

uncertainty they cause and the adverse climate created by the very possibility of such measures. In fact, the trade remedy issue constituted—and still constitutes, as we will see—the main irritant in Canada-U.S. relations.

2. The Canada-U.S. Free Trade Agreement of 1987

2.1 Summary and Evaluation of the Subsidy Provisions

It is therefore very understandable that the Canadian government made reform of American trade law its main concern in the negotiations leading to the conclusion of the Canada-U.S. Free Trade Agreement (FTA) in 1987.¹⁴ The government wanted most of all in its free trade initiative to reach an agreement with the United States on what constitutes a subsidy, on acceptable assistance to companies, and on abolishing the existing remedies, namely countervailing duties, in bilateral trade.

However, obstacles soon emerged in the course of the negotiations. From the outset, the parties' perceptions of the issue and of the solutions to it differed radically. The Americans were eager to obtain more stringent controls over Canadian subsidies, while the Canadians hoped to be exempted from U.S. trade remedies. One of the parties perceived government policies and practices as an obstacle to open, secure trade, while the other was concerned about the responses to these policies. Nevertheless, considerable efforts were made during the negotiations to hammer out a common view of the subsidy issue. The Canadian negotiators attempted to work out an agreement on subsidies that would have made it possible to settle the issue of government assistance and obviate the need for countervailing duties. The American negotiators, for their part, were eager to put a stop to most Canadian assistance programs and to maintain the countervailing duty mechanism.¹⁵ In the end, these differences could not be ironed out and a temporary solution had to be devised. This solution, set forth in Chapter 19 of the FTA under the heading "Binational Panel Dispute Settlement in Antidumping and Countervailing Duty Cases," consists basically of four parts:

- Retention of domestic antidumping and countervailing duty law (Article 1902). It was stipulated in particular that any changes to this legislation would not

¹⁴ Canada, External Affairs, *Free Trade Agreement Between Canada and the United States*.

¹⁵ Michael Hart, "The Future on the Table: The Continuing Agenda under the Canada-United States Free Trade Agreement," in Richard G. Dearden, Michael M. Hart and Debra P. Steger (eds.), *Living with Free Trade: Canada, the Free Trade Agreement and the GATT* (Ottawa/Halifax: Centre for Trade Policy and Law/Institute for Research on Public Policy), pp. 85-87. See also Simon Reisman, Comments, in *Assessing the Canada-U.S. Free Trade Agreement*, pp. 112-115.