTL views the changes made in the Uruguay Round Agreement as ones which will weaken U.S. laws against unfair trade practices and U.S. industry's ability to compete. Therefore, the group believes that U.S. implementing legislation should promote progress for U.S. industry and workers through strong U.S. trade laws in order to offset unfair trading practices of some foreign competitors.

CSUSTL released its own set of implementing legislation proposals in early March. These proposals also include provisions for sunset under which reviews should not begin until year 2000. The group's proposals state that existing orders should remain in effect if there has been dumping or subsidies in the recent past or if margins have been eliminated only in the last review period where import volumes also declined.

In its proposals for compensation awards, the group calls for one-half of all duties collected in an anti-dumping and countervailing duty case to be paid to petitioners to provide for partial offset to injury.

In other areas, CSUSTL proposes standing requirements. Under the new Anti-dumping Code, although all interested parties may be given the opportunity to file a petition, an investigation may not be initiated without the express support of producers accounting for at least 25% of domestic production. CSUSTL proposes that if a petition states that 25% of domestic producers support a petition, then there needs to be no further inquiry of the amount of support. Thus, the investigating authorities would only poll an industry to determine the amount of support if a member of the domestic industry states its opposition to the petition.

Additionally, as a result of the new GATT rules concerning dispute settlement under which GATT panel decisions are now binding and can no longer be blocked by a Party, CSUSTL has proposed that implementing legislation clarify that panel decisions should not be automatically implemented by the Department of Commerce and/or the International Trade Commission, but should require Congressional review and action where U.S. law is overturned.

With regard to its proposals for countervailing duty implementing legislation, the group is concerned over the new categories and definitions for determining what constitutes a subsidy. The GATT Subsidies Code declares several types of subsidies such as regional development subsidies and subsidies for research and applied research as no longer actionable. CSUSTL has proposed that the U.S. narrowly define these "greenlighted" subsidies in the implementing legislation.

In response to these various proposals by the Mineta-Regula bill and CSUSTL, many U.S. exporters and importers have charged that these proposals are only attempts by U.S. domestic industries to use GATT implementing legislation as an opportunity to strengthen U.S. trade remedy laws. They have proclaimed several of the proposals as GATT-illegal. Such GATT-illegal proposals include CSUSTL's proposals that the new WTO rules apply to investigations only and not reviews.

Another CSUSTL proposal found to be illegal by U.S. exporters involves standing under which the group states that no investigation is required if a petition asserts that it represents 25% of domestic production since standing is assumed. However, U.S. exporters have asserted that WTO specifically requires not only 25% of total production, but also that a petition be supported by at least 50% of those stating an opinion. WTO also requires authorities to examine standing. Finally, this group argues that WTO does not permit compensation, as both Regula and CSUSTL have proposed, rather than a remedial duty to offset dumping.

Additionally, CSUSTL has proposed that the Department of Commerce should be permitted to compare transaction-specific export prices to weighted average normal value if U.S. prices "vary significantly among different purchasers, regions, or by time periods". However, U.S. exporters assert that WTO provides that average-to-average comparisons "shall normally" be used.

The U.S. Administration's role is this debate over U.S. implementing legislation of the GATT Anti-dumping and Subsidies Codes is one that is attempting to provide balanced benefits to both U.S. domestic producers and exporters. The Administration recognizes this difficult task of reconciling the conflicting objectives of these two groups. In a speech given before the U.S. Chamber of Commerce, Under Secretary for International Trade Jeffrey Garten stated that the U.S. needs to pursue both the interests of domestic firms which use U.S. trade law for protection and the interests of U.S. exporters who worry about other nation's laws emulating ours and using their laws against U.S. exporting firms. In testimony before the House Ways & Means Subcommittee on Trade, Mr. Garten also stated that the Administration welcomes aggressive competition but not through predatory pricing or government subsidies which would undermine the benefits of free trade. Therefore, the Administration is committed to a "strong anti-dumping stature, vigorously enforced..."

Overall, U.S. implementing legislation of the GATT Anti-dumping and Subsidies Codes must address the opposing interests of U.S. producers and exporters in a way which incorporates the unparalleled trading opportunities of open markets and tariff reductions which were achieved in the Uruguay Round Final Act. The conflict in objectives between the U.S. import-competing producers and U.S. exporters will test whether U.S. anti-dumping and countervailing duty implementing legislation will actually reflect the trade liberalizing goals of the Uruguay Round Agreement.

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).*

EASTERN EUROPEAN COMMUNITIES

Amendments to the Anti-Dumping Regulation

The Council recently amended the Anti-Dumping Regulation by introducing time limits for investigation procedures carried out against dumped or subsidized imports and by streamlining the decision-making procedures.

Where it becomes apparent after consultation that the complaint does not provide sufficient evidence to justify initiating an investigation, the complainant is to be informed of this within one month of the date on which the complaint was lodged. If, however, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission is to do so within one month after the lodging of the complaint.

Time limits have also been introduced for the conclusion of the investigation. Whereas anti-subsidy investigations are to be concluded within 13 months of initiation, the Commission has 15 months to conclude anti-dumping investigations. The decision to impose a provisional duty must be made within nine months from the initiation of the investigation and may not have a maximum period of validity exceeding four months.

It should be pointed out, however, that these time limits only apply to complaints lodged, proceedings initiated, and review investigations initiated after the dates which the Commission is to specify before 1 April 1995.

In an attempt to streamline the decision making procedures, the Council has altered the voting requirements in anti-dumping cases. The qualified majority in the Council formally required for definitive actions and the extension of provisional measures has been changed to a simple majority. The practical significance of this is that those Member States who advocate free trade policies in the Council - primarily Germany, the Netherlands, and the United Kingdom have lost their blocking minority against anti-dumping measures.

Withdrawal of Tariff Concessions

The Council has withdrawn the tariff concessions for TV sets produced by Grundig Austria under the Free Trade Agreement with Austria. Under the Agreement, a contracting party may withdraw tariff concessions if the Joint Committee concludes that public aid has been granted to a certain undertaking

thereby distorting competition. In 1991 and 1992, the City of Vienna granted a subsidy to Grundig towards the costs of carrying out an investment program. The Commission came to the conclusion that this aid distorted competition within the EC. Based on this decision, the Council reintroduced a 14% duty on TV sets produced by Grundig, which is equal to the duties which would have prevailed if the Agreement had not entered into force. On the same day, however, the Council repealed its decision based on the notification that part of the aid was repaid by Grundig.

Extension of Jurisdiction of CFI

The Council recently decided to extend the subject matter jurisdiction of the Court of First Instance to include anti-dumping cases. In June 1993, the Council had decided to extend the jurisdiction of the CFI to all direct claims made by natural and legal persons. An extension of jurisdiction to trade cases was however deferred. On 7 March 1994, the Council decided that the jurisdiction of the CFI shall as of 15 March 1994 extend to cases of dumping and subsidies.

New Anti-dumping Procedures

Anti-dumping cases were initiated with respect to imports of certain synthetic staple fibre fabric originating in India, Indonesia, Pakistan, and Thailand, with respect to imports of cotton fabric originating in the People's Republic of China, India, Indonesia, Pakistan and Turkey, with respect to imports of certain types of bed linen originating in India, Pakistan, Thailand and Turkey, with respect to imports of certain tube or pipe fittings, of iron or steel, originating in the People's Republic of China, Croatia, the Slovak Republic, Taiwan and Thailand, with respect to imports of bicycles originating in Indonesia, Malaysia and Thailand with respect to imports of peroxodisulphates originating in the People's Republic of China and with respect to imports of activated powdered carbon originating in the People's Republic of China.

Provisional Anti-dumping Duties

Provisional anti-dumping duties were imposed on imports of large aluminum electrolytic capacitors originating in the Republic of Korea and Taiwan and on imports of certain magnetic disks originating in Hong Kong and the Republic of Korea.

Definitive Anti-dumping Duties

Definitive anti-dumping duties were imposed on imports of ethanolamine originating in the USA, on imports of fluorspar originating in the People's Republic of China, on imports of isobutonol originating in the Russian Federation, on imports of ferro-silicon originating in South Africa and in the People's Republic of China, and on imports of silicon carbide originating in the People's Republic of China, Poland, the Russian Federation and Ukraine.

Termination of Anti-dumping Proceedings

The Commission decided to terminate anti-dumping proceedings which were initiated concerning imports of gum rosin originating in the People's Republic of China and imports of certain synthetic hand-knitting yarn originating in Turkey concerning imports of silicon carbide originating in Norway, the Russian Federation and several republics previously part of

CANADIAN COMPETITION RECORD

Refund of Anti-dumping Duties Collected

The Commission granted several applications for the refund of anti-dumping duties collected on certain imports of polyester yarns originating in Indonesia. In those cases, the Commission re-examined the existence of the dumping margins and came to the conclusion that the actual dumping margin for the reference period was negligible and that the applications for refunds should therefore be granted.

GATT

Marrakesh and Beyond

Yes, it's true: The Uruguay Round is really and truly over. On 15 April, in the ancient trading centre of Marrakesh, Ministers from some 125 participating countries finally brought to a close seven-and-a-half years of hard work by signing off on the most comprehensive trade agreement ever negotiated. They gave their accord to the Final Act embodying the results of the Round, a legal text over 700 pages in length - over 26,000 pages if one counts the schedules of goods and services commitments. The results include a balanced package of agreements covering all areas of the Round and, indeed, going well beyond the expectations of Ministers who launched the Round back in 1986. Ministers in Marrakesh also signed the Agreement Establishing the World Trade Organization (WTO), a new multilateral institution which will supersede GATT and administer the implementation of the Uruguay Round results.

The WTO is expected to enter into force possibly as early as January 1995, depending on how quickly governments ratify the Uruguay Round package. Then the real work of implementing the new rules and market access commitments will begin in earnest.

JAPAN

Second Anti-dumping Case Initiated

The Japanese Government announced on February 18, 1994, that the Ministry of Finance and the Ministry of International Trade and Industry has initiated an anti-dumping investigation regarding cotton yarn from Pakistan.

While five anti-dumping complaints have been previously filed in Japan, this marks the second time that an anti-dumping investigation has actually been initiated. The first investigation concerned ferrosilicomanganese from China, Norway and South Africa, in which anti-dumping duties were imposed on the Chinese imports in February of 1993.

The Japanese Cotton Spinning Industry Association, composed of 51 cotton spinning firms, has claimed that roughly 200 cotton yarn manufacturers in Pakistan are engaged in sales at dumped prices.

The products being investigated are No. 20 and No. 21 count cotton yarns, which are mainly used in towels and sheets. According to industry officials, No. 20 and No. 21 cotton yarns account for 80% of domestic demand in Japan's cotton yarn market, and Pakistani cotton products account for 96% of all imports of No. 20 and No. 21 count cotton yarns. Industry officials claim that these products are, on the average, sold at prices 34% lower than in Pakistan. As a result, Japanese manufacturers' domestic share fell to 14.9% in the twelve months following June 1992, down 3.9% from two years before, industry officials allege.

The government's investigation regarding the existence of dumping activities by the accused companies in Pakistan and the resulting injury to Japanese industry should, in principle, be concluded within a year.

MEXICO

Issues of Sale Price into Mexico determined by SECOFI in Anti-dumping Proceedings under Mexican Law

Article 30 of the *Foreign Trade Law* ("FTL") of July 27, 1993, states that importations under price discrimination are "the introduction of merchandise in Mexico at a price less than its normal value". Article 31 of the same law defines normal value as the "comparable price of identical or similar merchandise in the country of origin in the course of normal commercial operations".

When there exist no sales in the country of origin of similar or identical merchandise, or when such sales do not allow a valid comparison, normal value will be defined as, in decreasing order of preference:

I. The comparable price of a similar or identical merchandise exported from the country of origin to a third country in the course of normal commercial operations. This price may be the highest, as long as it is a representative price; or

II. The reconstructed value in the country of origin which will be obtained from the sum of the production costs, general expenses and a reasonable profit, which must relate to normal commercial operations in the country of origin.

Article 32 of the FTL defines "normal commercial operations" as those commercial operations that reflect the market conditions in the country of origin and that have been realized on a regular basis or within a representative period among independent buyers and sellers. The FTL further provides that normal value cannot include sales in the country of origin or exports from same to a third country that would include considerable losses, some which are defined as those resulting from transactions whose prices do not allow to cover production costs and general expenses incurred during normal commercial operations in a reasonable period of time, which can be more extensive than the period of investigation. In the event that operations in the country of origin or in that of export that may generate profit are insufficient to qualify them as representative, the normal value must be determined in accordance with the reconstructed value.

In light of the above definitions provided by the FTL, it is clear that, from a strict reading of the law, a SECOFI investigation would analyze the price of similar or identical merchandise in the country of origin against the price which such merchandise is sold in Mexico. While the FTL is not definite as to the identification of the Mexican price against which the price of the merchandise in the country of origin will be compared, it is providing, in its Article 36, for adjustments so that the Mexican price (export price) and the normal value be in fact comparable. Such article includes elements of adjustment such as terms and conditions of sales, difference in quantities, physical differences in the merchandise and differences in taxes and duties. Further, this article specifically determines that the interested party soliciting such adjustments for purposes of this comparison shall have the burden of proof with the Mexican authorities.

In addition, Article 35 of the FTL provides that when, in the judgment of SECOFI, the export price is not comparable with the normal value, said price can be calculated on the basis of the price at which imported merchandise is resold for the first time to an independent buyer in Mexico.

The statement that SECOFI will consider such adjustments for purposes of arriving at a dumping margin is further confirmed by the questionnaires released by SECOFI itself in the course of anti-dumping investigations, which, for example, inquire as to a company's discounts and reimbursements policies, whether or not specific charges and costs are included in the unit prices reported, the amount and conditions of payment of commissions to agents and distributors, etc.

Therefore, in light of both Articles 35 and 36 of the FTL and the questionnaires provided by SECOFI, it is clear that, at the time of an official anti-dumping investigation, SECOFI will take into consideration the applicable adjustments to the Mexican sale price if the party charged with the unfair trade practices will submit the appropriate evidence.

NEW ZEALAND

New Appointment

A.E. Bollard has been appointed chairman of the Commerce Commission for a five year term from 1 April 1994.

Commerce Commission

The Commerce Commission has decided that trade through the New Zealand Futures and Options Exchange Clearing House will be subject to the Sydney Futures Exchange by-laws, including mandatory trading through members only, criteria for clearing membership admission and provision for disciplinary actions against members.

The Court of Appeal has allowed an appeal by Telecom Corporation of New Zealand Limited that the Commerce Commission had no statutory power to conduct an investigation into the development of competition in the New Zealand telecommunications industry. Cooke P. noted that the Commerce Commission has three functions or powers under the *Commerce Act 1986*:

> reporting functions and powers of recommendation in relation to price controls;
>
> considering and determining clearance applications in relation to business acquisitions and restrictive trade practices; and
>
> power to litigate alleged contraventions of the *Commerce Act*.

Anti-dumping - Investigations and Actions

The Minister of Commerce is investigating whether imported men's woven business shirts are being dumped. The shirts are of artificial, cotton or mixed fibres, short or long sleeved, with or without button-down collars, of any colour, with or without detachable collars, over 37 cm neck size, imported from China and Hong Kong, but do not include uniform shirts with epaulettes or formal dress shirts.

The Trade Remedies Group of the Ministry of Commerce is currently conducting anti-dumping actions in relation to: refined sugar from Belgium, Denmark, Germany, Malaysia, Thailand and the

Netherlands; lead acid automotive replacement batteries from Indonesia, Malaysia, Korea, Singapore, Taiwan and the Philippines; hog bristle paint brushes from China; plasterboard from Thailand; automotive oil filters from the United States; PVC clingfilm from Thailand and Korea; certain men's footwear from Thailand, Korea, Taiwan, China and Indonesia; and certain non-leather women's footwear from China.

Tariff and Excise Duties

With effect from 1 April 1994, the Tariff (Miscellaneous) Order 1994:

> removes the beneficial "less developed country status" from glycerol imports from the Philippines;
>
> replaces tariff items references in relation to parts and accessories of arms and ammunition; and
>
> removes all tariffs from primary batteries and cells for specified electrical equipment.

The High Court in Auckland has held that minimum monetary duties imposed on imported Japanese used cars under the Tariff (Motor Vehicle) Amendment Order 1991 are valid, even though the duty is not in conformity with New Zealand's GATT obligations. (*Boscawen Properties Limited* v. *Governor-General and Anor*, Blanchard J., High Court Auckland, M555/93).

SOUTH AFRICA

Anti-Dumping Investigations

The anti-dumping investigations for 1993 have been released by the Board on Tariffs and Trade (the Board). The figures indicated that nine anti-dumping complaints were accepted by the Board in 1993 (a total of 32 since the new legislation was promulgated in May 1992). Of these, four petitions were withdrawn, two were rejected, seven were supported and the balance were still pending as at 1 January 1994.

Since January 1994 investigations were initiated in respect of small and large-frame industrial circuit breakers imported from or originating in France and in respect of 88kV electrical power cable imported from or originating in Germany. A provisional payment was imposed on self-copy paper originating from the United Kingdom and on titanium dioxide originating from Australia. Final anti-dumping duties were imposed on laundry drying machines, tumbler-type, originating in Australia.

General System of Preference (GSP)

The United States recently invited South Africa to apply for GSP status and on 21 April 1994 South Africa was designated as a beneficiary developing country for the purpose of the GSP in accordance with the *United States' Trade Act* of 1974.

Import Control

In line with South Africa's undertaking to the GATT, import controls on a number of products have recently been abolished.

CANADIAN COMPETITION RECORD

Southern African Trade Relations

There is presently a great deal of discussion about the Southern African Customs Union (the SACU). The existing SACU Agreement was concluded between the Governments of South Africa, Botswana, Lesotho and Swaziland in 1969, and is a continuation of the custom union arrangements which had been in operation between the four countries since 1910. Namibia was a *de facto* member during the time that it was administered as part of South Africa, and became a *de jure* member after independence in July 1990. South Africa has historically dominated the SACU, and in return has allowed the revenue sharing formula to be weighted in favour of Botswana, Lesotho, Namibia and Swaziland (the BLNS countries).

The SACU has in recent times been plagued with problems and dissatisfaction by all parties. The BLNS countries, on the one hand, are concerned about the undemocratic structures of the SACU and lack of consultation by the South African Government, and are particularly concerned about the retardation of their industrial development. On the other hand, the South African Government has complained that with the present revenue-sharing formula, the SACU is becoming unaffordable. There is widespread agreement on the need to transform the SACU's internal workings, and it is likely that this will be high on the agenda of a new democratically elected government after the April elections. The Transitional Executive Council has set up a technical working group to provide guidelines on how to improve the SACU and re-define its role in the Southern African context. A workshop was held in Gaberone at the beginning of March, on the reconstitution and democratisation of the SACU, and was attended by the officials from the BLNS countries and representatives from the African National Congress and the Transitional Executive Council sub-committee.

A new democratic government will also need to consider whether South Africa should join the Southern Africa Development Community (SADC) and the Preferential Trade Area for Eastern and Southern African States (PTA), recently transformed into the Common Market for Eastern and Southern Africa (COMESA). Both organizations are seeking South Africa's membership.

UNITED STATES

NAFTA

The first round of negotiations for accelerated tariff reductions under the NAFTA is underway. The NAFTA provides for the progressive elimination of tariffs between the United States, Canada, and Mexico to zero within 15 years, depending on the product, but also provides for negotiated acceleration of tariff elimination for products on which agreement can be reached. The United States Trade Representative (USTR) has received over 600 petitions, and will give priority to those products listed on President Clinton's statement of administrative action for the NAFTA.

Export Controls and Trade Embargoes

In a landmark development, on February 3, 1994, the Clinton administration lifted the trade embargo against Vietnam, citing progress in resolving the issues of U.S. prisoners of war and servicemen missing in action. President Clinton cautioned, however, that the United States would not restore normal diplomatic relations with Vietnam or grant

most-favoured nation treatment. Under the Jackson-Vanik provision of the *Trade Act* of 1974, the U.S. Export-Import Bank and Overseas Private Investment Corporation are still prohibited from providing financial assistance to Vietnam.

On April 4, 1994, the Commerce Department removed export controls on most telecommunications equipment and some computers to formerly proscribed destinations, namely the former Soviet Union and China. This was a significant liberalization, and is part of the Clinton administration's plan to reform U.S. export controls in the aftermath of the Cold War. The controls will remain on exports of these items to Cuba, Libya, Iraq, Sudan, North Korea, and Syria.

Eastern Europe and the Former Soviet Union

The United States and Kazakhstan signed a protocol on February 14, 1994, to extend medium and long-term financing for U.S. exports to Kazakhstan.

On March 4, 1994, the United States and Ukraine singed bilateral investment and tax treaties. The United States also extended preferable trade treatment under the Generalized System of Preferences program to Ukraine.

On March 7, 1994, the United States and Georgia signed a bilateral investment treaty to encourage private investment.

Trade Disputes and Trade Measures

By executive order, on March 3, 1994, President Clinton renewed the so-called "Super 301" law for two years. Under this provision, the United States will investigate those foreign trade practices which have the most detrimental effect on U.S. ability to gain market abroad. Congress originally enacted Super 301 as part of the *Omnibus Trade and Competitiveness Act* of 1988 for a period of two years. The renewed version differs from the original in that it permits negotiations before countries are targeted for investigation and gives the USTR discretion in designating countries subject to investigation.

The United States also announced that it will impose trade sanctions against Japan for violating the 1989 Third Party Radio and Cellular Telephone Agreement, which provides for U.S. access to the Japanese cellular telephone market.

In response to a U.S.-Canada binational panel remand order, on March 7, 1994, the U.S. International Trade Commission again found that the United States was being materially injured by Canadian softwood lumber imports. In a related development, on April 6, the U.S. filed an extraordinary challenge to the ruling of the U.S.-Canada binational panel ruling ordering the Department of Commerce to issue a negative subsidy determination in the softwood lumber dispute.

On April 22, 1994, the United States announced that it had notified the GATT of its intention to impose trade sanctions against Canadian grain products under GATT Article XXVIII. The bilateral negotiations on this issue are continuing. In the event the United States imposed sanctions, Canada would withdraw equivalent concessions under Article XXVIII.