Captive Production

The U.S. Uruguay Round implementing legislation contains a provision which excludes from the calculation of the total domestic market, the production in downstream operations by petitioners in trade remedy cases. This provision could lead to an increase in affirmative injury findings by disregarding this production when assessing the impact of imports on the total domestic market.

Cumulation

A number of investigations conducted by the United States involve the cumulation of imports from several countries. In some cases, the volume of exports of a product from Canada has been insignificant and at times negligible in terms of its share of the U.S. market. Some recent injury determinations by the U.S. International Trade Commission have moved away from the concept of mandatory cumulation and have acknowledged differences between product characteristics and specific markets. Nevertheless, Canadian exporters are still vulnerable to situations where exports that are not harming U.S. industry will be cumulated with exports from other countries which are. Both the WTO Anti-dumping, and Subsidies and Countervail Measures Agreements provide specific rules for the cumulative assessment of injurious effects.

Section 232 of the Trade Expansion Act of 1962

Section 232 of the Trade Expansion Act of 1962 empowers the President to take action to remove the threat to U.S. national security resulting from mass imports of certain products. For instance, in 1994, the Independent Petroleum Association of America filed a petition with the U.S. Department of Commerce (DOC) seeking to curb oil imports for national security reasons. In December 1994, President Clinton accepted DOC's recommendation that, while over-reliance on imported oil posed a national security threat, the cost of an import tariff would outweigh the benefits of trade action. Even if the United States had pursued oil import restrictions, Canada's position is that NAFTA Article 607 severely constrains the ability of the United States to use national security exceptions in NAFTA Article 2102 and GATT Article XXI against Canadian energy exports.

Section 332 of Tariff Act of 1930

Section 332 of the Tariff Act of 1930 provides general authority for the U.S. International Trade Commission (ITC), on request from the Administration or Congress, to conduct fact-finding investigations of the foreign trade practices of other countries and their effect on U.S. industry. While import action is not authorized under this section, such investigations can develop information that may be used in a countervailing duty investigation. This is in addition to the burden sometimes placed on foreign industries and government to supply information. Along similar lines, Section 409 (B) of the U.S. Free Trade Agreement Implementation Act of 1988 allows U.S. industry to request that the U.S. Trade Representative provide information on the subsidy practices of countries with which the United States has entered into free trade agreements. If used, the provision can create uncertainty and possibly disrupt trade and investment decisions.