

of injury, as ratified by GATT, was adopted in countries like the United States essentially as a legal concept, not an economic one, which in actual practice has reinforced the protectionist effect of the trade remedy mechanism.¹⁰

Finally, we should mention that the Uruguay Round did not result in any appreciable changes to the multilateral provisions governing the definition of "domestic industry" or the concept of "injury" and its connection to subsidization. We will return to these issues in the final part of this paper.

Returning to the American legislation, we find that the executive branch cannot intervene in the process and take discretionary action regarding the way in which trade remedy legislation is being used. If a company or a group of producers submits a request for countervailing duties, the procedure must be followed, even if the executive would prefer not to contest particular assistance practices of other countries, for diplomatic or other reasons.¹¹

During the 1980s, Canada was subjected to 14 countervailing duty investigations by the U.S. government. These investigations covered products such as softwood lumber, pork and fish. Five of them resulted in the levying of duties, in particular on pork and Atlantic groundfish, and one investigation ended with Canada adopting a 15% export tax on softwood lumber headed for the United States.¹² Even though such investigations do not necessarily end in the levying of definitive duties¹³, they nevertheless have a harmful effect on trade and investment because of the

injury criterion as applied in Canada and the United States, see Robert Bertrand, "Role of the Canadian Import Tribunal," *Canada-United States Law Journal*, vol. XII (1987), pp. 195-207.

¹⁰ Rodney C. Grey, "A Note on U.S. Trade Practices," in William R. Cline (ed.), *Trade Policy in the 1980s* (Washington: Institute for International Economics, 1980), p. 250.

¹¹ For an interesting summary of the main features of American laws and practices in the area of countervailing duties, see Michael Hart, *The Canada-United States Working Group on Subsidies: Problem, Opportunity or Solution?* (Ottawa, Ontario Centre for Trade Policy and Law, 1989), pp. 24-32. For a broader summary of trade remedies see: Canada, Department of Foreign Affairs and International Trade, United States Trade Relations Division, *U.S. Trade Remedy Law. A Ten Year Experience* (Ottawa, December 1993), pp. 1-83; Thomas M. Boddez and Michael J. Trebilcock, *Unfinished Business. Reforming Trade Remedy Laws in North America* (Policy Study 17) (Toronto: C.D. Howe Institute, 1993), pp. 1-68. For an extended discussion of American trade legislation, see I.M. Destler, *American Trade Politics*, 2nd edition (Washington/New York: Institute for International Economics/Twentieth Century Fund, 1992); and for the Canadian trade legislation, Robert K. Paterson, *Canadian Regulation of International Trade and Investment* (Toronto: Carswell, 1986).

¹² Canada, *U.S. Trade Remedy Law*, pp. 30-33. The dispute over softwood lumber continues unabated in 1994. We will return to this later (p. 16) when we analyze the implementation of the provisions in the U.S.-Canada Free Trade Agreement on dispute settlement.

¹³ So-called definitive duties should be distinguished from the interim duties imposed pending the results of the investigation.