1. Introduction

What to do about trade remedy law (comprising mechanisms to address antidumping and subsidy/countervail issues) remains at or very near the top of Canada's trade policy agenda. The concern is most immediate, perhaps, with regard to the misuse of antidumping duties by U.S. authorities against Canadian exports. Some observers have suggested that the solution for Canada lies in the whole-scale replacement of the trade remedy approach by competition (antitrust) law. Others are ambivalent about outright replacement, either because they see some merit in retaining an antidumping mechanism to provide import relief in Canada (perhaps with a suitable tightening of the rules to avoid the worst abuses), or because competition law itself is perceived to rest on an imprecise economics base that creates its own uncertainty and potential for abuse, or because of concern that replacement discussions might lead to pressure for Canada to adopt certain U.S. practices that are viewed here as inappropriate (e.g., treble damages in private suits). Some simply believe that significant reform might be beyond our grasp into the foreseeable future, given that the importance of retaining a "viable" antidumping regime is deeply entrenched in the U.S.'s trade policy and political psyche. In this view, Canada could most usefully focus on seeking to launch a step-by-step approach that might, over time, lead to considerable incremental improvement.

With regard to antidumping, some international discipline already exists in the form of the respective 1980 GATT Code, tightened to a modest degree in the recently concluded Uruguay Round of multilateral trade negotiations (MTN). For their part, the FTA/NAFTA agreements did not lead to the modification of the formal legal regime in the U.S. or Canada governing the use of antidumping measures. Nonetheless, the provisions found in NAFTA's Chapter 19 include useful procedural safeguards with regard to future amendments to national antidumping statutes and, most importantly of course, establish a supra-national panel system to review final domestic antidumping duty determinations, replacing thereby more prolonged and costly domestic judicial review procedures.[1]

The NAFTA also sets up a process to move reform efforts forward. The Agreement establishes a Working Group on Trade and Competition Policy, with a mandate to report within five years on the relationship between competition laws and policies and trade within the free trade area.[2] In addition, last December the Canadian

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[1] The panel review process also addresses final countervailing duty determinations.

[2] See Article 1504.