

which result in the application of lower duties. Such delays create considerable difficulties for Canadian exporters since they can continue to be assessed higher duties for several years on exports entering the U.S. market, based upon the findings of a previous administrative review period. There is no provision for review of original injury determinations in an administrative review. Finally, once reviews are completed and new margins assessed, exporters can face considerable difficulty in trying to recover duties overpaid during the review period. In the case of the 1985 countervailing duty order on live swine from Canada, for example, the annual administrative reviews represent a significant burden on the industry.

Sunset Provisions

There is no effective sunset provision in U.S. law that would end anti-dumping or countervailing duty assessments after a certain time. As a consequence, U.S. actions can remain in effect indefinitely, even in those cases where the import no longer causes any injury. In contrast, Canadian legislation provides for automatic termination of an action after five years, unless it is extended following a review of the injury determination to determine the continuing justification for the application of duties. The Uruguay Round of multilateral trade negotiations, when implemented, will provide for a review of duties after five years. The duties may be continued only if injury is found likely to continue.

Anti-Circumvention Provisions

The Omnibus Trade and Competitiveness Act of 1988 added a provision under which products, though not subject to dumping or countervailing duties, may be found to be circumventing the application of such duties. If circumvention is found, dumping or countervailing duties are applied without appropriate findings of dumping, subsidy or injury. Depending on the circumstances, these circumvention measures can be inconsistent with the GATT.

Cumulation

A number of investigations conducted by the United States involve the cumulation of imports from several countries. In some cases, the volume of exports of a particular product from a particular country, such as Canada, has been insignificant and at times negligible in term of its share of the U.S. market. In many such cases, the U.S. administering authorities have refused to distinguish between Canadian and other foreign goods and have included all such imports in the subsequent investigation. This situation has created inequities for Canadian exporters who could legitimately claim that their exports were not the cause of injury to U.S. producers.