II. U.S. TRADE REMEDY LEGISLATION

Anti-dumping and Countervailing Duties

The application of anti-dumping and countervailing duties on U.S. imports from Canada continues to be a concern for Canadian producers and exporters. In the last decade, the United States has initiated 25 anti-dumping and 13 countervailing duty investigations against Canada. On the dumping side, 12 of the investigations resulted in the application of anti-dumping duties, 12 were terminated and one other resulted in the conclusion of a suspension agreement. On the countervail side, 8 of the investigations resulted in the application of countervailing duties, 3 were terminated and two others were terminated by agreement.

U.S. trade remedy laws allow for the imposition of anti-dumping and countervailing duties on imports of dumped or subsidized goods respectively that cause or threaten injury to the domestic industry. U.S. industries seeking protection from import competition increasingly rely on trade remedy legislation. The U.S. system of law and practice also contains features that, in effect, allow U.S. producers to harass Canadian exports to the U.S. market. For an exporter, the defence of its interests before the United States government is both expensive and cumbersome.

The passage by the United States of the Uruguay Round Agreements Act and the entry into force of the Uruguay Round Agreements on January 1, 1995 resulted in a number of improvements with respect to the application of U.S. trade law. Nevertheless concerns remain. As a result, the conclusion of a meaningful North American regime regarding the application of anti-dumping and countervailing duties remains a high priority of the Government in the context of the Trade Remedy Working Groups established under the North American Free Trade Agreement. From a Canadian perspective, the creation of the NAFTA has changed the environment within which the North American private sector operates. Therefore, the NAFTA partners need to examine whether the current North American trade remedy regime is appropriate for developing globally competitive North American industries. Furthermore, in the context of the U.S. Uruguay Round implementing legislation, Canada will continue to make representations regarding the development by the U.S. Administration of regulations pertaining to the changes made to U.S. trade remedy law. Canada's initial comments, which were submitted to the U.S. Department of Commerce (DOC) on February 3, 1995, expressed concerns regarding the definition of subsidy and the use of the "effects test" and specificity in determining the countervailability of subsidy programs.

Some of the outstanding areas in U.S. legislation where Canada still has concerns are listed below.

Anti-Dumping

Anti-Circumvention

The U.S. Uruguay Round implementing legislation contains language which broadens the scope of the provision in the Omnibus Trade and Competitiveness Act of 1988 for the United States to take action against alleged circumvention of U.S. anti-dumping or countervailing duty orders. If circumvention is found, dumping or countervailing duties are applied without appropriate findings of dumping, subsidy or injury. Canada has long taken the position that any action taken further to U.S. anti-circumvention provisions without an appropriate investigation would be inconsistent with the United States' obligations under the WTO Anti-dumping Agreement.