Injury, Procedural and Institutional Issues

Initiation

The new WTO rules stipulate that an investigation may be initiated only where there is "sufficient evidence" of a subsidy or of dumping, of injury, and of a causal link between the subsidized or dumped imports and the alleged injury. Frequently, however, the DOC does not conduct before the investigation a verification of the allegations of dumping or subsidization, of the presence of injury, or of a causal link between them. On the countervailing duty side in particular, it has been relatively simple for a potential U.S. petitioner to identify Canadian subsidy programs that were involved in previous investigations and then list them in a petition, without offering evidence of whether they were in fact used by a Canadian exporter of the target product.

Standing

While the new U.S. legislation provides improvements related to the verification of a petitioner's standing, Canada still has concerns as the U.S. Statement of Administrative Action provides that, where the management of a firm expresses a position in direct opposition to its workers with respect to a petition, the DOC will treat the production of that firm as representing neither support for nor opposition to the petition. The ability of workers to neutralize effectively industry opposition to a petition gives rise to a concern about multi-plant unions and petitioners acting in concert to artificially satisfy the new standing requirements.

Captive Production

The U.S. Uruguay Round implementing legislation contains a provision which excludes from the calculation of the total domestic market, the production in downstream operations by petitioners in trade remedy cases. This provision could lead to an increase in affirmative injury findings by disregarding this production when assessing the impact of imports on the total domestic market.

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 product from Canada has been insignificant and at times negligible in terms of its share of the U.S. market. Some recent injury determinations by the U.S. International Trade Commission have moved away from the concept of mandatory cumulation and have acknowledged differences between product characteristics and specific markets. Nevertheless, Canadian exporters are still vulnerable to situations where exports that are not harming U.S. industry will be cumulated with exports from other countries which are. Both the WTO Anti-dumping, and Subsidies and Countervail Measures Agreements provide specific rules for the cumulative assessment of injurious effects.