

III. EXTRATERRITORIAL LEGISLATION

United States trade policy is supported by domestic legislation that can have an extraterritorial effect. Its existence outside of agreed multilateral or bilateral arrangements promotes uncertainty and instability in the international trading system. The following is an example of extraterritorial legislation that has been used against Canadian firms.

"Cuban Democracy Act"

Section 1706 (a) (1) of the U.S. National Defense Authorization Act of 1993, or the "Cuban Democracy Act", seeks to prevent U.S.-owned or controlled subsidiaries located in other countries from trading with Cuba. It would accomplish this objective by asserting jurisdiction over the conduct of corporations that are organized in foreign states, and owned or controlled by U.S. citizens.

IV. GOVERNMENT PROCUREMENT AND DOMESTIC PREFERENCE LAWS

Despite the GATT and the FTA, barriers in government procurement remain. The Buy American Act still affects federal contracts directly, whereas related legislation creates barriers that flow through federal funding to federal, state and local contracts. The Buy American Act indirectly discourages United States distributors from selling Canadian goods. Small business set-asides further prohibit Canadian bids.

Buy American Act

Canadian firms encounter the Buy American Act at the federal level in either construction contracts or contracts with certain departments. Canadian companies are also confronted by it at the state and local level in contracts, particularly for mass transit, telecommunications, and electrical equipment, that receive certain federal funds.

Certain agencies, including the Department of Energy and Transportation, the Bureau of Land Management and the Army Corps of Engineers, must apply the Buy American Act to all of their contracts. On contracts to supply goods, these purchasing agencies must buy domestic product unless it is determined that:

- the cost would be unreasonable in comparison with the proposed foreign good;