

American trade legislation, formulated by the U.S. Congress and applied by administrative agencies, and through which protectionist lobbying pressures are focused. The continuing vagueness of U.S. trade remedy legislation with regard to certain important concepts ("domestic industry"; "injury") should be stressed.

In the course of the 1980s, the United States initiated 14 countervailing duty investigations against Canadian imports, 5 of which led to the imposition of duties. Canada considers the possibility and the frequency of such remedies as harassment of its exports by U.S. authorities. This is also highly detrimental to Canadian interests in view of the resulting uncertainty and the unfavourable environment created for trade and investment.

It is in good part to counter these problems that Canada concluded in 1987 a free trade agreement (FTA) with the United States. Although unable to secure the desired subsidies code which would have obviated the need for trade remedies, the Canadian government did obtain from the U.S. an undertaking to agree on such a code within 5 to 7 years. This was accompanied with an interim solution whereby binational panels, with the power of binding decisions but without modifying national laws, would decide whether national authorities correctly applied national law when recommending the use of countervailing duties.

The panel mechanism, although a significant achievement, has not ended the harassment of Canadian exports. Of the 6 countervailing duty investigations conducted by U.S. authorities since the FTA came into force in 1989, 3 have involved important trade volumes and led to a decision to impose duties. Canada has appealed to the panel mechanism in these three cases. Two of these disputes, concerning pork and softwood lumber, have been particularly long and serious, the American government having required the establishment of an Extraordinary Challenge Committee to review the decision of the panels.

The problems related to subsidies and countervailing duties have also been addressed under the auspices of the GATT. The delayed conclusion of the multilateral trade negotiations complicated the timing of the Canada-U.S. reform agenda related to trade remedies. The bilateral FTA negotiations were, largely as a consequence of the ongoing multilateral work, unsuccessful. In the meantime, the negotiations for a North American Free Trade Agreement (NAFTA) that concluded in 1992 (including Mexico) presented an opportunity for Canada at least to remove any ambiguity as to the permanence of the FTA panel mechanism. In November 1993, moreover, the Liberal government obtained from Washington the renewal of the undertaking to work towards trade remedy reform by the end of 1995.