

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.

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.

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, including Canada, has been insignificant and at times negligible in terms 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.

Section 301

Section 301 of the Trade Act of 1974, amended through the Omnibus Trade and Competitiveness Act of 1988, is the principal instrument for redressing "unfair" trade practices of other countries. Section 301 empowers the United States Trade Representative (USTR) to determine whether other countries maintain "unjustifiable," "discriminatory" or "unreasonable" practices. It also provides authority for, and can also require, unilateral retaliation by the USTR in order to improve access to foreign markets for United States goods, services and investment, and for the protection of intellectual property rights.

Use of the unilateral retaliatory measures without the authority of the GATT, as occurred when the United States imposed a surtax on beer imports from Ontario and duties on softwood lumber from Canada, undermines both the GATT rules and the GATT dispute settlement procedure.