

Canada and the United States retain a good deal of discretion. A positive determination of injury by the U.S. International Trade Commission may lead to recommendations by it to the President to restrict imports of the products concerned, but the President has discretion as to whether or not to impose restrictions. Similarly, in Canada, the government retains the authority over the imposition of safeguard measures which may be recommended by the Canadian Import Tribunal or the Textile and Clothing Board.

What is proposed here is that a new Canada-U.S. trade agreement should contain provisions which would require in all cases a joint determination of injury as a condition for imposing anti-dumping, countervailing duties or safeguard measures on exports of goods or services from one country to the other. This would involve the establishment of a Joint Injury Panel drawn from the International Trade Commission and the Canadian Import Tribunal, which could conduct public hearings and carry out their own analysis of whether or not exports of the products concerned from one of the parties are causing or threatening injury to producers in the other country. The trade agreement would require that anti-dumping, countervailing duties, or safeguard measures could be applied only when the joint panel came forward with a positive finding of injury. Following the precedents in the domestic legislation of the two countries, determinations of injury by the Joint Injury Panel in regard to dumping and countervailing duty cases might be "binding" and automatically lead to the imposition of such duties on a definitive basis; on the other hand, positive determinations of injury in regard to safeguard cases could be "advisory" and could leave to the government concerned, as now is the case, the final decision as to whether to impose safeguard measures.

It is proposed that the agreement should provide for the establishment within the framework of the Joint Trade Commission of such a Joint Injury Panel and set out the procedures under which it would operate. The process should involve public hearings by the Joint Panel to which interested exporters, importers and others would be invited, under procedures analogous to those followed by the Canadian Import Tribunal and the U.S. International Trade Commission. Following its investigation, the Joint Panel would submit its findings and recommendations to the Commission, which the Commission would transmit, with its own comments and recommendations, to the two governments. By this process, the outcome of the investigations by the Joint Panel would be translated into findings and recommendations by the Joint Trade Commission to the two governments.

The implementation of provisions of this kind in a future trade agreement would presumably require amendments to existing laws and procedures on both sides. For one thing, it would seem necessary to assign to the Joint Injury Panel exclusive responsibility for injury determinations in regard to import relief measures affecting cross-border trade, so as to avoid the possibility of conflicting determinations by the U.S. International Trade Commission or the Canadian Import Tribunal. Also, there would presumably be a need to establish firmly in domestic law the status and responsibilities of the joint panel and the legal status of its determinations and recommendations. Amendments to domestic U.S. and Canadian legislation of this kind, however, might meet with less resistance than more ambitious proposals to exempt goods in cross-border