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# **CANADA-U.S. TRADE IN AGRICULTURE: MANAGING THE DISPUTES**



**Department of Agricultural Economics and Business  
Ontario Agricultural College  
University of Guelph  
and  
Economics and Policy Coordination Branch  
Ontario Ministry of Agriculture and Food**

**October 1987**

**AEB/87/6**

## BACKGROUND

The papers in this compilation were presented at a conference designed for leaders in Ontario's agricultural and food systems to learn more about the subject and share experiences.

The conference was jointly sponsored by the Department of Agricultural Economics and Business, Ontario Agricultural College, University of Guelph and the Economics and Policy Co-ordination Branch of the Ontario Ministry of Agriculture and Food.

The funding came from registration fees, Ontario Ministry of Agriculture and Food and the organizations represented by the speakers.

The papers were prepared for publication by Debra Steger and Erna Van Duren. Conference arrangements and publication of the conference proceedings were undertaken by Dr. W. S. Young, Ontario Agricultural College Coordinator of Extension.

Copies of the publication are available at \$15.00 each while supplies last. Make remittances to University of Guelph and send to W. S. Young, OAC Co-ordinator of Extension, University of Guelph, Guelph, Ontario N1G 2W1.

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ISBN 0-88955-101-4

ISSN 0832-8773

## INTRODUCTION

In the last few years, there has been an escalation of agricultural trade disputes between Canada and the United States. In part, this has been caused by the increasing frictions in the U.S.-European Community agricultural trade war. Canadian agricultural producers find themselves the target of countervailing duty and antidumping actions in the United States and, in the last year, have begun to fight back with trade actions of their own in Canada. At the same time, the Canadian and U.S. governments are involved in bilateral and multilateral negotiations aimed at developing new rules and achieving more harmonious international agricultural trade relations.

For the foreseeable future it is clear that countries are going to be increasingly intolerant of subsidy practices by their trading partners. Accordingly, the application of "contingent protection" or "trade remedy" measures and the definition of "a level playing field of competitive conditions" are going to become ever more important in the conduct of international trade in farm and food products. This is especially true of bilateral Canada-U.S. agricultural trade, but it is becoming a global issue too.

This conference was designed for persons involved in the production, processing and marketing of agricultural and food products in Canada.

A distinguished group of speakers addressed many of the important questions facing persons engaged in agriculture in Canada: What are the lessons to be learned from recent Canadian and U.S. trade cases? How can Canadian producers successfully defend themselves in a U.S. countervailing duty action? How can Canadian producers bring trade actions in Canada against unfair foreign competition? How will subsidies and trade remedy laws be dealt with in the Canada-U.S. free trade negotiations and the GATT multilateral round? What are the implications for the future of Canadian agricultural policy?

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## **SPEAKERS**

### **The Honourable Donald S. Macdonald**

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### **Gary N. Horlick**

Partner, O'Melveny & Myers, Washington, D.C. is a Washington trade lawyer who, in his former position as Deputy Assistant Secretary for Import Administration in the U.S. Department of Commerce, was responsible for the 1983 decision in the softwood lumber case. He recently has defended the Canadian Atlantic groundfish industry in a major U.S. countervailing duty case.

### **Dr. Leo V. Mayer**

Associate Administrator, Foreign Agricultural Service, U.S. Department of Agriculture.

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Trade Negotiations Office, Ottawa, are the U.S. and Canadian officials responsible for negotiations on agriculture in the Canada-U.S. free trade talks and the GATT multilateral round.

### **Dr. Larry J. Martin and Professor T.K. Warley**

Well-known academics in the agricultural trade policy field. Dr. Martin has appeared as an expert witness in countervailing duty cases involving agricultural products in both the United States and Canada. Professor Warley has spoken and written extensively on agricultural trade policy issues.

### **Debra P. Steger**

Practices in the area of international trade law with Fraser and Beatty, Ottawa and has spoken and written extensively on the subject of Canada-U.S. trade law and policy.

THE NEED FOR BILATERAL AND MULTILATERAL AGREEMENTS  
CONCERNING AGRICULTURE

HON. DONALD S. MACDONALD

Much of the public discussion during the last eighteen months on the question of a Canada-U.S. free trade area agreement, indeed much of the discussion on the multilateral negotiations to take place within the context of GATT, has focussed on trade between the countries in manufactured goods and services. So, we have heard a great deal from the leaders of industrial unions such as Mr. Bob White of the Canadian Auto Workers, or from leaders of the Canadian cultural community, on why the negotiations should not be taking place. In reply, we have heard from major industry associations, such as the Canadian Manufacturers' Association or the Business Council on National Issues, on why negotiations are appropriate and will be in the long range of interest to Canada. We have had relatively little discussion of the consideration which the Canadian agricultural community should give to these negotiations. This conference, therefore, provides an excellent opportunity to canvass what the issues are and what the positions of Canadian agriculture should be.

It is not necessary for many in this audience, but it is of value for the wider Canadian community, to give a reminder of just how important trade in agriculture has been, both for the Canadian and American economies. Agriculture has been a significant employer in our two economies, as much through indirect as direct employment, that is, in various kinds of functions supporting agriculture. As we know, the structure of Canada outside the cities has been created by the farm community. Above all, agriculture has in the past been an important source of export earnings for both Canada and the U.S.

During the 1970's, for example, agriculture was the single largest contributor to the United States trade surplus. And, in Canada, the shipment of grains and dairy products to world markets, and of red meat and vegetables to the United States, played a significant role in Canada's favourable economic performance on world markets.

The negotiation of a free trade area agreement between Canada and the United States or, for that matter, a new round of negotiations internationally among the GATT parties, should not be seen as events creating apprehension for the Canadian farm community. Rather, negotiations should be seen as opportunities to return to the more favourable competitive environment which the farm communities knew in the 1970's and which has been undermined by restrictive practices throughout the world during the last decade.

For the better understanding of the problems and opportunities which arise from negotiations, I would propose to subdivide the broader questions of agriculture into a number of categories, categories each of which has concerns quite different from the others. I will stress three of these: firstly, the sector which has traditionally sold its commodities competitively on the world market, principally grains and some dairy products; secondly, those sectors in Canada which have been selected by government for special protection, largely through supply-control marketing boards, for example the milk industry, chickens, turkeys, eggs and tobacco; and thirdly, those which have shown an ability to compete in the North American context without special assistance of special protection, for example, the red meat sector.



Let me talk then of each one of these, using each one as an illustration of the problems and, as I have said, the opportunities posed by the two sets of negotiations, multilateral and bilateral, in which Canada is now engaged.

1. While the grain trade has provided the hottest single incident in bilateral Canada-U.S. relations in agriculture recently, that is to say, the successful prosecution of U.S. grain corn by Ontario corn producers; in fact, the principal problems which face the grain trade are not North American, but worldwide. In part, the problems of the grain trade come from international events over which Canada can have no control and which no treaty could or should deal with and that is the effort principally of some major developing country nations to give priority to self-sufficiency in our own agriculture. Over the period of the last decade, we have seen some quite remarkable successes in grains in which countries like the Sudan and India not only have developed a capacity to feed their own populations, but have even developed surpluses for export. In humanitarian terms, those are advances which no Canadian farmer would begrudge the hungry people of Asia and Africa. Indeed, authoritative spokesmen within the Canadian grain trade have spoken of a continued improvement in the standard of living of the peoples of the developing countries with favour, as a future source of prosperity for the grain trade. When the standard of living goes up, so does the demand for cereal products go up and, at that point, the major grain producers will again have an opportunity in those markets.

The principal problem for which trade negotiations in the grain sector can provide solutions is in overcoming the widespread use of subsidies which have so distorted grain production in the developed countries. Among these countries, none can really be the first to cast a stone. We have all, through various public support programs, provided governmental assistance to the grain growers. Canadians can at least claim not to have been as great sinners as, for example, the Europeans who have by public transfer payments, elevated production to substantial levels, but levels which could not be sustained by economic production alone. And the European example has been countered by the actions of the United States which has now moved to match subsidy with subsidy. It is quite apparent that the problems in this sector cannot be resolved by bilateral negotiations. Rather, they may only be solved by negotiations which include the two great subsidisers, Europe and the United States, and also some of the small but more competitive producers such as Canada, Australia and Argentina, who share between them an interest in a competitive international market over the long run.

There has been an important acceleration in the international negotiation of this question between the countries involved. If GATT has not been successful in the past in meeting the problems of the agricultural sector, there seems at least some early promise that it will be so this time. There is one factor, however, which Canadians should bear in mind. Canadians too will have to give up some of the special programs of assistance if we expect others to give up theirs. For example, the special regime that has subsidized the western grain transportation industry will have to be phased out, and we should be prepared to meet fair foreign competition in our own market from grains produced elsewhere and, of course, particularly from the United States. The comparative advantage which Canada has had in the past as a grain grower served us well in the past and it can in the future provided it is allowed to have full play on the international scene.

2. The second category of Canadian agricultural sectors is made up of those which have been seen as not being capable of meeting international competition and for which very special protection arrangements have been made. I address, of course, those sectors for which supply-control marketing boards have been put in place. The boards not only have been given the power to shelter Canadian producers from foreign competition, but they have even eliminated effective competition between Canadians in various provinces.

Those who are familiar with Volume Two of the Report of the Royal Commission on the Economic Union and Development Prospects for Canada will not be surprised if I once again put forward some negative comments about supply-control marketing boards. In doing so, I make the important clarification that it is not all marketing boards which I am criticising. For example, those that simply facilitate farmers' common marketing of commodities, such as hogs, fruits and vegetables, have worked to the advantage of producers and have enabled markets to function better. It is the others which we singled out for criticism: "In sum, by restricting foreign and domestic supply, supply-management marketing boards raise the prices of agricultural commodities and thus augment farm incomes. They appear to accomplish this, however, at a significant efficiency cost to the Canadian economy as a whole. Nor do they benefit all producers equally. They bring very little benefit to new farmers, who must buy their quota. Indeed, it may be that few of the beneficiaries of marketing boards are still on the land; many have sold their quota and retired." (Vol. II, p. 431).

And just to make the distinction clear, the Commission went on: "Again, Commissioners would repeat that these criticisms are levelled at national supply-management marketing boards controlling the supply of agricultural products such as eggs, chickens, turkeys, tobacco and milk; we are not criticising those marketing boards which do not restrict supply, many of which operate at the provincial level."

Most of the commodities protected by such supply-control boards are those in which competition would come from the United States producers. They are, therefore, instruments which might fairly be the subject of discussion within the Canada-U.S. negotiations and could be the subject matter of bilateral agreement. Within Canada, I would like to see a much more open and rational discussion of the reasons why those particular sectors continue to need the very special protection. I would like to hear why Wisconsin dairy producers are inherently more competitive than those of Ontario, if that is so. With access to the wider markets of the two countries and with lower input prices, could not the Ontario producers be equally competitive?

One of the responses, I am sure, is that throwing those sectors open to competition will also be to throw some Canadian producers open to the need for adjustments. That, of course, is precisely what other sectors of the Canadian economy are being exposed to and it is the adjustments to competitive actualities that will, in the long run, be of interest to the economy as a whole. Indeed, looking over the perspective of forty years back to the end of World War II, no sector of the Canadian economy has adjusted more successfully and with less intervention of public assistance than has the agricultural sector in Canada. I would like to know why that capacity still does not exist.

I am, however, a political realist. Probably these restrictive arrangements will survive these negotiations, although it should be recognized

that if we are to protect one or two sectors of the Canadian economy, then other sectors are going to have to pay more. At this point, however, I don't accept that result as inevitable and I think it should be very much a matter for public debate within Canada and for consideration within the bilateral negotiations.

3. The third category of the Canadian agricultural industry that I refer to is those sectors which have not sought protective or special treatment. The debate between the consumer interest and advocates of the supply-control marketing boards has, in the past, risen to such a noise level that the case for the other sectors of the Canadian farm community has not been heard. But they have been heard from on the free trade negotiations. I quote a press release issued by the Canadian Cattlemen's Association on April 6, 1987, on behalf of a range of associations, including the Cattlemen, the pork producers, and the wheat, corn and other grain producers: "A cross section of agricultural leaders from Canadian grain and livestock sectors has endorsed free trade talks between Canada and the U.S....

There is concern among farm leaders about the negative publicity surrounding free trade with the U.S. The agricultural leaders agreed that, since Canada exports at least one-half its total farm production, free trade is vital to the agricultural industry.

The farm leaders agreed that a domestic farm policy must be put in place to foster efficient, competitive, low-cost, market-oriented agriculture. It was also agreed that farmers must take the lead in formulating a long-term policy, and not leave the responsibility totally to federal and provincial governments."

The release also went on to observe: "It was agreed that domestic barriers which inhibit the production and movement of products within Canada must also be addressed." As the spokesman observed, "We have to create freer trade within Canada if we are to compete in freer international markets."

As I have already observed, those in the grain trade have the most to gain from multilateral negotiations. But in the other commodities, Canada's principal export successes have been in the United States market and, therefore, it is through bilateral negotiations that they stand to gain the most. In the last several years, a number of Canadian farm commodities have felt the heavy weight of United States contingent protectionism. I have in mind here, particularly, actions taken against potatoes from New Brunswick and Prince Edward Island, or technical standards action taken against pork and hogs from western Canada. What a carefully drafted bilateral agreement with the States can do is to restrain the ability of American producer interests to take legal action on spurious arguments against competitive Canadian imports. To do nothing, in particular to resist the negotiation of an agreement, is merely to assure that producers in the United States will continue to be able to resort to phony legal expedients rather than to meeting Canadian competition fairly.

Let me speak a special word of appreciation here, and one that might on its face appear to be contradictory. I have already been critical of American countervailing duties actions, for example, against Canadian potatoes and, therefore, I appear to be contradicting myself when I congratulate the Ontario corn producers' action for the countervailing duty action which they brought under Canadian law against grain corn coming into this market from the United

States. Taking that action, the Ontario corn producers have not only assisted themselves. They have also assisted producers elsewhere in Canada and elsewhere in the world in exposing United States subsidy practices. They have exposed the inconsistency of United States officials like the Special Trade Representative, or Senators like Senators Baucus or Durenburger, who have condemned the Canadian tribunal for doing precisely what the U.S. has been attempting to do to Canada and to others. One is reminded of the old story about the man who loved Labrador dogs, but regularly hit them over the head with a two-by-four just to attract their attention. While we have great affection for our American neighbours and economic competitors, that kind of action by other Canadian producers might be necessary just to get the attention of the United States. A softwood lumber two-by-four would be particularly appropriate in this context.

From the standpoint of these sectors, it will be clear that the goal should be for the widest possible success in the bilateral trade negotiations. Adjustments will undoubtedly be required here but, clearly, these groups believe they can compete successfully.

Let me just offer one final comment before closing and that is one that applies to all farm producers whatever sector they may be in. While there may be some debate as to how freer trade will affect Canadians as producers, harm or favour, there can be no doubt as to how they will be affected as consumers. Freer trade will bring down the costs of Canadians whether as producers or consumers. To the extent that higher Canadian costs have been created directly by higher customs duties, then the duties saved will add to the efficiency of Canadian production. Opening to a wider market will also increase benefits to Canadians as consumers as they receive the cost advantages of longer production runs, the benefits of scale from serving a wider market.

**DEALING WITH U.S. TRADE LAWS:  
BEFORE, DURING AND AFTER**

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Kathleen Chagnon  
O'Melveny & Myers  
Washington, D.C.

**Introduction**

Canadian exporters to the U.S. are confronted by a thicket of not entirely coordinated U.S. trade laws, administered by a maze of administrative agencies. From the perspective of a U.S. industry seeking protection, however, those laws simply represent different ways of reaching the same goal -- improvement of the competitive position of the complainant against other companies.<sup>1</sup> The Canadian exporters should disregard any moralistic claims associated with trade litigation ("dumping," "subsidies," "unfair" access to raw materials, cheap labor, etc.) and view it from the same perspective -- how will the dispute affect their competitive position in the U.S. market.

The only way to be completely sure of staying out of trade disputes in the U.S. is to stay out of the market there. However, exporters can take action to avoid embroilment in (and to win) U.S. trade disputes -- assuming that the necessary action makes sense commercially.

The role of specialized counsel is to help ascertain those actions which can be taken (and be seen to be taken) before, during and after the case to reduce risks to the maximum extent consistent with sound business practices. This paper will sketch some of the ways this is done, but the reader should bear in mind that each case is different, and requires different treatment.

**I. The first phase: Before any specific trade action is threatened.**

What can an exporter do before there is any threat of U.S. trade action to avoid it? This requires an assessment of the peculiarities of the major U.S. trade laws.

**A. "Nonpolitical" remedies.**

The antidumping and countervailing duty laws are the most important threats to exporters, because they are non-discretionary. 19 U.S.C. 1303, 1671-177g (1982). That means that U.S. companies (or workers) can file petitions and, if they can prove their cases, put up import barriers without

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<sup>1</sup> In recent years, for example, cases have been brought by a U.S. subsidiary of a foreign parent against imports from third country subsidiaries of the same parent, see Motorcycle Batteries from Taiwan, 46 Fed. Reg. 28, 465 (1981) (initiation), and against a U.S. corporation which had signed a supply contract with a foreign company by a second U.S. company which had tried and failed to get the same supply contract from that same foreign exporter. Truck Trailer Axle and Brake Assemblies and Parts Thereof from Hungary, 47 Fed. Reg. 2949 (1982) (suspension).

being stopped by political intervention.

The imposition of antidumping duties requires a showing that exports have been sold in the U.S. at less than their price in the home or third country markets, or less than their cost of production. Thus, theoretically, a company can avoid antidumping cases by conscientiously checking the prices of its exports to the U.S. to ensure that they are not priced lower than sales at home or to third countries, or below cost. While such an "antidumping audit" may well be worth performing if a trade action is likely, it is not very useful advice if the result requires attempts to sell in the U.S. above the price the market will pay.

The imposition of antidumping duties also requires a finding that the imports in question have caused material injury to the U.S. industry. Certain planning steps probably should be taken in connection with this "injury" question: sales should be monitored to avoid unnecessary "bunching," and careful documentation should be kept showing that your company's sales are not price leaders in the U.S. market.

The imposition of countervailing duties requires receipt of a subsidy of some sort. This is not as simple as it sounds -- the U.S. considers as countervailable subsidies some things which may not strike a foreign businessman that way, such as government loan guarantees or (perhaps the extreme case) the purchase of inputs from producers who themselves receive subsidies. A company with substantial exports to the U.S. might want to check its possible liability for government assistance it has received or is contemplating receiving. More important, counselling can be quite useful in advance of receipt of government assistance, since the form and structure of that assistance could well dictate whether or not it is countervailable under U.S. laws, and to what extent.<sup>2</sup> It can make a tremendous difference, for example, whether the amount of the government grant is allocated over the output of the entire company, or over the output of a single machine bought with the grant.

Most countervailing duty cases require the same showings of material injury as antidumping cases, and the same precautions would apply.

#### B. "Political" remedies.

Section 201, or the "escape clause," permits a U.S. industry to seek relief from imports with which it cannot compete effectively. 19 U.S.C., 2251 (1982). Since Section 201 requires a finding by the U.S. International Trade Commission ("ITC") of "serious injury," some advance planning on the injury

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2 For greater detail on U.S. countervailing practice, see Horlick, Current Issues in the Definition and Measurement of Subsidies Under U.S. Countervailing Duty Law, The Trade Agreements Act of 1979--Four Years Later (Practising Law Institute 1983); Holmer, Haggerty and Hunter, Identifying and Measuring Subsidies Under the Countervailing Duty Law, The Department of Commerce Speaks on Import Administration and Export Administration (Practising Law Institute 1984); and Horlick, Bello, and Kelly, Valuing Subsidies: Issues and Arguments, The Department of Commerce Speaks on Import Administration and Export Administration (Practising Law Institute 1984).

issue can be done, as with antidumping and countervailing duty cases. Section 201 also requires a decision by the President to impose relief.

Because Section 201 proceedings are required to include imports into the U.S. from all sources, Canadian producers are frequently exposed to the "side swipe" phenomenon. In the 1984 steel Section 201 proceeding, for example, the U.S. complainants specifically stated that imports from Canada and Japan were not a problem, yet Japan wound up with quotas and Canada wound up committing itself not to "surge" (whatever that means). Thus, one country's exporters frequently can do very little to avoid entanglement in a Section 201 proceeding (although it is advisable to marshal political interest early to get more favorable treatment at the end of the case).

Section 301 provides a remedy that U.S. companies can invoke against unfair foreign trade barriers of almost any description. 19 U.S.C., 2411 (1982). Consequently, it is relatively difficult to plan ahead. But these disputes rarely arise suddenly. Typically, U.S. willingness to take action will be signalled well in advance. In the only Section 301 case where formal U.S. retaliation has occurred, involving Canadian denial of tax deductions for advertising on U.S. broadcast media, the U.S. action occurred eight years after the Canadian law in question was enacted (and six years after the Section 301 petition was filed). Trade and Tariff Act of 1984, Pub. L. No. 98-573, 232, 98 Stat. 299.

C. Section 337 normally provides a remedy against patent or trademark infringements. 19 U.S.C., 1337 (1982). Consequently, advance planning in this context is similar to normal patent/trademark precautions.

D. Section 332 investigations by the ITC are purely fact-finding investigations, but they often are instituted in order to build trade cases for a U.S. industry (as with Canadian potatoes, lumber, fish and live pigs). 19 U.S.C., 1332 (1982). Consequently, they represent a threat, but also an opportunity for exporters to advertise any claims they wish to make about not dumping or receiving subsidies or causing injury. They also can serve as a mechanical device for forcing the exporters to focus early on the possibility of trade litigation.

## II. The second phase: When you are apprised that a trade complaint is being considered.

The advice given by counsel in this phase gets a little murky. The goal is to avoid an unnecessary trade dispute by changing whatever practice is causing the friction, but not if it means giving up a necessary commercial practice. A further complication is the spectre of antitrust laws of the U.S. (and other countries). The imminence of a trade complaint -- whether justified or not -- will not excuse liability under the U.S. antitrust laws if industries on both sides of the border sit down to allocate markets or modify prices.

## III. The third phase: Action just prior to the filing of a trade case.

Once it is certain that a case will be filed (and this often occurs before the petition is formally filed), the foreign exporter should move very quickly.

In antidumping ("AD") and countervailing duty ("CVD") cases, for example, the ITC will make the preliminary determination of injury within 45 days of the

filing of the petition.

Typically the U.S. complainant is well prepared for this exercise, while the exporter is hurrying to catch up. The first thing the exporter should do in these cases is acquire specialized counsel and begin preparation for the preliminary hearing/determination. The ITC preliminary decision are made on the basis of fairly standard questionnaires, so work should begin at once on filling out the standard questionnaire, even before the questionnaire is formally received from the ITC. At the same time, one would move at once to try to limit the scope of the investigation. Obtaining exclusion of a product at this stage is victory with respect to that product.

Similarly, in Section 301 cases, the foreign government would want to begin talking with the U.S. Trade Representative's office at once, to see if some immediate settlement is possible.

#### IV. The fourth phase: Once the petition is filed.

##### A. Preliminary Stage.

1. Consultation. The Department of Commerce ("Commerce") is required to consult with the government of the foreign country if it is a signatory of the GATT Subsidies Code before initiating a countervailing duty investigation.<sup>3</sup> This is an opportunity to point out flaws in the petition, and refute factual errors with publicly available information. A decision whether to initiate an investigation must be made by Commerce within 20 days of receipt of the petition. 19 U.S.C., 1671a(c), 1673a(c) (1982). In practice, Commerce has little leeway to refuse to investigate an allegation that a given foreign government practice could conceivably be a subsidy or that dumping is occurring, as long as the claim is supported by some evidence. 19 U.S.C., 1671a(b)(1), 1673a(b)(1) (1982). See United States v. Roses, Inc., 4 ITRD 1841, 706 F.2d 1563 (Standards for acceptable petitions in antidumping proceedings). Art. 3.1, Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("Subsidies Code"), incorporated by reference into U.S. law, Trade Agreements Act of 1979, Pub. L. No. 96-39, 2, 93 Stat. 144, 147 (1979), reprinted in House Comm. on Ways and Means and Senate Comm. on Finance, 96th Cong., 1st Sess., Multilateral Trade Negotiations: International Codes Agreed to in Geneva, Switzerland, April 12, 1979 (Joint Comm. Print 1979); 19 C.F.R., 355.25(a) (1981). But see United States v. Roses, Inc., 4 ITRD 1841, 706 F.2d 1563 (limitations on contacts prior to initiation of an antidumping investigation).

Contacts with the Office of the U.S. trade Representative (USTR) should begin at once in Section 301 cases, but are of less use at this phase in

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<sup>3</sup> Antidumping and countervailing duty proceedings may be initiated in response to a petition filed by a private party, 19 U.S.C., 1671a(b), 1673a(b) (1982), or self-initiated by the administering authority (Commerce pursuant to Reorg. Plan No. 3 of 1979, 3 C.F.R. 513 (1979), reprinted in 19 U.S.C., 2171 note (1982), and in 93 Stat. 1381 (1979). In practice, virtually all cases are begun by private petition (in part because, absent a private petitioner claiming injury, Commerce is unlikely to self-initiate a case where injury must be shown to the ITC).



Section 201 and Section 337 cases.

2. Preliminary Determination of Injury in AD/CVD Cases. Within 45 days of the date of filing of an AD/CVD petition or self-initiation by Commerce, the ITC must determine "whether there is a reasonable indication that . . . an industry in the United States -- (a) is materially injured, or (B) is threatened with material injury." 19 U.S.C., 1671b(a)(1), 1673b(a)(1) (1982).<sup>4</sup>

The Commission's determination follows a staff investigation and, usually, a "conference" (in effect, a hearing before the ITC's Director of Operations or Investigations). Petitioner's counsel should be fully prepared for this prior to filing a petition -- a copy of the Commission's questionnaire should have been obtained and filled out in advance, possible problem areas thought over, and briefs planned. Conversely, respondent's counsel typically has very little if any warning of the filing of the petition. He or she must review with client and experts possible weaknesses in the petitioning industry's case, and consult with ITC staff to make sure that the right questions are asked of the petitioning industry.

If the ITC does not find a reasonable indication of injury to a U.S. industry, then the investigation is terminated. 19 U.S.C., 1671b, 1673b (1982). Although in theory there is no rule against a refiling of a petition with new evidence, in practice it would not be wise for a U.S. industry to do so absent some major change in the facts or law relied upon. If the Commission finds a reasonable indication of injury, then the investigation continued at Commerce (which has probably already sent its questionnaires out and started its information-gathering). *Id.*

3. Possible Trade Effect. The initiation of an investigation may or may not have an effect on trade. Thus, in AD/CVD cases an exporter should wait for the preliminary determination of injury by the ITC (within 45 days of the filing of the petition) to see if it should change its sales patterns in the U.S. because of the investigation. In Section 201, 301, and 337 cases, the impact on trade is less clear. (There is anecdotal evidence that the filing of the 1984 Section 201 steel petition stimulated an increase in imports.)

#### B. Investigation.

1. Questionnaire. Once commerce initiates an AD or CVD investigation, its next step in an investigation is to send a questionnaire to the foreign government and/or companies.

A response to the questionnaire is usually required within 30 days of its receipt. Extensions of time for the response are possible if appropriate. In requesting an extension of time for answering the questionnaire, the respondent

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<sup>4</sup> In countervailing duty cases involving countries which are not signatories to the Subsidies Code and which have not assumed substantially equivalent obligations, no injury test is made available except in certain cases involving non-dutiable merchandise. 19 U.S.C., 1303, 1671 (1982). Certain other differences in procedure also apply. See 19 U.S.C., 1303.

must show evidence of cooperation (i.e., that work is being done on the response), together with good reason why 30 days are insufficient.

The AD/CVD questionnaire responses are respondent's opportunity to shape its case in the way most advantageous to it, subject to verification of any information in the response. Section 201 cases are also based on questionnaires to both sides, while Section 301 cases are somewhat "free-form," and Section 337 proceedings are like court trials.

2. Access to Confidential Information. Access to confidential information under protective order is available to both sides in an AD/CVD proceeding before Commerce (but not the ITC). In theory, the required non-confidential summary, 19 U.S.C., 1677f(4) (1982); 19 C.F.R., 355.18, 353.28 (1983), should be sufficient in most countervailing duty cases, but in practice, petitioner's counsel will frequently want to see the confidential responses to questions. Petitioner's counsel should almost always seek the confidential numbers in an antidumping response in order to double-check the calculations and claims of the respondent. Respondent's counsel will want to argue that there is no real need ("good cause") for the information, although typically Commerce will reject that argument except for customers' names and confidential sources of information. No access to confidential data is permitted in Section 201 or 301 cases, while there is liberal discovery under Section 337.

### 3. Time limits.

a) Countervailing Duty Cases. An extension of time beyond the "normal" 85 day limit for preliminary determinations may be obtained for up to an additional 65 days if the case is novel, complex, or involves a large number of responding companies, 19 U.S.C., 1671b(c)(1) (1982), or for up to 250 days if an "upstream subsidy" is alleged. Trade and Tariff Act of 1984, Pub. L. 98-573, 613, 98 Stat. 3036.

b) Antidumping Cases. The "normal" time limit for an antidumping investigation is 160 days, 19 U.S.C., 1673(b)(1) (1982), with a potential extension of up to 210 days if the statutory criteria of novelty, complexity, or number of firms involved are met. 19 U.S.C., 1673b(c) (1982).

### C. Other Trade Limitation.

Section 201 petitions must be acted upon by the ITC within 180 days. If the ITC finds that there is serious injury, the President must decide what, if any action to take within 60 days. 19 U.S.C., 2252(b) (1982).

Under Section 301, a decision whether to initiate an investigation must be made by the USTR within 45 days, 19 U.S.C., 2412(a) (1982). After that, the deadlines in practice get a bit flexible. Section 337 investigations must be completed within a year to a year and a half. 19 U.S.C., 1337(b)(1)(3) (1982).

4. Verification. Verification of the AC/CVD questionnaire response will normally be conducted by a Commerce case analyst working on the case, possibly with help from other Commerce staff or from outside accountants under contract to Commerce. The case analyst in a verification should be very simple -- respondent, in putting together the questionnaire response, should have assembled the "paper trail" leading to each item in the response. Respondents

should not waste their time arguing that a response is the word of a foreign government and therefore should be taken at face value.

Commerce takes the position that a verification may be made on the basis of a random selection of data rather than on all data. But see, 19 U.S.C., 1677e(a) (1982).

The ITC has subpoena power to compel production of evidence in Section 201 and Section 337 cases. 19 U.S.C., 1333(b) (1982).

#### D. Determinations.

1. AD/CVD Preliminary Determination. A preliminary AD/CVD determination will lead to the suspension of liquidation of duties and posting of bonds for the imported merchandise under investigation, effective on the date of publication in the Federal Register of the preliminary determination. 19 U.S.C., 1671b(d)(1), (2), 1673d(d)(1), (2) (1982).

In addition, an affirmative preliminary determination by Commerce will trigger a 120-day period within which the Commission must make its final injury determination. 19 U.S.C., 1671d(b)(2), 1673d(b)(2) (1982). Moreover, in certain specified circumstances, Commerce can order that the withholding of appraisement be made retroactive for up to 90 days to prevent importers from rushing in merchandise known to be dumped or subsidised prior to the preliminary determination. 19 U.S.C., 1671b(e), 1671d(a)(2), (b)(4), 1673b(e), 1673d(a)(3), (b)(4) (1982). A negative preliminary determination will lead to a continuation of the investigation, with no suspension of liquidation nor requirement of posting of bonds. The preliminary determination includes Commerce's first presentation of its policy decisions on issues raised in an investigation. This presentation clarifies the issues of the case and affords both parties an opportunity to develop their strategies. The preliminary determination is followed within a few days by a disclosure conference at which each side is told separately the details of the calculations leading to the preliminary determination. The purpose of the disclosure conference is to give the parties the detailed knowledge which will enable them to participate effectively in the remainder of the investigation. It is not a good idea to use the disclosure conference to attempt to argue with staff about the results. That is done at a hearing, which may be requested by either party. 19 U.S.C., 1677c (1982). In addition, the hearing serves the function of getting one's arguments on the record for purposes of possible later judicial review.

2. Final AC/CVD Determinations by Commerce. A final determination must be reached by Commerce within 75 days of a preliminary determination in a countervailing duty case, or 75 days (extendable by 135 days at the request of the party "losing" the preliminary determination) in an antidumping case. If the final determination is negative, the investigation is terminated. 19 U.S.C. 1671d(c)(2) (1982). If the final determination is affirmative, it goes to the Commission for a final determination of the existence of material injury. Cash deposits (which tie up more of the exporter's working capital) are now required instead of bonds. 19 U.S.C., 1671d(c)(91) (1982).

During the period between the preliminary determination and the final determination, both parties will be making their best arguments on questions of fact and law/policy. In practice, the ultimate decision makers will not have time for anything but the most concise briefs.

3. Final AD/CVD Determination by the International Trade Commission. In general, the Commission must make a final determination of injury 45 to 75 days after a final affirmative determination of dumping or subsidization by Commerce, 19 U.S.C., 1671d(b), 1673d(b) (1982) except in those countervailing duty cases where no injury test applies. 19 U.S.C., 1671 (1982). This process involves a full-fledged hearing before the ITC, with pre- and posthearing briefs and use of expert economic and technical witnesses, all within a very short time span. If the ITC's final determination is negative, the investigation is terminated. 19 U.S.C., 1671d(c), 1673d(c) (1982).

If the final ITC determination is affirmative, then Commerce must issue an antidumping or countervailing duty order, as appropriate. 19 U.S.C., 1671e, 1673e (1982).

4. Other Trade Remedies. Affirmative (favorable to the U.S. complainant) findings by the ITC in Section 201 and Section 337 cases cause no direct trade impact. Instead, the affirmative determination triggers a review by the President (in practice, preceded by an interagency review), who usually accepts Section 337 relief (if for patent or trademark violations) but often rejects relief in Section 201 cases. E.g., Refined and Blister Copper Industry, Prospects for Adjustment Assistance for Firms, 49 Fed. reg. 32,095 (1984).

#### E. Review.

1. Judicial Review. Judicial review can be sought by one of both of the parties for almost any decision in an anti-dumping or countervailing duty investigation, starting with the initiation of the investigation. 19 U.S.C., 1516a (1982).

Judicial review of Section 201 appears to be limited to procedural matters, Maple Leaf Fish Co. v. United States, 566 F. Supp. 899, 570 F. Supp. 734, while judicial review of Section 337 is limited to the ITC's decision (and not the President's). Certain Headboxes and Papermaking Machine Forming Sections for the Continuous Production of Paper, and Components Thereof, 49 Fed. Reg. 32,689 (1984) (termination and issuance of consent order), 705 F.2d 1565 (Fed. Cir. 1982).

2. Administrative Review. Annual reviews of antidumping or countervailing duty orders, pursuant to Section 751 of the Tariff Act of 1930, as amended by the 1979 Trade Agreements Act, 19 U.S.C., 1675 (1982), are conducted much as the original investigation. The annual review represents a chance to raise new facts, including those which may have been missed in the initial investigation, and a less promising opportunity to argue the original points again (at some risk of irritating the staff). In addition, under Section 751(b), Commerce may revoke an order for changed circumstances; Commerce has normally refused to use Section 751 as a vehicle for revising recently issued orders. E.G., Color Television Receivers from Korea, 49 Fed. Reg. 50,420 (1984) (termination).

Section 201 petitions cannot be brought by a losing industry for another year, but the same result can be obtained by having the Senate Finance Committee or the House Ways and Means Committee bring the petition for the losing industry within that one year period. E.G., Non-Rubber Footwear Hearings, 50 Fed. Reg. 4278 (1985).

The President must review relief given under Section 201 after five years. 19 U.S.C., 2253(a) (1982).

#### F. Settlements.

##### 1. AD/CVD.

Settlement of AD/CVD cases may be obtained by one of two means.

a) Termination. Commerce can terminate an investigation upon withdrawal of the petition by the petitioner, 19 U.S.C., 1671c(a), 1673c(a) (1982), as amended by the Trade and Tariff Act of 1984, Pub. L. 98-573, 604, 98 Stat. 3028, typically upon negotiation of some satisfactory "deal." The 1986 softwood lumber cases technically were settled by withdrawal of the petition, as was the Bombardier subway car case.

b) Suspension Agreements. Cases can also be settled by suspension agreements. In practice, there are three useful types of suspension agreements for countervailing duty cases:

(1) Renunciation of the subsidy by the foreign government or recipient company, 19 U.S.C., 1671c(b)(1) (1982); see Prestressed Concrete Steel Wire Strand from South Africa, 47 Fed. Reg. 22,173 (1982) (suspension).

(2) Imposition of an export tax equal to the amount of the subsidy, 19 U.S.C., 1671c(b)(1) (1982); see Tool Steel from Brazil, 48 Fed. Reg. 11,731 (1983) (suspension).

(3) Quantitative restraints, 19 U.S.C., 1671c(c)(3) (1982), Trade and Tariff Act of 1984, Pub. L. 98-573, 604, 98 Stat. 3026. This form has yet to be used.

(4) Other possible statutory means (cessation of exports, 19 U.S.C., 1671c(b)(2), and elimination of 85 percent of the subsidy and suppression of price undercutting, 19 U.S.C., 1671c(c)(1) (1982) have not proven useful to date.

Antidumping investigations may be suspended upon an agreement by the exporters to revise their prices to eliminate completely any dumping margin. 19 U.S.C., 1673c(b)(2) (1982). While there are methods of suspension under the statute which parallel those for countervailing duty proceedings described above, see 19 U.S.C., 1673c(b)(1), (c)(1) (1982), they are rarely practicable.

The procedures for AD/CVD suspension agreements are complex. Essentially, they require an agreement between Commerce and the respondent at least 30 days prior to the date of the final determination in order to allow the domestic petitioner its statutory right of comment. 19 U.S.C., 1671c(e), 1673c(e) (1982). There are ample provisions for review of suspension agreements. 19 U.S.C., 1671c(g), (h), 1516a(a)(2)(B)(iv) (1982).

c) Settlements under Section 201 in essence turn into political "deals," such as the "voluntary" import restraints imposed in the wake of the Section 201 steel case in 1984.

d) Section 337 cases are quite frequently settled by consent decrees

or licensing agreements between the complainant and the foreign respondent (as with much other, normal patent and trademark litigation).

**V. The fifth phase: After the Case is over.**

A great deal can be accomplished after a case is over to ameliorate the consequences of a negative result. For example, in antidumping cases, the method of calculating duties for collection is actually different than the method used during the initial investigation, and a well organized company can arrange its sales to minimize duties. Similarly, countervailing duties can be minimized by a review of operations and decisions whether to terminate acceptance of some government assistance, or by payment of export taxes (in which case the foreign government, rather than the U.S. Treasury, in effect collects the duty). Quotas or tariffs under Section 201 or 301 might require changes in business operations, production patterns (the 1983 tariffs under Section 201 on motorcycles with engines larger than 700 cc led to a spate of 699 cc engines), or diplomatic action (including reprisals or threat thereof).

**RECENT CANADIAN EXPERIENCE WITH COUNTERVAILING DUTIES:  
THE CASE OF AGRICULTURE**

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The Canadian experience with countervailing duty laws is relatively short. We certainly have not had the experience that the United States has had since 1979. It is only since the enactment of the Special Import Measures Act ("SIMA")<sup>1</sup> in 1984 that there has been in Canada a privately-initiated, complex administrative system for determining countervailing duty complaints. In total, there have only been six countervailing duty cases since SIMA came into force in December 1984. Four of those cases were investigated in 1986 and the numbers appear to be increasing every year.

There are two trends emerging in Canadian countervailing duty cases. The majority of cases brought in 1986, three out of four, involved agricultural products from the European Economic Community (EEC) and the United States.<sup>2</sup> The other cases involved manufactured products such as carbon steel pipe and polyphase induction motors from newly industrializing countries such as Brazil, Taiwan and Mexico. A significant reason for the recent increase in countervailing duty actions involving agricultural products is the agricultural trade war between the United States and the EEC. In response to the world glut and falling prices for agricultural products, many countries have responded with new or improved assistance programs to cushion their domestic agricultural producers from the effects of the world supply and demand imbalance. However, such domestic subsidization programs have resulted in overproduction and diversion of subsidized products into foreign markets, depressed world prices and injury to agricultural producers in foreign markets. These were some of the allegations in the recent Canadian cases involving imports of boneless manufacturing beef from the EEC (EEC Beef) and grain corn from the United States (U.S. Corn).

Another significant reason for the increase in the number of countervailing duty cases in Canada in the last few years relates to the significant procedural changes that came into effect with the enactment of SIMA. Before SIMA, the Countervailing Duty Regulations under the Customs Tariff<sup>3</sup> provided for an investigatory process which was subject entirely to Cabinet discretion. Canada did not have a quasi-judicial, administrative system for adjudicating countervailing duty actions. With the enactment of SIMA, Canada adopted a two-track, privately-initiated, quasi-judicial, time-limited system for investigating antidumping and countervailing duty complaints. As in the United States, the Canadian system was designed with a distinct procedural bias in favour of domestic complainants.

### **Procedures**

There are two agencies in Canada which are responsible for investigating and determining the issues in a countervailing duty case: the Department of Revenue, Customs and Excise ("Revenue") and the Canadian Import Tribunal (the "CIT"). Under SIMA, the Deputy Minister of Revenue may commence an investigation on his own initiative or on the basis of a written complaint properly documented by persons representing a major proportion of the industry in Canada

or, in some cases, where notice is received from the CIT. Where the Deputy Minister is satisfied that there is evidence that the imported goods have been subsidized and that there is a reasonable indication that the subsidization of the goods has caused, is causing or is likely to cause material injury, or has caused or is causing retardation of the establishment, in Canada of production of like goods, he is required to launch an investigation.<sup>4</sup> It is Revenue's practice to issue written reasons for its decision to initiate an investigation, Revenue will send out questionnaires to all known importers concerning their imports of the goods under investigation. In most cases, Revenue officials will contact the foreign exporters of the subject goods and attend at their premises to verify the information provided in the importers' questionnaires.

Once an investigation has been commenced, the Deputy Minister must make a preliminary determination within 90 days.<sup>5</sup> This time may be extended, as it was in the case of U.S. Corn, to 135 days where the issues involved are complex or novel.<sup>6</sup> Revenue will examine the issue of whether there is a reasonable indication that the subsidized goods are causing material injury to an industry in Canada. Up to 30 days after receipt of notice of an investigation, an interested party, (i.e., an exporter, an importer, the government of the country of export or the complainant) may refer the question of reasonable indication of injury to the CIT.<sup>7</sup> If the preliminary determination by Revenue is affirmative, provisional duties in the estimated amount of the subsidy may be imposed on all like products entering the country between the date of the preliminary determination and the final order of the CIT.<sup>8</sup>

As soon as a preliminary determination is made, the matter must be referred by the Deputy Minister to the CIT which then conducts an inquiry into the question of whether the subsidized goods have caused, are causing or are likely to cause material injury, or have caused or are causing retardation of the establishment, in Canada of the production of like goods. The CIT must conduct its inquiry and issue a finding within 120 days from the date of the preliminary determination.<sup>9</sup> During the course of the CIT's inquiry, the Deputy Minister of Revenue must, within 90 days of the date of the preliminary determination, make a final determination on the question of subsidy. In his final determination, the Deputy Minister must determine whether the imported goods have been or are being subsidized, whether the amount of the subsidy on the goods or the actual or potential volume of the subsidized goods is negligible, and the amount of the subsidy on such goods.<sup>10</sup>

The CIT, is required to examine two major issues in its inquiry. First, it must determine whether there has been, is or will likely be in future material injury or material retardation to the production in Canada of like goods. In its inquiry into material injury, the CIT may examine the volume of subsidized imports, the effect of the imported goods on prices of like goods in the domestic market and the consequent impact of the imported goods on domestic production of like goods. In its examination, the CIT may consider whether there has been significant price undercutting by the subsidized imports; whether the effect of the imports has been to depress prices to a significant degree or to prevent price increases which otherwise would have occurred; whether there has been actual or potential decline in output, sales, market share, growth, productivity, return on investment or utilization of capacity; other factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, profits, ability to raise capital or investments and, in the case of agriculture, whether there has been an



increased burden on government support programs.<sup>11</sup> Also, the CIT must determine whether the subsidization of the imported goods is the cause of material injury to the production in Canada of like goods. Causality between the injury to the domestic production in Canada of like goods and the subsidization of the imported goods must be established.

Generally speaking, the CIT relies on the domestic complainants, importers, exporters, the government of the country of export, and other interested persons to make representation with respect to the issues of material injury and causality. It conducts public hearings at which new evidence is presented and interested parties have an opportunity for cross-examination. The CIT has the power to compel the attendance of witnesses and proceedings before it, although informal, have many of the trappings of a court.

## Issues

### (a) Standing

The first important question that Canadian producers have in contemplating initiation of a countervailing duty action is, who may bring a countervailing duty complaint? In legal terminology this is the issue of standing. The Canadian law is considerably more ambiguous on this point than the U.S. law. SIMA speaks only of the Deputy Minister receiving "a written complaint respecting...the subsidizing of goods."<sup>12</sup> Although there are no specific provisions in SIMA indicating who may make a written complaint, the CIT in its decision in EEC Beef stated that common sense dictated the acceptance of the principle that, as in an antidumping case, "a major proportion of an industry has standing to make a case for material injury."<sup>13</sup> In practical terms, this means that persons or associations representing a major proportion of the production in Canada of like goods may bring a countervailing duty complaint.

In U.S. Corn<sup>14</sup> and EEC Pasta<sup>15</sup> the issue of standing was not a problem. In U.S. Corn, the complainants were the Ontario Corn Producers Association, the Manitoba Corn Growers Association, and an association of Quebec feed grain producers. All three associations represented producers of the same product as the imported product under investigation. In EEC Pasta, the complainant was the Canadian Pasta Manufacturers Association, and association composed of five major producers, four of whom represented an estimated 95 per cent of Canadian production.

In the third significant case in 1986, EEC Beef,<sup>16</sup> the question of standing was critical. In that case, the respondents, the CBF Irish Livestock and Meat Board and Ronald A. Chisholm Limited, alleged that the complainant, the Canadian Cattlemen's Association ("CCA"), did not have standing to bring the action because the CCA did not represent producers of "like goods." The imported product under investigation was boneless, manufacturing beef which consisted of frozen quarters of beef packaged in boxes. The complainant, CCA, is an association of cow-calf producers and feed lot operators who produce live cows for sale to slaughterers, boners, processors and packers. These latter operations are not integrated in Canada.

The CIT found in EEC Beef that the CCA represented a majority of producers of like goods in Canada. The CIT reasoned that the production process for the product consists of a single, continuous line of production starting with a raw material (the cow) which yields only one, commercially significant end-product,

namely, boneless manufacturing beef.<sup>17</sup> In the U.S. cases involving imports of Canadian Atlantic groundfish (Groundfish), the International Trade Commission found, to the contrary, that the producers of live swine and the pork processors and packers, and the producers of whole fish and the processors and packers of fish fillets, respectively, were distinct and different industries and that the products were not "like goods". The U.S. test, as enunciated in Swine and Pork, requires that the raw product enter into a single line of production resulting in the processed product and that there be a substantial degree of economic integration between the producers of the raw product and the processors, with an emphasis on the close economic and legal relationship between the producers and the processors.<sup>18</sup>

In EEC Beef, the CIT chose to ignore the second part of the U.S. test and stated that it is essential only to prove that the raw material entered into a single, continuous line of production resulting in the end product to establish standing in Canada. The CIT was persuaded that in cases involving agricultural products, to hold otherwise would mean that no one would have standing to bring an action to protect Canadian primary agricultural producers. The question of who has standing to bring a petition in a countervailing duty case in the United States involving agricultural products has not been finally resolved. There have been decisions contrary to Swine and Pork and Groundfish. As well, there have been Congressional proposals to override the ITC decisions in Swine and Pork and Groundfish.

(b) Subsidy

The second important issue in countervailing duty case is the question of what constitutes a countervailable, or actionable, subsidy.

In SIMA, "subsidy" is defined as:

any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods, as a result of any scheme, program, practice or thing done, provided or implemented by the government of a country other than Canada...<sup>19</sup>

To be a countervailable subsidy, a program need not provide a benefit directly in respect of the production or manufacture of the imported goods, but need only provide a benefit to a person engaged in one of the above activities related to the imported goods.

In U.S. Corn, out of a total of 64 federal programs and 20 state programs that were investigated, only 4 federal programs were found to confer a countervailable subsidies. The four countervailable programs were the Great Plains Conservation Program, the Storage Facilities Equipment Loan Program, the Feed Grain Program and the Reserve Storage Payment Program. In U.S. Corn, Revenue established the following criteria for determining whether a government program confers a countervailable subsidy:

- (1) whether the program provides a financial or other commercial benefit, and
- (2) whether the program is targeted.<sup>20</sup>

Revenue has adopted the principle, accepted internationally, that "generally available" government programs are not countervailable whereas government programs "targeted" at a specific enterprise or industry are countervailable. In U.S. Corn, Revenue established the following criteria for determining which programs are "generally available":

- (1) programs which are available to all persons in an industrial sector, such as agriculture;
- (2) programs which are available to similar persons across a range of industrial sectors, such as small business programs;
- (3) programs which are available to more than one industrial sector; and
- (4) programs which are generally available within the jurisdiction of the granting authority, whether it is a province or a country.<sup>21</sup>

In the latter case, a provincial program which is available across a range of industrial sectors or to all persons in an industrial sector throughout the province is generally available. However, a federal program which is targeted to specific regions within Canada, such as a regional development program, is countervailable. Generally speaking, if a program is available only to certain enterprises or access to the program is limited in some way, either by specifically including or excluding certain enterprises or regions, then the program may be "targeted" depending upon the eligibility conditions or criteria for the program. In determining whether a program is regionally targeted within a particular jurisdiction, Revenue will consider reasons why the program is directed only at certain segments within that jurisdiction. If the program is directed at a certain region because that region is the only one that could reasonably benefit from the program or because that region possesses certain characteristics that are unique, then the program may not be considered to be targeted.

Although on first analysis, the definition of "subsidy" in SIMA is extremely broad and includes a commercial benefit to a person engaged at any stage in the production, processing, distribution, transportation or sale of imported goods, Revenue appears, in the first cases which it has examined, to be interpreting countervailable subsidy in a narrower manner than the recent interpretations by the U.S. Department of Commerce ("DOC") in the administrative review in the Carbon Black from Mexico and the preliminary determination in Softwood Lumber from Canada in 1986.

It is interesting to compare and contrast the criteria established by Revenue in U.S. Corn from recent determinations by the DOC. In its 1983 final determination in Softwood Products from Canada, the DOC found that Canadian federal and provincial stumpage programs did not confer countervailable subsidies because the programs were not targeted to "a specific enterprise or industry, or group of enterprises or industries." The DOC found that stumpage programs were available in Canada on similar terms regardless of the industry or enterprise of the recipient, that there was no governmental targeting to limit use to a specific industry, and that stumpage was widely used by more than one group of industries.<sup>22</sup> In its 1986 preliminary determination in Softwood Lumber from Canada, however, the DOC found that stumpage programs were available to a smaller group of industries than it had found previously and that particular recipients were targeted by the exercise of provincial govern-

ment discretion in allocating timber licenses and establishing stumpage rates. In that determination, the DOC found that the industries benefiting from stumpage programs were limited to the lumber and pulp and paper industries which were in fact one integrated industry.<sup>23</sup>

In Swine and Pork, decided in 1985, the DOC found that government programs available in fact to all agricultural producers across the whole range of agricultural products were not "specific", or in Canadian terms were not countervailable.<sup>24</sup> In that case, the Canada Agricultural Products Standards Act was deemed not to provide countervailable subsidies because numerous agricultural products were graded under the Act. On the other hand, payments made under the Federal Agriculture Stabilization Act were found to be countervailable because that Act and regulations specifically listed certain products eligible for price support payments. In Groundfish, however, the DOC refused to apply the same reasoning as it did in Swine and Pork to consider the saltwater fishing and seafood products industries as a broad group of industries like agriculture.<sup>25</sup> Thus, government programs directed at the saltwater fishing and seafood products industries were deemed to be "specific" and therefore countervailable.

Of particular concern to Canada is the DOC's interpretation that government programs available in certain regions of a province or country are "specific" and therefore countervailable. Under this reasoning, the DOC has held that provincial government programs available throughout a province were not countervailable, but programs such as B.C.'s Low Interest Loan Assistance program, which was available formerly in all parts of British Columbia except the Lower Mainland, were countervailable. Similarly, federal government programs designed to provide opportunities in economically-depressed regions of the country have been found to be countervailable.

In EEC Pasta, the programs investigated and found to be subsidies were programs which provided export refunds on wheat and eggs exported in the form of pasta.<sup>26</sup> The programs investigated provided benefits to the producers of primary agricultural products: durum wheat and eggs. These programs would be identified as "upstream subsidies" in U.S. law. SIMA contains some unique provisions concerning export subsidies, that is benefits contingent upon export performance or benefits which operate and are intended to stimulate export sales. The Deputy Minister of Revenue in making a final determination of subsidization is directed under SIMA to exclude in his calculation of the amount of subsidy any export subsidy provided by a country that is not inconsistent with that country's obligations under the General Agreement on Tariffs and Trade (GATT).<sup>27</sup> The 1979 Subsidies and Countervailing Duties Code (the "Code") provides in Article 9 that signatories shall not grant export subsidies on products other than certain primary products. With respect to primary products, the signatories agreed not to grant directly or indirectly any export subsidy in a manner which results in the subsidizing country having a more than equitable share of world export trade in an agricultural product. Signatories also agreed not to grant export subsidies on exports of certain primary products to a particular market in a manner which results in prices materially below those of other suppliers to the same market. Although the question was not discussed in its reasons in EEC Pasta, Revenue must have concluded that the export subsidies under investigation in that case were inconsistent with the provisions of the GATT and the Code.

(c) Injury

The third important issue in a countervailing duty case is the issue of material injury or material retardation to the production in Canada of like goods. Significant considerations in cases involving agricultural products are (i) who comprises the industry in Canada involved in the production of like goods and (ii) what are like goods?

These issues were critical in EEC Beef. In that case, the CIT found that the subsidized imports had not caused and were not causing material injury to Canadian cow/calf producers and feed lot operators. It found, however, that there was a likelihood of material injury on the basis that there was a significant and growing surplus of beef in the EEC and that, without import restrictions, it was likely that EEC exports to Canada would resume in substantial volumes. A surge in imports of EEC beef into Canada, the CIT reasoned, would likely result in a diversion of Canadian live cows and beef into the U.S. market. The U.S. National Cattlemen's Association and certain Congressmen had threatened to bring retaliatory action against Canada if, in the words of some Congressmen, Canada continued to act as a "back door" for the EEC. On the basis of this evidence, the CIT found a likelihood of material injury from the threat of U.S. retaliatory action.<sup>28</sup>

The CIT also found material injury in U.S. Corn. In a 2-1 split decision, the CIT found past, present and likelihood of future material injury to Canadian corn producers from U.S. Feed Grain Program, which have resulted in over-production and high inventories of grain corn in the United States. In that case, the CIT looked to price as the only indicia of injury as the volume of subsidized imports from the U.S. had been declining since 1981. It heard evidence that the Canadian price for corn generally follows the U.S. price as set by the Chicago Board of Trade. The CIT found that there had been significant decline in the average farm price of corn in the U.S. Midwest which had caused Canadian prices to decline below the cost of production. The dramatic decline in the Canadian price for corn, the CIT determined, was of a magnitude that indicated material injury to Canadian corn producers. As the U.S. Feed Grain Program had already resulted in depressed market prices in Canada below the cost of production and would inevitably result in increased federal and provincial stabilization payments for Canadian corn producers, the CIT concluded that there has been, is and will likely be in future material injury to Canadian producers of grain corn from the subsidization of U.S. corn.<sup>29</sup>

In EEC Pasta, the CIT found unanimously that there was no material injury to Canadian pasta production from the subsidized imports. The CIT based its decision on its analysis that the markets for European pasta and Canadian pasta were different and that the products do not compete with each other. The market for Canadian pasta consists largely of large retail chain grocery stores whereas the market for European pasta consists of large independent grocery outlets in the Metropolitan Toronto and Montreal areas. European pasta is sold in different sized packages and at significantly higher prices than Canadian pasta in the large independent grocery outlets in Metropolitan Toronto and Montreal. The CIT found that consumers of European pasta are generally speaking certain ethnic groups within those Metropolitan areas and that demand is relatively price inelastic. The injury suffered by the Canadian industry was not caused by the subsidized imports, the CIT determined. The price suppression and reduction in profit margins experienced by the Canadian pasta

producers was caused largely by the intense competition among Canadian producers in their own market and by an increase in the regulated price set for wheat by the Canadian Wheat Board. Because of intense domestic competition, Canadian pasta producers had not been able to pass on the increase in the cost of wheat to their customers. The CIT concluded that the Canadian pasta producers were experiencing intensely competitive conditions within their own market which had caused price suppression and squeezing of profit margins.<sup>30</sup>

### Public Interest Hearings

Generally speaking, in the cases to date, the countervailing duties which have been levied have been imposed in the full amount of the subsidy on the imported goods. In the United States, the Trade Agreements Act of 1979 provides for a mandatory assessment of a countervailing duty in an amount equal to, and not less than, the amount of the net subsidy on the imported goods.<sup>31</sup> Article VI of the GATT and Article 4 of the Code provides that no countervailing duty may be levied in excess of the estimated subsidy on the imported goods. The Code provides further that the amount of duty imposed should be less than the net subsidy where the injury to the domestic producers is less than the full amount of the subsidy.<sup>32</sup>

In Canada, there is a unique section in SIMA which provides a procedure whereby an interested person may challenge the imposition of a countervailing duty, or the imposition of a duty in the full amount of the subsidy, as not being in the public interest. Any "interested person" may make a request to the CIT for an opportunity to make representations on the question of whether such a duty is in the public interest.<sup>33</sup> The CIT may hold public hearings on the question after its injury finding has been made. It is required to report its finding on the public hearings on the question after its injury finding has been made. It is required to report its finding on the public interest question to the Minister of Finance. He has the discretion to determine that the imposition of a countervailing duty, or the imposition of a duty in the full amount of the subsidy, is, is not or might not be in the public interest.

The public interest provision will be tested for the first time in U.S. Corn. The CIT will conduct a public hearing commencing on July 6, 1987 to receive representations from interested persons on the question of whether the imposition of a countervailing duty would, would not or might not be in the public interest. In this case, there are a number of groups that have challenged the imposition of a countervailing duty on the basis that it is not in the public interest. The Canadian industry associations arguing against the imposition of countervailing duties include the Industrial Corn Users Group, consisting of the St. Lawrence Starch Company Limited, Casco Company, Nacan Products Limited and King Grain (1985) Limited; the Association of Canadian Distillers; the Canadian Feed Industry Association (Quebec, Alberta and Saskatchewan divisions); the Brewers Association of Canada; the Canadian Pork Council; the Maritime Farmers Council and the Alberta chicken, turkey and egg marketing boards.

The reaction of Canadian users of grain corn demonstrates the significant interdependency among agricultural producers and among agricultural producers and their customers within the Canadian economy. As illustrated in U.S. Corn, some of the users of grain corn are other producers of primary agricultural products, such as the poultry producers in Alberta and British Columbia and hog producers in Quebec. Seventy-six per cent of the grain corn in Canada is grown

in Ontario. Smaller amounts are grown in Manitoba and Quebec. The B.C. division of the Canadian Feed Industry Association argued successfully before the CIT that they should be excluded from the imposition of countervailing duties since they do not purchase corn from Ontario farmers and Manitoba growers cannot fulfill their requirements. Quebec hog producers expressed concern about obtaining grain corn for feed during the periods of the year when Ontario corn is not available but they were not excluded from the application of the countervailing duty order.

In many ways, the Canadian economy resembles the world economy in that there is significant interdependence among agricultural producers and among producers of primary agricultural products and their customers. Choices made by governments to assist domestic agricultural producers directly or indirectly with subsidization programs or to impose countervailing duties, quotas or other restrictions on imports upset the delicate balance in the world agricultural trade and result in increased prices for the consumer. The U.S. Feed Grain Program has been criticized around the world by agricultural producing countries for adding new pressures to an already out-of-balance world agriculture supply and demand equilibrium. The need for new international rules governing subsidies and their discipline through the use of domestic countervailing duty measures is particularly acute in the agricultural area. We can only hope that the multilateral trade negotiations and the Canada-U.S. negotiations will produce new agreements and understandings aimed at rationalizing and improving world agricultural trade.

#### FOOTNOTES

1. Stat. Can. 1984, c. 25.
2. Four countervailing duty cases were investigated in Canada in 1986: Boneless Manufacturing Beef Originating in or Exported from the European Economic Community (EEC Beef), Dry Pasta Originating in or Exported from the European Economic Community (EEC Pasta), Grain Corn Originating in or Exported from the United States of America (U.S. Corn), and Carbon Steel Seamless Pipe Originating in or Exported from Brazil.
3. Countervailing Duty Regulations, C.R.C., Vol. V, c. 520, enacted under the Customs Tariff, R.S.C. 1970, c. C-41 as amended.
4. SIMA, Stat. Can. 1984, c. 25, s. 31.
5. SIMA, s. 38.
6. SIMA, s. 39.
7. SIMA, s. 33(2).
8. SIMA, s. 8(1).
9. SIMA, ss. 42 and 43.
10. SIMA, s. 41(1).
11. Canadian Import Tribunal Rules, S.O.R./85 - 1068, s. 36.

12. SIMA, s. 31(1).
13. CIT-2-86, Statement of Reasons - August 8, 1986, pp. 11-12.
14. Department of National Revenue, Customs and Excise, Prelim. Affirm.- November 7, 1986, Final Affirm. - February 7, 1987; CIT-7-86, Finding- March 6, 1987, Reasons - March 20, 1987.
15. Department of National Revenue, Customs and Excise, Prelim. Affirm. - July 2, 1986, Final Affirm. - December 19, 1986; CIT-5-86, Finding - January 28, 1987, Reasons - February 12, 1987.
16. Department of National Revenue, Customs and Excise, Prelim. Affirm.- March 27, 1986, Final Affirm. - June 12, 1986; CIT-2-86, Finding - July 25, 1986, Reasons - August 8, 1986.
17. CIT-2-86, Finding - July 25, 1986, Reasons - August 8, 1986.
18. Live Swine and Fresh, Chilled and Frozen Pork Products, 50 Fed. Reg. 31931 (1985) (ITC, Final Affirm.).
19. SIMA, s. 2(1).
20. Department of National Revenue, Customs and Excise, Final Affirm.- February 7, 1987.
21. Supra, note 19.
22. Certain Softwood Products from Canada, 48 Fed. Reg. 24159 (1983) (DOC, Final Neg.).
23. Certain Softwood Lumber Products from Canada, 51 Fed. Reg. 37453 (1986) (DOC, Prelim. Affirm.).
24. Supra, note 18.
25. Certain Fresh Atlantic Groundfish from Canada, USITC Publication #1844, May 1986 (ITC, Final Affirm.).
26. Department of National Revenue, Customs and Excise, Final Affirm.- December 19, 1986.
27. SIMA, ss. 38(1) (b) (iii), 41 (1) (a) (iv).
28. CIT-2-86, Reasons - August 8, 1986.
29. CIT-5-86, Reasons - March 20, 1987.
30. CIT-5-86, Reasons - February 12, 1987.
31. Pub. L. 96-39, 93 Stat. 144; 19 U.S.C. ss. 2501-2582.
32. Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, GATT (1979), Basic Instruments and Selected Documents, 26th Supp., Art. 4, para. 1.
33. SIMA, s. 45.



## THE ROLE OF ECONOMIC ANALYSIS IN TRADE LAW AND TRADE DISPUTES

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### 1.0 Introduction

In recent years Canadian agricultural products have been the subject of numerous trade disputes. On the basis of our experience with three subsidy cases, Hogs and Pork from Canada (U.S., 1985), Boneless Beef from the EEC (Canada, 1986) and Corn from the U.S. (Canada, 1987) and familiarity with others, we assert that economic analysis is important in trade law and trade disputes in three major ways.

First, economic analysis is important in understanding the GATT, particularly the Subsidies and Countervailing Duties Agreement of 1979, and differences in countries' interpretation of the GATT.

Second, economic analysis is necessary to defending and bringing a subsidy case.

Third, legal procedures and statutes could be made more sensible if economic principles were used in their application and development.

These issues are discussed below.

### 2.0 Economic Analysis and Subsidies Law

There are three substantive conditions which must be satisfied in every subsidy case: first, the existence and level of a subsidy must be demonstrated; second, the existence of material injury, the threat of material injury or material retardation of a domestic industry must be shown; and third, a causal link between the subsidy and the injury must be established.

Current subsidy laws have their roots in the GATT and national trade laws, especially in the case of the U.S. In this section we will provide an analysis of the guidelines provided by the GATT for dealing with subsidy cases, and Canadian and U.S. interpretation of these guidelines. This is done with the aid of three panel trade diagrams.

#### 2.1 The GATT Guidelines

The GATT Subsidies Code provides guidelines on the three conditions which must be satisfied in order to impose a countervailing duty.

##### Subsidies

Articles 8-11 of the GATT deal with the issue of subsidies, both export and domestic subsidies. The GATT expresses disapproval of export subsidies, except on certain primary products, and states that domestic subsidies may have legitimate objectives but that they may result in injury to other countries.

## Injury

Article 6 states that a determination of injury is to be made by examining the volume of subsidized imports and the consequent impact of these imports on domestic producers of such products. It does not provide a definition of material injury, either in terms of domestic prices or effects on domestic producers. Rather, it lists several factors that should be investigated but states that this "list is not exhaustive, nor can one or several of these guidelines necessarily give decisive guidance". (GATT Subsidies Code, p. 15)

## Causality

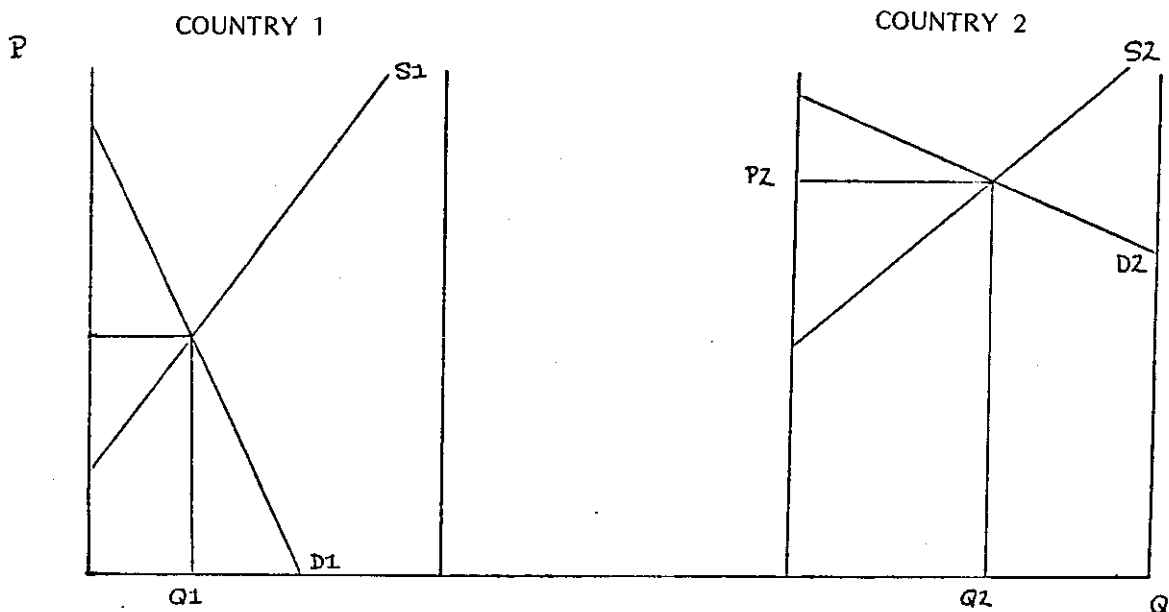
Article 6 states that a causal link between the subsidy and the material injury must be established prior to the imposition of a countervailing duty. Specifically, it states that "It must be demonstrated that the subsidized imports, are through the effects of the subsidy, causing injury ... There may be other factors which are at the same time injuring the industry, and the injuries caused by these other factors must not be attributed to the subsidized imports." (GATT Subsidies Code, p. 15)

## 2.2 U.S. and Canadian Trade Law

Canada and the U.S. have implemented their interpretations of the GATT Subsidy Agreement in their national trade laws: the U.S. in the Trade Agreements Act of 1979 (USTAA) ; and Canada in the Special Import Measures Act of 1984 (SIMA). Although both Canadian and U.S. trade law claim to be consistent with the GATT, there are some important differences and similarities among the three. Canadian and U.S. laws have evolved differently from the GATT agreement, both through implementation into national law and subsequent interpretation and application.

The substantive differences and similarities among the current state of GATT and U.S. and Canadian countervailing duty laws can be illustrated using three panel trade diagrams. First, the basic diagram is derived. Subsequently, the cases of an export subsidy and a domestic production subsidy will be illustrated, and the differences in the law explained.

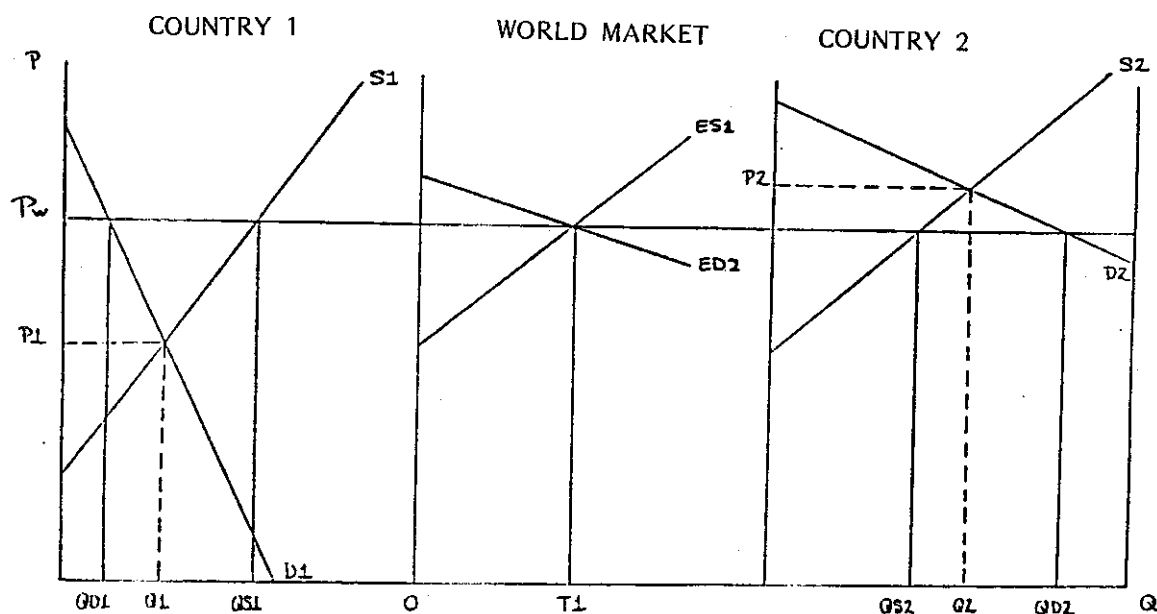
Figure 1 : The Economics of Autarky



Panel 1 depicts supply ( $S_1$ ) and demand ( $D_1$ ) curves for a product in country 1 of a two-country world. If trade cannot occur the price of the product is  $P_1$  and  $Q_1$  is produced and exchanged. Panel 3 depicts the supply ( $S_2$ ) and demand curves ( $D_2$ ) for the same product in the other country. The price of the product in country 2 is  $P_2$  and  $Q_2$  is produced and exchanged. Since trade cannot occur there is no activity in Panel 2. Supply and demand conditions in the two countries are such that the price in country 2 ( $P_2$ ) is higher than the price in country 1 ( $P_1$ ). In a no-trade situation these prices will persist unless some event alters the domestic supply and demand curves.

If trade is possible and there is no cost to trading the free-trade situation depicted in Figure 2 occurs.

Figure 2 : The Economics of Free Trade



As in the autarky situation, panel 1 and panel 3 depict the domestic supply and demand curves for country 1 and country 2. However, if trade is possible country 1 will have an excess supply of product available for the world market at any price above  $P_1$ . The horizontal difference between country 1's supply and demand curves, above the price  $P_1$ , can be mapped in panel 2 to produce country 1's excess (or export) supply curve ( $ES_1$ ).

With the possibility of trade country 2 will have an excess demand for the product at any price below  $P_2$ . The horizontal difference between country 2's supply and demand curves, below the price  $P_2$ , can be mapped in panel 2 to produce country 2's excess (or import) demand curve ( $ED_2$ ).

When trade is possible, and there is no cost to trading, the price of the product will be determined in the world market by the intersection of country 1's export supply and country 2's import demand curves. The price in both countries will be  $P_w$ . The quantity  $OT_1$  will be traded; country 1 will export  $Q_{S1}-Q_{D1}$  and country 2 will import  $Q_{D2}-Q_{S2}$ . The price to the exporting country increases and the price to the importing country decreases relative to the no

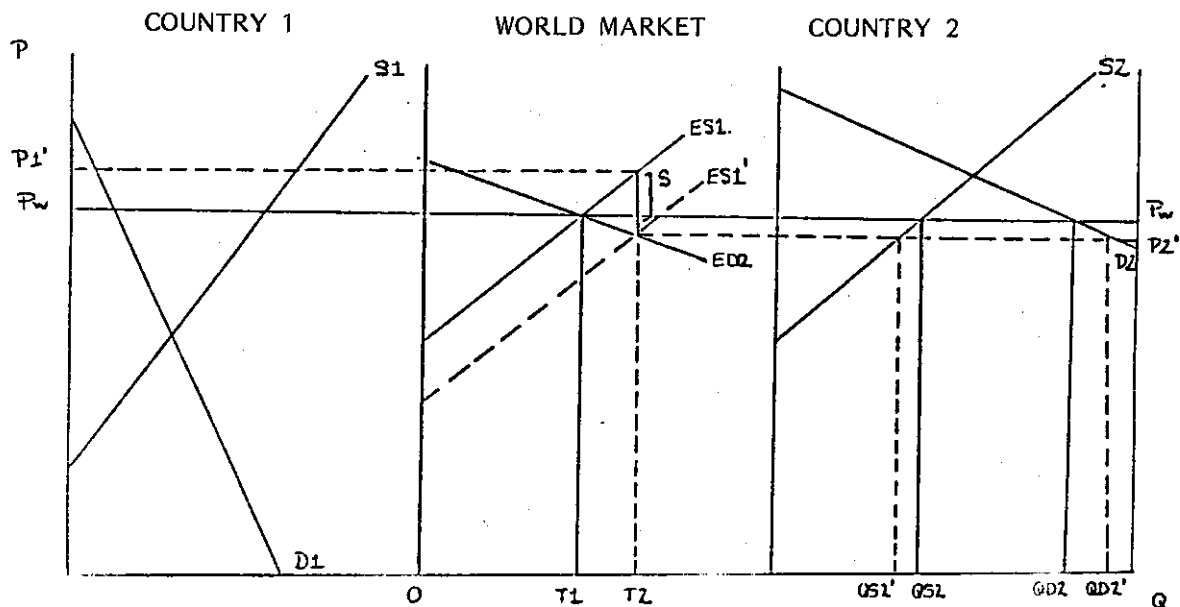
trade situation. In country 1, production increases from  $Q_1$  to  $Q_{S1}$  and producers' revenues increase from  $P_1 \cdot Q_1$  to  $P_w \cdot Q_{S1}$ . In country 2 production decreases from  $Q_2$  to  $Q_{S2}$  and revenues decline from  $P_2 \cdot Q_2$  to  $P_w \cdot Q_{S2}$ .

Figure 2 can now be used as the foundation for analyzing the effects of export and domestic production subsidies.

### Export Subsidies

An export subsidy produces a decrease in prices in the importing country relative to a free-trade situation. Figure 3 illustrates the economics of an export subsidy.

Figure 3 : The Economics of an Export Subsidy



An export subsidy is a payment made on the exported portion of production only. If the simplest type was used by country 1, a constant per unit export subsidy of the vertical distance  $S$ , its export supply curve would shift outwards from  $ES_1$  to  $ES_1'$ . Exports to country 2 increase from  $OT_1$  to  $OT_2$ . The price in the exporting country increases from  $P_w$  to  $P_1'$  and total production and earnings increase. In the importing country, the price declines from  $P_w$  to  $P_2'$ , less is produced and revenues decline.

The GATT, and the U.S. and Canadian countervailing duty laws converge for their treatment of an export subsidy. First, there is an export subsidy of the amount  $S$ . Second, there is injury. The price in the importing country has declined from  $P_w$  to  $P_2'$ . Revenues of the domestic industry have declined from  $P_w \cdot Q_{S2}$  to  $P_2' \cdot Q_{S2}'$ . Third, there is a causal link between the subsidized exports from country 1 and the injury in country 2.

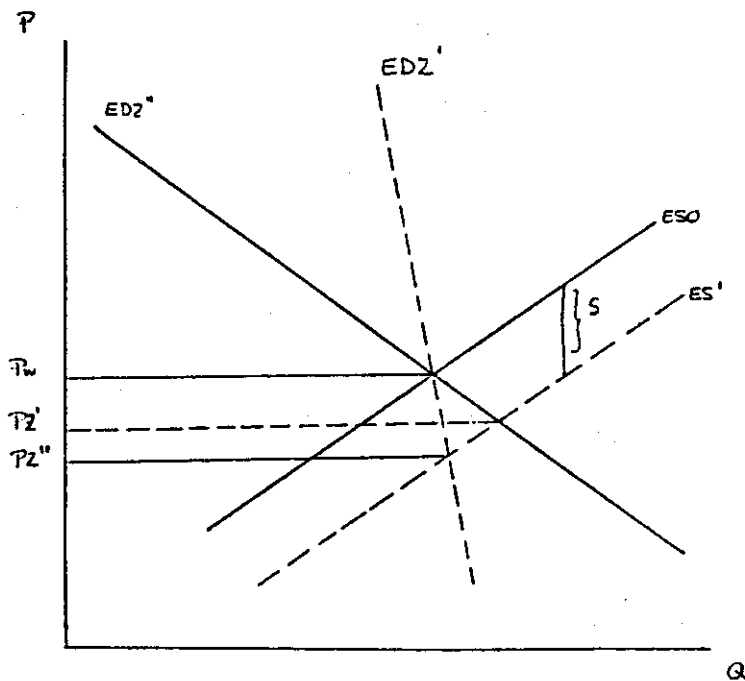
The injury to country 2 is a function of the increase in imports made possible by country 1's use of an export subsidy. The degree of injury to country 2, or whether the injury is "material", is a function of the slope of

country 2's import demand curve. The slope of country 2's import demand curve is a function of the slopes of its domestic supply and demand curves. Figure 4 illustrates that the less price elastic a country's import demand, the greater the price injury that results from a given export subsidy.

The steeper or less price elastic export demand curve,  $ED2'$ , results in a greater decline in price, for an export subsidy of  $S$ . The pre-subsidy price  $P_w$  is given by the intersection of the original export supply curve ( $ES0$ ) and each of the two import demand curves ( $ED2'$  and  $ED2''$ ). With the subsidy (the excess supply curve  $ES'$ ) the price declines from  $P_w$  to  $P2'$  if country 2's export demand is relatively more price elastic. With the relatively less price elastic export demand curve, which means that prices are relatively more flexible, the same subsidy produces a larger decline in price, from  $P_w$  to  $P2''$  instead of to  $P2'$ .

On economic grounds an affirmative subsidy and material injury determination are sufficient for the imposition of a countervailing duty on a product benefitting from an export subsidy since causality exists by definition. U.S. and Canadian trade laws apply this reasoning to all products, including "certain primary products" which are excluded from the general provisions regarding export subsidies in the GATT.

Figure 4 : The Degree of Injury



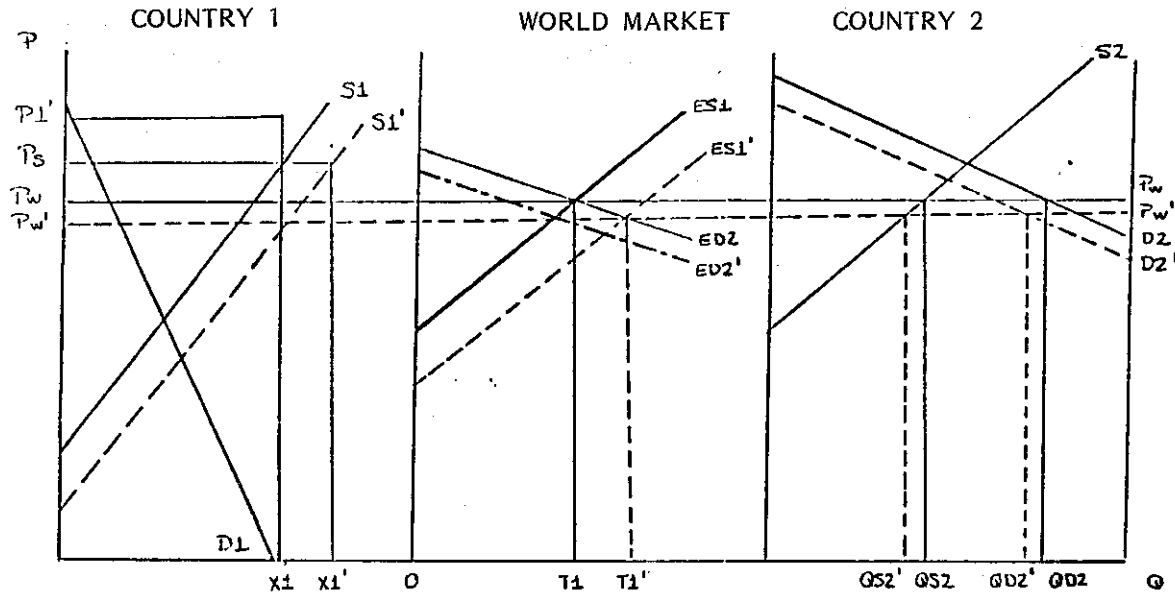
#### Domestic Production Subsidies

U.S. law diverges from Canadian law and the GATT Subsidies Code in its treatment of domestic production subsidies. Figure 5 will be used to illustrate.

There are three groups of domestic production subsidies; those that produce a movement up the supply curve, those that produce an outward shift in the supply curve and those that produce both a movement up and an outward shift

in the supply curve.

Figure 5 : The Economics of a Domestic Production Subsidy



First, we consider the case of an upstream subsidy. An upstream subsidy refers to any transfer made to a firm which results in lower costs for inputs. The simplest type of upstream subsidy is a constant per unit input subsidy. It produces a parallel, outward shift in country 1's supply curve from  $S_1$  to  $S_1'$ . This occurs because lower input costs make it possible for a firm to supply more product at a given price for the product. This shift also results in country 1's export supply curve shifting outwards from  $ES_1$  to  $ES_1'$ . As a result country 1's exports increase by the distance  $X_1$  to  $X_1'$ . The world price, paid by consumers in both countries and received by producers in country 2, falls from  $P_w$  to  $P_w'$ .

In economic terms the three conditions required to impose a countervailing duty are fulfilled and are as follows. First, there is a domestic production subsidy, equal to  $P_s - P_w'$ . Second, there is material injury: prices in country 2 decline from  $P_w$  to  $P_w'$ . Producers' revenues decline from  $P_w \cdot Q_{S2}$  to  $P_w' \cdot Q_{S2}'$ . Third, there is a causal link. The domestic subsidy causes an increase in country 1's exports and the injury in country 2.

In this situation the GATT, U.S. and Canadian law would result in the imposition of a countervailing duty, but as the result of different interpretations of the law. GATT and Canadian law would be consistent with the economic interpretation. The U.S. decision would be based on the existence of a subsidy and the presence of injury. It would not address the issue of whether the injury was caused by the increase in exports made possible through country 1's domestic subsidy.

This is clearer if we consider the case of a support price in country 1. If the support price is  $P_1'$  and is announced after the production decision has been made it does not affect production or exports. If, simultaneously, there

is a decline in demand for the product in country 2, from  $D_2$  to  $D_2'$ , its import demand will shift down from  $ED_2$  to  $ED_2'$ . The world price will decline from  $P_w$  to  $P_w'$ , but not as the result of increased exports due to a subsidy provided in country 1.

If there is a small increase in imports in country 2 all the conditions required to impose a countervailing duty under U.S. law would be met. First, there is a domestic subsidy in country 1. Second, there is injury, at least in terms of a lower price. Third, the U.S. requirement for a causal link has been met. There is an increase in imports from the country that uses the domestic subsidy. The issue of whether the increase in country 2's imports is the result of increased exports in country 1 due to a subsidy is simply not addressed.

The absence of a proper test of causality constitutes the most serious divergence between the U.S. and Canadian interpretation of the GATT Subsidies Code. The result is that a countervailing duty can be imposed more easily under U.S. law than either Canadian or GATT law.

### 3.0 The Role of Economic Analysis in Recent Subsidy Cases

Canadian and U.S. subsidy law both require a determination on subsidization, material injury and causality. Economic analysis has played an important role in several recent decisions concerning Canadian agricultural products.

#### 3.1 The Subsidy Determination

Currently, economic analysis is not used to determine the existence and the level of a subsidy in the U.S. and only to a small degree in Canada. In both countries the subsidy determination is made by one body and the injury and causality determination by another. Both Revenue Canada and the U.S. International Trade Administration (USITA) use a simple accounting method. The level of an export subsidy is calculated by dividing government expenditure on exports by the quantity exported. The level of a domestic production subsidy is calculated by dividing government expenditure by domestic production.

#### Domestic Production Subsidies

In terms of economic analysis there are two issues that must be addressed in a domestic production subsidy determination: first, what subsidies are to be included; and, second how are they to be measured. In most cases the measurement varies by the type of program, but is fairly simple once the subsidy has been identified.

An economic subsidy is a movement up the supply curve, an outward shift in the supply curve, or a combination of the two; there must be a supply response to the program. In terms of Figure 5 the program must result in either a shift from  $S_1$  to  $S_1'$ , a movement up the original supply curve or some combination of the two.

Revenue Canada appears to apply some of this reasoning in deciding whether or not a program confers a subsidy; however, there have been relatively few cases heard in Canada.

U.S. practice has evolved very differently. The USITA uses its specific-

ity test. A program is deemed to confer a countervailable subsidy if benefits are "provided to a specific industry or enterprise or group of industries or enterprises" Apparently the economic rationale behind the test is that a non-specific, or generally available, subsidy will not distort comparative advantage within a country while a specific subsidy will.

The specificity test has some serious weaknesses. First, a "specific" subsidy may not produce a supply response. For example, federal and provincial stabilization programs for hogs in Canada do not result in increased production. (Martin and Goddard) Second, use of the specificity test may exclude programs that do induce a supply response from the affirmative determination. For example, a fuel tax rebate available to all agricultural producers would likely result only in increased grain production. Also, the specificity test appears to be based more in semantics than in legal, let alone economic, reason. For example, in Hogs and Pork from Canada the Quebec Income Stabilization Program is found to be generally available. Yet it is deemed to confer a specific benefit because of participation restrictions. Ironically, these participation restrictions were designed to limit supply response to the program!

### 3.2 The Injury Determination

Economic analysis has played its largest role in the injury component of subsidy cases. In terms of Figure 5, the degree of price injury is a function of the slope of the import demand curve; a steeper or less price elastic import demand curve will produce a larger price decline for a given shift in the export supply curve. The effect on revenues and profits is not as clear-cut.

In the GATT Subsidies Code as well as Canadian and U.S. law the determination of injury refers to determining whether there has been material injury, whether there is a threat of material injury or the threat of material retardation of injury. In practice, most cases require a determination on actual material injury and, if it is negative, a determination on the threat of material injury. Actual material injury refers to the impact that the subsidized imports have had or are having on prices, and revenues or profits, in the importing country. Threat of material injury refers to the impact that subsidized imports could have if no action was taken to prevent them.

Canadian and U.S. trade law diverge in their interpretation of the GATT. Section 6 of the GATT Subsidies Agreement contains a list of all factors that may be considered in an injury determination but also states that "This list is not exhaustive, nor can one or several of these factors give decisive guidance." Canada has essentially adopted the GATT guidelines. This allows the Canadian Import Tribunal (CIT) to obtain expert economic analysis of the market being investigated. The U.S. has followed a different approach. The U.S. Congress has codified its interpretation of the GATT. It has provided the USITC with specific factors to be considered in any injury investigation, and additional factors for a threat of injury investigation. U.S. procedure has resulted in rigid, legalistic examinations of issues that really require economic analysis if they are to be properly resolved.

The divergence between Canadian and U.S. procedure for determining injury is clear from an examination of the determinations in Hogs and Pork from Canada (U.S., 1985), Boneless Beef from the EEC (Canada, 1986), and Corn from the U.S. (Canada, 1987).



In Boneless Beef from the EEC actual injury did not result from imports of subsidized beef because unrestricted beef trade between the U.S. and Canada insulated Canada from the effects of the increased beef supply. However, if Canadian access to the U.S. was threatened due to U.S. retaliation for Canada acting as a "back door" to the U.S. for EEC beef then Canadian cattle prices and producers' earnings would decline. Economic analysis of potential effects of subsidized imports is possible in Canada. The decision of whether U.S. retaliation against Canadian beef and cattle exports was real and/or imminent had to be made by the CIT. The CIT determined that actual material injury was not present, but that the threat of material injury was.

In Corn from the U.S. the economic analysis performed for the CIT concentrated on the impact of the U.S. Food Security Act on the U.S. market price, and not on whether the quantity of U.S. corn imported by Canada resulted in a lower price in Canada. (what's his face, 1987) This approach was used because the U.S. market price for corn, not the volume of imports, determines the Canadian price. If Canadian producers do not match the U.S. market price, massive imports from the U.S. would result, and the Canadian price would fall due to the imports. This would trigger increased government support payments in Canada and producers' returns from the market would decrease. On the basis of economic analysis and the realities of the market the CIT determined that actual and threat of material injury existed, with a dissenting opinion.

In Hogs and Pork from Canada the USITC determined that hogs and pork were two different "like" products and made separate injury determinations. Imports of Canadian hogs were determined to cause material injury because import penetration had increased, U.S. prices had declined and there had been an aggregate revenue impact. Imports of Canadian pork were determined to not cause material injury because the USITC noted that the U.S. price of pork had increased while imports from Canada were increasing, that the import penetration remained low and that there were no discernable trends of price suppression. The USITC also made a negative determination on threat of material injury. The reasons were that Canadian production fluctuated considerably during the investigation, production had increased recently but only to 1980 levels, import penetration remained low and that there had been a decline in Canadian breeding potential and that this would likely reduce Canadian exports in the future.

In the Canadian cases economic analysis relevant to the market being investigated is used. This is not always so for the U.S. In Hogs and Pork from Canada there is little economic rationale for treating hogs and pork as separate products.

### 3.3 The Causality Determination

Canadian law follows the GATT guidelines. In its causality determination the CIT investigates whether the subsidy produces an increase in exports, and whether those exports result in injury in the importing country. The USITC does not use a causality test. Instead causality is assumed if there is a subsidy, an increase in imports and material price suppression. Thus, in the U.S. a countervailing duty can be imposed without an investigation of whether the increase in imports actually results from the subsidy. This occurred in Hogs and Pork from Canada. A countervailing duty was imposed on hogs, although a link between increased hog exports and Canadian stabilization programs was never established.

#### 4.0 How to Improve National Trade Laws

Economic principles were used in the development of the GATT Subsidies Agreement. The Canadian SIMA is more consistent with the GATT than is U.S. trade law. The process for determining subsidies could be improved in both Canada and the U.S. if the economic content was increased. U.S. procedure for determining injury and causality would be more consistent with the GATT if economics was given a larger role.

Current Canadian and U.S. procedure could be improved if economic theory, and previous economic analyses, were used to compile a list of allowable, non-allowable and debatable subsidy practices. For example, an export subsidy would be classified as a non-allowable subsidy and a product grading program or a public good as an allowable subsidy. The status of other programs would have to be determined in an investigation. If such a list was compiled, non-allowable subsidies could be countervailed without an injury test, allowable subsidies would not be interfered with and debatable subsidies could be handled in a court, but using economic, not legal, analysis. The net economic subsidy should be calculated on the basis of subsidization in the two countries involved in the dispute. Adoption of these procedures would make economic sense, and would also make the upstream provisions and constant amendments to U.S. trade law unnecessary.

The U.S. injury and causality determinations could be made more consistent with economic principles if the USITC could investigate the factors relevant to a particular case, and not be bound to an investigation of the factors enumerated in U.S. law.

#### 5.0 Conclusions

The GATT Subsidies Agreement is based on sound economic analysis. Unfortunately some countries' interpretations of the Agreement are not. Canada's SIMA follows the guidelines set out in the GATT quite closely. U.S. trade law deviates considerably from the GATT, and consequently has evolved to be excessively legalistic and largely devoid of economic content. The major deficiency of U.S. countervailing duty law is the lack of a proper causality test. Consequently, it is easier for a domestic complainant to produce the economic evidence required to win a countervailing duty case in the U.S. than in Canada. Conversely, it is more difficult for the defendant to produce the economic evidence required to defeat a countervailing duty action in the U.S. than in Canada.

**U.S. - CANADIAN NEGOTIATIONS AND THE GATT ROUND:  
U.S. PERSPECTIVES**

Leo V. Mayer  
U.S. Department of Agriculture

**Introduction**

I'd like to begin today with a short review of what nonagriculturalists are saying about the importance of agriculture in the ongoing rounds of trade talks.

"They've got to talk about agriculture. I'd say clearly that's the most important economic problem today--more important than trade, debt, and so on. Agriculture has more potential for all sorts of devastating consequences."--That's Allen Wallis talking, U.S. Under Secretary of State for Economic Affairs.

"It's a sector of the world economy that is in absolute chaos. It has got to be brought under control, and it's not something that one country can do alone."--That's a quote from Alan Woods, our Deputy United States Trade Representative.

Wallis and Woods recently made these comments about the world agricultural situation to a N.Y. Times reporter. The interview was on U.S. goals for the seven-nation economic summit conference to be held in Venice this June. But their comments typify the growing frustration felt in the United States about the fact that:

- world agricultural production bears little relation to prospective demand;
- governments are making record-large payments to their farmers to encourage even more production of commodities, despite huge, price-depressing stockpiles;
- national budgets have been stretched to the breaking point by these massive subsidy programs;
- and the stage has been set for a devastating series of skirmishes in world markets that could lead to a total breakdown of discipline and order in world agricultural trade.

UNLESS...Unless...the world gets serious about making progress in trade talks that are aimed at improving the world trading order.

But the clock is running. The world over, farmers are floundering, governments are floundering, and politicians are furious. More and more countries are seeking to solve their agricultural problems not through reason, but through retreat behind ever stronger protectionist barriers.

**The Macro Picture**

Much of the current consternation about the world's agricultural problems

is due to a failure to understand the "macro" setting in which farmers and farm policymakers must operate today. The macro picture includes several realities, often forgotten or overlooked:

- the reality of a food and agricultural world that runs in cycles, up in the '70s, down in the '80s.
- the reality of a technological world in which the adoption of new innovations has become more rapid and more global, leading to greater self-sufficiency in many parts of the world.
- the reality of a consumer world in which the availability of imported goods and products is taken for granted, especially in western countries but elsewhere as well.
- the reality of an economic world in which change is the only constant, change in interest rates, exchange rates, employment rates, as well as prices, incomes and savings rates.
- the reality of a government world in which budgets are out of balance, trade balances are enormous, and debt burdens are weighing heavily on a number of countries, all of which is forcing a re-examination of government policies and programs worldwide.
- and finally, the reality of a trade policy world in which these issues--the spread of technology, growing consumer demand for imports, growing economic variability, and growing budget deficits--are pressing governments to either protect their own markets or push for more open markets through trade negotiations.

#### The U.S./Canadian Choice

Fortunately, for us, the United States and Canada have both chosen to follow the path of trade negotiations. Both our countries are working hard for a free trade arrangement that would open up trade along our mutual border--the longest border anywhere in the world that is open, unguarded and friendly. A lot of trade already crosses that border--and it is in the interest of both our countries to expand that trade further.

The United States and Canada are also both committed to a successful round of multilateral trade negotiations under the GATT. While we may not have exactly the same goals for the Uruguay Round, we both recognize the importance of these talks in restoring reason and order to world trade, especially agricultural trade.

#### The U.S.-Canadian Free Trade Talks

I'd like to turn now to the U.S./Canadian free trade talks--the U.S. objectives for these talks and where these talks stand at the current time.

Negotiations--and even agreements--between the United States and Canada on free trade date back more than 100 years. The first move in this direction came in 1854 when our two countries signed an agreement that permitted each to fish in the other's waters and to trade freely in natural resources. That first treaty lasted for 12 years but was not renewed following British support

for the Confederacy in the 1860's.

Another major effort at freer trade between our two nations was made in 1911, when we negotiated a Reciprocity Agreement that would have introduced free trade for agricultural products and reduced tariffs on manufactured products. That agreement was never ratified here in Canada because of concerns, stemming from U.S. political rhetoric, that the free trade might have only been a first step in eventual annexation of Canada.

During the mid-1930's, the United States and Canada negotiated a treaty that reduced U.S. tariffs on Canadian goods imposed during the Depression under the Smoot-Hawley Tariff rules. The pact was renewed in 1938 but then abandoned in 1948 when both our countries participated in the multilateral General Agreement on Tariffs and Trade (GATT).

At the present time, only one major bilateral economic accord--the 1965 treaty creating a duty-free market for automobiles and parts--is in effect between our two countries.

The current talks are the first in nearly 40 years in which the United States and Canada have addressed the issue of freer trade. They are the result of a summit meeting two years ago in March 1985 between President Ronald Reagan and Prime Minister Brian Mulroney.

How are the talks going? What are the chances for success this time? I am most closely involved in the negotiations involving agriculture, so I tend to judge progress on the basis of what has been happening in the agricultural area.

We held our first meeting to discuss agricultural issues nine months ago--in July 1986 in Montreal. During the meeting, we mutually agreed on the need to include both tariff and non-tariff barriers in the talks. We also decided that the first topic to be negotiated should be the harmonization of health and sanitary regulations. A task force with representatives from both governments was formed to discuss this topic--and I believe we have made some headway on this issue.

The question of agricultural subsidies was addressed for the first time in September 1986 during a meeting in Washington. Both sides agreed to identify subsidy programs--at the federal as well as the State and Province levels--that distort agricultural trade.

The subsidies issue is going to be one of the knottier ones that we will be addressing. Joe Clark, the Minister for External Affairs here in Canada, recently told the Trilateral Commission which was meeting in San Francisco, that "Agricultural production in Europe is subsidized to an extent that defies all economic sense. The United States finally responded to this structural distortion with equally absurd export subsidies of its own."

Minister Clark went on to say that the current subsidy situation "has devastated the livelihood of many Canadian farmers."

Obviously agricultural subsidies are a highly charged issue here in Canada. "South of the border" in the United States, we also have similar concerns. Canada's freight payments, for example, trouble us, as do the

pervasiveness of its production subsidies for nearly all agricultural production in Canada.

Subsidies aren't the only problem, however. In December 1986, our two countries also decided to form a working group on access issues. This group is concentrating on non-tariff barriers such as Canadian provincial wine regulations and marketing boards' import licensing requirements and the restrictions imposed by the U.S. under various import regulation programs.

Timing has also become an issue in these talks. President Reagan has Congressional authority to pursue these negotiations on a "fast track" basis, but this authority expires at the end of the year. To meet the deadline, the U.S. negotiators need to submit whatever we have come up with to Congress by early October. This means we have a lot to accomplish over the next few months.

Can we come up with an agreement in time? Can we come up with an agreement where both sides will come out winners--in other words, an agreement that stands a chance of being approved in both the United States and Canada.

I don't know. I do know that there are strong pressures for a free trade agreement in both our countries. While oftentimes the opponents of freer trade seem to get most of the publicity, there are many, many businesses on both sides of the border for whom freer trade is essential for continued economic growth.

There are also pressures on both of our nations from outside sources--in particular, the European Community which is becoming more and more protectionist and the Pacific Rim countries which are becoming more and more aggressive in exporting. These trade policies of Europe and the Pacific Rim have heightened the importance of the U.S. market for Canada, and the Canadian market for the United States.

The United States and Canada already enjoy the largest bilateral trade relationship in the world. For U.S. agriculture, Canada is both a major U.S. market and a major supplier of farm and food products. According to U.S. data, U.S. agricultural imports from Canada in 1986 totaled nearly \$2.0 billion and Canadian imports from the United States totaled \$2.4 billion.

Canada consistently ranks as the fifth or sixth largest U.S. agricultural customer. It is our biggest foreign buyer of a number of high-value products such as oranges and orange juice, fresh grapes, fresh tomatoes, lettuce, and nursery stock and flowers. About 70 percent of U.S. agricultural exports to Canada is comprised of 100-plus products where the export value is relatively small--less than \$40 million annually.

Canada also is one of our foremost competitors in third-country agricultural markets, with nearly three-fourths of its exports destined for countries other than the United States. Besides being our No. 1 rival in world wheat markets, especially for spring varieties and durum, Canada also is a major competitor in barley, oilseeds, horticultural and livestock items.

Canada is the United States' largest supplier of competitive agricultural products. Frozen pork, beef and veal plus live cattle and hogs and products led the list at nearly \$1 billion. Other significant Canadian exports to the

United States include horticultural items and grain products. Some of Canada's most important exports to the United States are commodities for which it has few alternative markets--for example, live hogs and fresh potatoes.

### Setting the Stage for the MTN

While many parties on both sides of the border desire freer trade between our two countries because it would spur economic growth, it is not solely the value of our mutual trade that makes the U.S.-Canadian free trade talks so significant.

Rather, it is that these talks offer both our countries an opportunity to get a head start on issues that will undoubtedly be addressed in the multi-lateral forum of the Uruguay Round. Among these are:

- the need to stop the growth in new barriers to agricultural trade and to phase out the tariff and non-tariff barriers which exist now;
- the need to freeze the present level of trade-distorting agricultural subsidies and to phase out the use of these subsidies over time;
- the need to reconcile differences in food, plant, and animal health regulations in order to facilitate greater trade;
- and finally, the need to improve the dispute settlement process under the General Agreement on Tariffs and Trade, so that once trading nations have agreed on better rules, there is assurance that they will be applied consistently and dependably.

The Uruguay Round of multilateral represents the best opportunity U.S. and Canadian farmers will have in this decade, and possibly for the rest of the century, for developing ground rules that will facilitate expanded trade.

The opening declaration for the new Uruguay Round cited the urgent need to bring more discipline and predictability to world agricultural trade. This declaration is a landmark for world agriculture.

In the Tokyo Round, which previously had been the most ambitious multi-lateral trade round, the opening declaration barely mentioned agriculture. We now have an entire section devoted to improving agricultural trade.

However, for the Uruguay Round to succeed, all nations must be prepared to put their trade policies and farm programs on the negotiating table. Likewise, all nations must be willing to examine their trade policies and farm programs from the perspective of how these policies will affect other nations, developed and developing alike.

In this context, world agricultural leaders will doubtless be keeping a close watch on the progress of the U.S.-Canadian free trade talks.

If our two nations--both of which have highly developed systems, and both of which a big stake in freer and fairer agricultural trade--cannot resolve the issues that trouble our trade, what chance for success will there be for the Uruguay Round? If the two of us can't agree, what will happen when 92 countries with 92 points of view get together?

## Conclusion

President Reagan has made it clear, time and time again, that his Administration favours negotiation over confrontation in trade matters. That is why we are very pleased that the issue of freer trade with Canada is once again under negotiation--and we are hopeful that this time our two nations can come up with a mutually satisfactory arrangement.

But as you know from reports in the U.S. press, the U.S. public's commitment to the free trade philosophy which we have followed over the past 50 years is weakening--and U.S. patience with the current world trading order is wearing thin.

While most of us below the 49th parallel sincerely believe that everyone--farmers, consumers, taxpayers--will be better off in the long run if world trade is freed of restrictions and subsidies, we are not going to ignore unfair trade practices on the part of other nations. The export programs established by the 1985 farm bill, for example, were designed to help us compete in whatever trading environment evolves in the future.

As I have argued on a number of occasions, the world cannot remain half free trade and half subsidized trade. Either it will slowly move toward freer trade or more and more nations will join in the subsidy game.

The world's agricultural trading nations must make a decision soon: Will trade in the future be conducted in a free and rational environment in which all nations can compete fairly? Or will it be conducted through a series of costly and painful battles over world markets?

Past experience has shown us that there are no winners in trade wars.

Furthermore, if nations continue to ignore the consequences of changes occurring in the global trading environment, we are headed for an even more serious level of instability in world agricultural trade.

It is with this background that the U.S.-Canadian discussions on freer trade are of special importance. What we are able to achieve in these bilateral talks is doubtless going to be perceived as a test--in our two countries as well as the rest of the world--of whether progress in resolving agricultural trade disputes is possible in the multilateral GATT forum.

It is also with this background that the Uruguay Round of negotiations present both our countries with one of the biggest challenges in the history of trade. The challenge is to make this GATT round not one of self-interest, but one of world interest.

These are the challenges facing us in the coming months. These are the challenges that we cannot afford not to meet.



THE CANADA/USA NEGOTIATIONS AND THE GATT ROUND:  
CANADIAN AGRICULTURAL PERSPECTIVE

M.N. Gifford

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I have been asked to speak about agricultural subsidies and how they may be subject to international discipline in the context of both the Canada/USA trade negotiations and the new round of GATT negotiations. However, before turning specifically to subsidies, let me recall the extent to which agricultural trade generally has been subject to international disciplines.

If one looks at trade in general, it can be fairly said that the general agreement on tariffs and trade has contributed significantly to the liberalization of world trade which has occurred since the GATT was formed in 1947. However, it can also be fairly said that, in practice, the GATT has not worked well in some specific sectors. In particular, no one would dispute the assessment that for the past 40 years the GATT has had little success in dealing with agriculture. The GATT rules, as they relate to agriculture, are in some cases deficient or ineffectual and the results of past negotiating rounds have largely been limited to tariff reductions. Little or no progress has been made in reducing non-tariff import barriers and virtually no progress has been made in limiting the trade impact of agricultural subsidies.

What explains the GATT's lack of success in dealing with agriculture? Part of the answer lies in its complexity - a complexity which arises from the intercommodity linkages and the biological nature of the industry, the causal relationships between domestic agricultural policies and their associated trade measures, and the tendency of virtually all governments to regard the agricultural sector as special - both for social reasons as well as from the perspective of ensuring food security. By not confronting these issues - in effect for forty years saying agriculture is too difficult to negotiate - problems were stored-up for the future. We are paying for this neglect today.

Others, more bluntly, would attribute the GATT's impotence as regards to agriculture to a lack of collective political will. When it came to agriculture, most developed countries, at best, lived up to the spirit of the GATT when it suited them. Many governments have in effect obtained waivers which enabled them to maintain measures which otherwise would be inconsistent with their GATT obligations. By action, and inaction, all countries have contributed to a situation where each country's agricultural policy makers came to believe they were not accountable for the international consequences of their domestic policy actions.

Artificially depressed international prices, subsidized export competition, an ever growing proliferation of non-tariff import barriers, are all symptoms of the malaise gripping agricultural trade. How do we deal with the underlying causes?

In the last few years, there appears to have been a growing recognition by a number of governments of the links between domestic farm policies and trade measures, that is to say, a recognition that sooner or later excessive government support generates pressures to restrict imports and/or provide government assistance to dispose of surpluses on world markets. Similarly, there has been

an increasing realization that domestic farm policies cannot be operated in isolation from the international economy: they must take into account market developments and trade impacts. There is certainly an evident awareness by ministers of finance and ministers of foreign affairs around the world that record high farm support costs at a time of budgetary constraint and a proliferation of agricultural trade disputes are developments which are simply not sustainable over the longer-term.

It is against this background that ministers from over 90 countries agreed last September in Punta Del Este, Uruguay to launch a new round of GATT negotiations and it is against this background that Canada is currently negotiating a comprehensive bilateral trade agreement with the U.S.A..

As regards the GATT negotiations, I do not believe I am overstating the case when I say that the Uruguay Round will be judged largely on what it achieves with respect to agriculture.

At the Punta Del Este meeting, it was agreed that the objectives for agriculture were to liberalize trade and bring agriculture under more effective GATT rules. This will be accomplished by addressing three major elements:

- (1) Improving and securing access to markets, i.e. a reduction in tariff and non-tariff import measures;
- (2) Improving international disciplines on all subsidies affecting agricultural trade; and
- (3) Improving international disciplines to prevent the use of technical regulations as disguised barriers to trade.

(It is no coincidence that these three elements also form the agenda for the Canada/USA negotiations).

Before examining what is meant by "improving international disciplines on all subsidies affecting agricultural trade", let me first recall what the GATT currently does and does not do with respect to agricultural subsidies. On the import side, the GATT provides for the imposition of countervailing duties against imports of subsidized agricultural and industrial products, if they cause or threaten material injury to a domestic industry. On the export side, there is a prohibition against the use of export subsidies on non-primary products but only an ineffectual exhortation that export subsidies should not be used to gain "more than an equitable share of world trade" when it comes to primary products. The GATT is just as ineffectual when it comes to limiting the trade effects of so-called domestic subsidies in terms of their import replacement or export stimulation impacts. There is an obligation on the subsidizing party to consult with any other GATT member if the domestic agricultural (or industrial) subsidies in question are causing or threatening serious prejudice to the interests of other countries but there is no obligation on the subsidizing country to limit or reduce the subsidization.

In short, the current GATT rules on agricultural subsidies only really provide effective recourse when it comes to offsetting the injurious effects of subsidized imports into a domestic market. There are no effective disciplines on the subsidizing country in terms of either export stimulation or import replacement subsidies.

Put another way, the major deficiency of the current GATT rules is that what remedies exist are all after the fact. There are no disciplines to guide domestic policy makers in developing agricultural assistance programs.

Up until a few years ago, conventional wisdom suggested that the focus of future GATT negotiations should be to bring the agricultural subsidy provisions into conformity with the industrial subsidy provisions. In other words, all would be well in agricultural trade if the GATT agreed to extend to agricultural products the prohibition on export subsidies. In fact, some countries seemed to attach such a high priority to the prohibition of agricultural export subsidies that they left the impression that the traditional GATT preoccupation with improving and securing access was very much of secondary importance.

Today, however, the conventional wisdom on agricultural subsidies is more sophisticated. There are a growing number of governmental, intergovernmental, and academic studies which suggest that the primary focus of the GATT negotiations should be a multi-country, multi-commodity reduction of government support to agriculture. This approach, in part, stems from the "negotiability" appreciation that the EEC is unlikely to agree to single out agricultural export subsidies as being the sole source of production and trade distortions in agriculture. What about north american deficiency payments and transportation subsidies, the Europeans ask? Surely a deficiency payment can be just as distorting as an export subsidy if you are a net exporter?

Without getting into a discussion of the relative trade effects of a deficiency payment as compared to an export subsidy, suffice to say the Punta Del Este ministerial declaration launching the Uruguay Round of GATT negotiations explicitly took this point on board when it referred to "improving the competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes".

How the agricultural subsidy negotiations of the Uruguay Round will proceed is still very much an open question. A number of countries plan to table negotiating proposals by midsummer, early-fall. During the course of the winter of 1987/88, the negotiators in Geneva will examine the various proposals with a view to developing a composite approach.

In assessing how the various negotiating proposals meet Canadian interests, Canada will want to ensure that the current preoccupation with subsidy disciplines does not push to one side the need to improve and secure access. In fact, one can argue that access negotiations are complimentary to and will reinforce a meaningful result on agricultural subsidies. However, even duty free unrestricted access is not always sufficient to counteract a domestic subsidy if the subsidizing country is willing to bear the financial cost. The classic example of this is the crushing subsidy the EEC pays to its rapeseed processors which enables them to pay higher than world prices to EEC rapeseed producers. The end result has been the EEC increasing its rapeseed production to 5 million tonnes and becoming a net exporter and Canada being placed in a residual supplier position just as surely as if it had been faced with a variable import levy instead of duty free access.

The EEC rapeseed case is the most striking example I know of the trade distorting effects of a so-called domestic subsidy. It certainly reinforces

the EEC's own position that all subsidies, domestic and export, must be considered when assessing production and trade effects.

The complexities and difficulties involved in negotiating international disciplines on all subsidies affecting agricultural trade are mind-boggling. In no particular order, some of the difficulties which spring to mind include:

- negotiating clear subsidy disciplines which are amenable to dispute settlement and enforcement. The lessons of the existing GATT code on subsidies indicate clearly that papering over fundamental differences is a recipe for disaster. You cannot expect a panel to adjudicate on a rule the negotiators left vague.
- persuading governments to accept limits on the extent to which agricultural subsidies can affect trade.
- persuading governments that the acceptance of responsibility for the international consequences of their domestic agricultural support policies is an exercise of political sovereignty not a surrender of political sovereignty.
- persuading governments that it is possible to reduce the trade distorting aspects of current farm policies while continuing to respond to the economic social and political imperatives of their rural sectors.

No one who has studied the political economy of agriculture underestimates the difficulties in persuading governments to accept international disciplines on their agricultural subsidy practices. Because of the differences between countries in support levels and types of support programs, some observers are attracted to concepts which index, on a commodity by commodity basis, the sum total of government support. Support, in this context, being defined to include border protection support as well as government expenditure support. The so-called "producer subsidy equivalent" measurement developed by Tim Josling and refined by the OECD is an example of this approach. Other observers argue, however, that the chances of a direct attack on reducing agricultural subsidies succeeding are slim and that a more realistic approach would be to concentrate on indirect disciplines such as a combination of increased access obligations and limits on the extent to which products can be subsidized for export. Those in favour of the more indirect approach are in effect arguing that partial or second best solutions have a better chance of success than more optimum but less negotiable solutions. The only thing that is sure at this juncture is that fundamental changes to domestic agricultural policies can only be implemented slowly, over time, and the negotiability of such changes fall to zero unless all countries are prepared to accept equivalent disciplines.

Turning to the Canada/USA negotiations, it will come as no surprise if my comments on this subject are somewhat more abbreviated than my comments on the GATT negotiations. Perhaps the best way to approach this issue is to outline Canadian interests and to indicate some of the complicating factors. I will leave it to Leo Mayer to indicate what are the USA interests.

From a Canadian perspective, the Canada/USA agricultural subsidy negotiations encompass three separate but obviously related dimensions. The first

relates to Canada's concerns regarding USA export subsidies to third markets, particularly with respect to grains. The second relates to the differences in support levels between the two countries as regards some major commodity sub-sectors. The third factor is the potential for the existing USA countervailing duty legislation to be used to harass Canadian exports. Particularly disturbing is the tendency for the Administration and/or Congress to make increasingly frequent unilateral changes as to what constitutes a countervailable subsidy.

Obviously, the Canadian grain sector is extremely concerned with respect to USA export practices in third markets. Targeted export subsidies can have a disproportionate impact on world markets, particularly when they are made by the country which is the effective price leader for many agricultural exports. Thus, in Canada's view, subsidy practices to third markets cannot be ignored in a comprehensive bilateral trade agreement. This being said, it is difficult to dispute that, as a practical matter, long-term solutions to the problem of subsidized exports to third markets are probably only negotiable in a multilateral context. Thus, the question for the bilateral negotiations is how best to reflect a recognition that the commercial interests of one party can be prejudiced by the export practices to third markets of the other.

The differences in support levels between major subsectors have very direct implications for bilateral trade. The Canadian countervailing duty against imports of U.S. corn and the USA countervailing duty against imports of Canadian hogs starkly illustrate this point. How do you reconcile the fact that while both countries currently support their agricultural sectors in a roughly equivalent manner in the aggregate, there are significant differences between sectors? The situation is further complicated by the fact that the provinces also provide income and price supports while virtually all of the support provided to U.S. agriculture by the states are limited to research, extension, and inspection.

With respect to the potential for harassment in trade remedy legislation, let me simply note that in this regard the interest of Canadian agriculture are no different than those of the rest of the economy. We need predictability and security of access. The present trade remedy system is based on a unilateral determination of what constitutes a level playing field and all too often what is level depends on the eyes of the beholder. What is required is a joint determination of the rules of the game. The game is too important to the interests of both countries to be left to the regulators and the special interest groups of either country.

In conclusion, I would simply note the bilateral and multilateral negotiations are not mutually exclusive. Quite the contrary, they are mutually reinforcing. The bilateral negotiations offer the prospect of going further on certain trade issues than would be possible in a multilateral negotiation. Here I am thinking about the possibility of both countries modifying their trade remedy legislation and moving away from a unilateral system of dispute settlement to a binational system. This being said, there are limitations as to what can be done in the bilateral negotiations. For both countries, most of our agricultural exports move off-shore and, hence, we must view the world in a global as well as a bilateral context. It may well be that certain agricultural subsidy issues may only be fully resolvable in a multilateral context. This being said, I remain confident that it is possible to negotiate a mutually beneficial bilateral agricultural package which will, in several important respects, provide a beacon for the multilateral negotiations.

## IMPLICATIONS FOR CANADIAN AGRICULTURAL POLICY

T.K. Warley  
University of Guelph

**Context**

The subject of contingent protection that we have discussed today has interest at several levels.

In the most immediate terms, farm and agribusiness leaders need to know how access for Canada's exports of farm and food products to the United States can be made more secure by a bilateral agreement on the conditions under which countervailing and anti-dumping duties may be imposed and safeguard measures may be taken, and by improved methods of resolving bilateral disputes on these matters. Equally, Canadian producers need mechanisms that will assure them that they will not have to compete in Canada with unfairly dumped or subsidized imports from the U.S., and that they will be given temporary relief from fair but intolerably disruptive and injurious imports by the application of agreed safeguard mechanisms.

Beyond this immediate focus is the possibility that the bilateral accord reached by Canada and the U.S. in creating a free trade area could serve as a model for the multilateral trade negotiations (MTNs) now being conducted under the General Agreement on Tariffs and Trade (GATT). Multilateralization of the constructive features of a bilateral agreement on dumping, subsidies and safeguards in revised GATT codes would have implications for the terms of access of Canadian agrifood exports to third country markets -- which continue to account for some 70 percent of our export sales.

Additionally, it should be recognized that the application of contingent protection measures in bilateral Canada-U.S. agrifood trade is but a microcosm of the larger issue of the use of anti-dumping and countervailing duties and safeguards measures in world trade at large. This generalizability is especially pertinent with respect to the subsidy-countervail component of the contingent protection triad. For as governments become more extensively involved in shaping their economies, the subsidies they employ in pursuit of their sectoral and national industrial strategies are increasingly challenged by the authorities of other countries which complain that production and trade are distorted, that the competitive relations between producers are unfairly changed, and that the rights and benefits expected from previous trade and tariff agreements are impaired. Equally, unfettered national responses to the subsidy practices of other countries can lead to a wasteful pattern of retaliation and counteraction, escalation of trade barriers, and heightened political frictions between trade partners. Hence, the bilateral treatment of trade distorting agricultural subsidies is but an archetypal example of the wider global issue of the necessity of placing international disciplines both on the use of subsidies by nation states and on the response of other countries to them.

Finally, insofar as the acceptability of the use of national subsidies to trading partners becomes an explicit consideration in the instrumentation of national policies, one is forced to confront the stark reality of the limits on national sovereignty inherent in participation in a trade agreement and in an increasingly integrated and interdependent world economy.<sup>1)</sup>

## Complaints

It may be useful at this point to summarize the features of the content and practical application of the import relief provisions of U.S. trade law that are causing Canadian exporters of agricultural and food and other products so many difficulties.<sup>2)</sup>

- The system is essentially concerned with placing tariffs on imports. The bias towards blocking imports has been allowed to carry beyond the legitimate imposition of tariffs on imported products that are unfairly dumped and subsidized or intolerably disruptive to the point where the trade remedy provisions of U.S. trade law are being used as an instrument of protection against fair competition.
- The whole apparatus of U.S. trade remedy laws can be triggered into action by a simple petition from any U.S. producer group. As such, there is considerable potential for private groups to invoke public measures to harass foreign suppliers of goods with which domestic producers do not wish to compete.
- Foreign suppliers can be challenged under multiple statutes and forced to deal with multiple agencies under U.S. trade remedy laws, and domestic industries can appeal to the political system if they fail to secure the protection they seek through the judicial system.
- The analyses conducted by the International Trade Commission (ITC) and the Department of Commerce's International Trade Administration (ITA) are time-bound, superficial, incomplete and biased, and--though garbed in a veil of pseudo-scientific analysis and legalistic reasoning -- the rulings that have been made have been increasingly inconsistent and unreasonable, and on occasion bizarre.
- Further, though ostensibly autonomous and quasi-judicial, the ITC is in reality subject to political influence.
- Indeed, the executive branch has become a junior partner in trade policy-making and the President has no authority to prevent the automatic application of countervailing and anti-dumping duties once findings on subsidization or dumping and material injury have been made.
- The definition of what constitutes a countervailable subsidy has been broadened. Since the GATT subsidies code gives no meaningful definition of a countervailable domestic subsidy, the U.S. has been free to develop its own. There is a growing danger that any assistance available to foreign competitors that is not provided to U.S. producers, (or which is provided by instruments different to those used in the U.S.A.) will be defined as unfair subsidies.
- An associated development is the narrowing of the general availability requirement under which benefits of a program are countervailable only if they are enjoyed by one or a few industries. The effect of this development is that almost any exclusions from program benefits render those programs liable to be ruled to be countervailable subsidies.

- The material injury test used in countervailing and anti-dumping cases (whereby injury is harm that is "not inconsequential, immaterial or unimportant") is very easy to meet, and, contrary to the requirements of the GATT's subsidies code, there is no requirement for a petitioner under U.S. trade remedy laws to demonstrate a causal link between the payment of a subsidy, an increase in imports, and the infliction of material injury on competing U.S. producers.
- In countervail cases no account is taken of the subsidies received by U.S. complainants. Hence, imposing import duties that counter only the subsidies received by foreign suppliers does not create "a level playing field" on which U.S. and foreign suppliers compete.
- There are fundamental asymmetries in the application of U.S. trade remedy laws between U.S. plaintiffs and foreign respondents in that these laws focus on the rights of domestic producers, more weight attaches to information provided by complainants than that provided by foreign suppliers, the onus of proof is on foreign suppliers rather than U.S. complainants, and foreign respondents face more expense than U.S. plaintiffs.
- The cost of defending cases brought under U.S. trade remedy laws and the uncertainties of facing ambiguous laws that can be flexibly interpreted or changed in unpredictable ways are effective non-tariff barriers to trade-oriented specialization and investment.

These complaints against U.S. trade remedy laws and practices are shared by all Canadian industries that export to the U.S.A.. It follows that participants in the Canadian agrifood system should make common cause with other industry groups in seeking to have the provisions and operation of the U.S. contingent protection system changed in ways that will make access to the U.S. market more predictable and assured. Equally, all participants in the Canadian agrifood system should be supportive of the federal government's attempt in the bilateral negotiations to achieve more secure access to the U.S. market for Canadian goods, and to enshrine this in a legally binding intergovernmental agreement, and to protect it by establishment of improved mechanisms for resolving disputes. Further, looking beyond continental trade, the successful multilateralization in GATT of agreements reached bilaterally that have the effects of discouraging both the promiscuous use of trade remedy laws as protection against imports and the use of trade distorting subsidies in national policies could make a contribution to the larger task of multilateral agricultural trade reform. Such a development would be very favourable to the larger interests of the Canadian agriculture and food system.

#### **Reform**

By the same token, Canadian agrifood sector participants should lend their support to general approaches to securing improvements in the application of U.S. contingent protection measures to U.S. imports of Canadian goods, for while bilateral trade in farm and food products has its special features these are not so distinctive as to warrant a search for sector-specific arrangements.

The hope has been expressed in Canada that Canadian goods might be exempted from the import relief provisions of U.S. trade laws. This is unlikely. The protectionist mood in Congress and the perception that Canada



makes extensive use of public subsidies to private business seem bound to preclude Congress being willing to give Canada a blanket waiver. Nor is it apparent that Canada would be willing to reciprocally exempt U.S. goods from its own contingent protection arrangements, particularly its right to impose anti-dumping duties. More probable is some set of incremental improvements of varying degrees of ambition.<sup>3)</sup>

Among the many candidate measures identified the following seem attractive.

- It would be helpful to categorize industry assistance programs so as to distinguish between those that distort trade and those that do not. The first type would be prohibited, or be automatically countervailable if used. Those that do not distort trade would be permitted. In between would be programs that are conditionally permissible but subject to being countervailed if they exceed some specified limit and cause injury.
- Higher standards of proof might be required in such matters as trade distortion, injury, causality and the efficacy of the requested remedial action.
- At present a subsidy is generally not countervailed if it represents less than 0.5 percent of the value of the product. This de minimis or threshold level might be substantially increased.
- A very welcome development would be agreement to countervail only the differential by which subsidies in the exporting country exceed the subsidies received by the same industry in the importing country. This would truly "level the playing field of competitive conditions". Further, the higher de minimis standard could apply to the subsidy differential.
- There may be scope for binational administration of import relief laws through some kind of joint international trade commission. The powers of such a body would range from joint investigation and measurement and the provision of advice, through binding arbitration of trade disputes, to the supra-national administration of harmonized trade remedy laws.

This list is not exhaustive. It is provided only to illustrate some options concerning the implementation of import relief measures that are being considered, and to make the point that it is incumbent on agrifood system leaders to work with other industries and with government in promoting such generic reforms.

#### Program Design

It is apparent that, in the future, one of the features of farm program design that will have to be considered explicitly is their acceptability to trading partners and their susceptibility to attracting contingent protection measures.

Clearly there are two broad choices. Canada can assert its sovereignty in the instrumentation of its national agricultural policies, set its own stan-

dards for the treatment of competing imports, and be prepared to pay the price of having its exports fall foul of other countries' import relief measures. Alternatively, we can attempt to make our national farm programs conform with the present trade remedy provisions of U.S. law and with the standards set out in any bilateral trade agreement, and in revised GATT codes on dumping, subsidies and safeguards that will emerge from the MTNs.

In the latter case, there would be a conscious attempt to refrain from using "prohibited" policy instruments. Two obvious candidates to be avoided are explicit export subsidies and two-price plans under which product consumed domestically receives a cost-of-production related price and exports are sold at a market-determined price. Also forbidden would be domestic subsidies on products that unequivocally and significantly increased the amount supplied by causing industry groups to move along their supply functions to levels of output greater than the competitive levels, or input subsidies that caused an outward shift in market supply and excess supply functions.

By contrast, there would be no inhibitions on the provision of assistance to agriculture by generally available measures which had no tangible and immediate trade distorting effects, albeit they might maintain and enhance the competitive position of Canadian producers in the longer term. Foremost among such programs are those of a public goods character that are provided to agriculture by governments in all countries. These include research and extension programs that enhance technological and managerial efficiency, market news and grading services that improve market performance, licensing and inspection services that ensure food safety and plant and animal health, and programs that conserve resources and enhance environmental quality. Adjustment assistance and aids for industry restructuring would also be permitted.

More contentious are price, margin and income stabilization programs (such as the Agricultural Stabilization Act and the Western Grains Stabilization Act) that share with farmers the down-side risks of volatile markets. It can be argued that payments under these programs should not be treated as counter-vailable subsidies provided they meet at least the following criteria: they offer producers only low-slung, stop-loss, economic safety nets, the floor price levels are market-driven, and payments to producers are sporadic. Other features which would enhance their acceptability to the U.S. (and to Canada's other trading partners) are their general availability to the producers of a wide range of commodities, their partial financing by producer contributions, and the use of a lexicon in discourse about them that emphasized their compensatory and allocative efficiency improving intents and results.

There remains a large number of other forms of public intervention in Canadian (and U.S.) agriculture where a determination would have to be made about whether they fall into the definitively prohibited or permitted categories, or whether they are conditionally permissible provided their trade impacts are less than an agreed threshold level. Examples include counter-distorting assistance programs (such as the Special Canada Grains Program), relaxed competition, residue or environmental standards, state trading, the differential treatment of farmers for taxation purposes, and agricultural resource and infrastructure pricing.

It may also be wise to exercise more prudence in the lexicon used to describe agricultural policy. Most importantly, the terms "support" and "stabilization" should not be used interchangeably as commonly they are now,

and such terms as "stop-loss", "insurance", "market failure", "remedial", "corrective", "compensatory", "externalities", "adjustment" and "development" might better convey the underlying intent of Canadian agricultural programs to people in other countries who are disposed to view all foreign agricultural "assistance" programs as potentially countervailable subsidies.<sup>4)</sup>

### Concluding Observations

In both bilateral agricultural trade with the U.S. and in off-shore trade with the rest of the world it is in the general interest of Canadian agriculture that greater discipline be exerted over the use of subsidies and dual pricing systems and the response of countries to them. This for three main reasons. First, Canadian agriculture will be more likely to reach its potential if continental and global agricultural resource use and trade are less distorted. Second, given its growing trade-dependence, the Canadian agrifood system as a whole needs assured access to import markets, especially to the U.S.A. which is the largest, fastest-growing and most diversified outlet for Canada's agricultural and food exports. Thirdly, smaller powers such as Canada must always prefer the codification of acceptable practice and the rule of law in international commerce, for we are bound to lose in a system characterized by the rule of power. The U.S. contingent protection system is presently power-oriented to an exceptional degree<sup>5)</sup>; hence the imperative for Canada of further codifying the application of the import relief provisions of U.S. trade laws and, if possible, creating an impartial third party mechanism to arbitrate disputes over their use.

There is no way of preventing the harassment of Canadian farm and food exports if the U.S. is determined to use anti-dumping and countervailing duties and temporary safeguard measures in a protectionist manner by resorting to unreasonable, changing and legalistic interpretations of the import relief provisions of its trade laws. Nonetheless, there are a number of ways in which the temptation for U.S. authorities to move in this direction can be minimized. First, it is important that Canadian farm and agribusiness groups continue to mount a strong defence when their exports are challenged. Indeed, it is arguable that public funds should be provided to help particular groups contest disputes that seem likely to establish more generally applicable case law. Second, countervailing U.S. exports that have benefitted from subsidies (as in the corn case) has both educational and deterrent effects. Third, as noted earlier, care in the design, instrumentation and presentation of national farm programs so as to avoid attracting restrictions on our exports seems likely to become a normal feature of agricultural policy development. To the extent that this is true, agricultural policy seems likely to take a shape that fits into the framework envisaged in the national agricultural strategy articulated by Canada's agricultural ministers in November 1986.<sup>6)</sup>

This points finally to three fundamental tensions between Canadian agricultural policy-making and instrumentation on the one hand and the desire to avoid trade sanctions against our farm and food exports to the U.S. on the other. First, in the strategy document Canada's agricultural ministers reaffirmed their commitment to provide stabilization programs for agriculture. If this is to be done an imperative for Canada's commercial policy must be to persuade the U.S. that market-oriented, stop-loss stabilization programs (such as the A.S.A. and W.G.S.A.) are production and trade neutral. Secondly, one of the Canadian realities is that provincial governments run their own agricultural policies in such fields as price and income support and stabilization and

the subsidization of credit and other inputs. This being the case, a continuing problem will be to dissuade provincial governments from providing assistance to their farmers on a scale that will be ruled to cause production and trade distortions and thereby attract countervailing duties on Canada's total export supply. Finally, the desire to use limited funds as effectively as possible is pushing both federal and provincial governments towards "targeting" their assistance to agriculture on precisely defined groups of worthy and needy farmers. This otherwise laudable development seems destined to conflict with the "general availability" condition in U.S. trade law that averts the imposition of countervailing duties.

#### Notes and References

- 1) One of the earliest treatments of the conflicts between national economic policy sovereignty and international obligations is William Diebold, Jr. (1980), Industrial Policy as an International Issue, McGraw-Hill for Council on Foreign Relations, New York.
- 2) Extensive discussions of Canada's discontents can be found in Debra Steger, "The Impact of U.S. Trade Laws on Canadian Economic Policies" in Policy Harmonization: The Effects of a Canadian - American Free Trade Area, (1986), C.D. Howe Institute, Toronto and in Alan Rugman (1986), "U.S. Protectionism and Canadian Trade Policy", J. World Trade Law, 20 (4), July : August.
- 3) Detailed analyses of alternatives are contained in Murray G. Smith with C. Michael Aho and Gary N. Horlick, (1987), Bridging the Gap: Trade Laws in Canadian-U.S. Negotiations, Canadian-American Committee, Toronto and Washington, D.C.; Frank Stone (1986), Institutional Provisions and Form of the Proposed Canada-United States Trade Agreement, Discussion Paper #8604, Institute for Research on Public Policy, Ottawa; and Paul Wonnacott (1987), The United States and Canada: The Quest for Free Trade, Policy Analyses in International Economics #16, Institute for International Economics, Washington, D.C.
- 4) In the brief containing the Canadian Meat Council's and National Pork Producers Council's challenge to the ITA's and ITC's determinations that a countervail duty should be imposed on live swine exports from Canada there appears the following statement: "Stabilization programs are intended to assist agricultural producers to realize fair returns for their labour and investment and to assure a fair relationship between costs of production and market returns" (emphasis added), [Brief in the United States Court of International Trade in Support of Plaintiffs' Motion for Judgement upon the Agency Record, 10 July, 1986, p. xvii]. The terms used convey a dangerously erroneous sense of the purpose and "richness" of the assistance provided to Canadian hog producers under the Agricultural Stabilization Act.
- 5) This perception of U.S. import relief or trade remedy laws as providing a system of power-oriented contingent protection is closely identified with the name of Rodney Grey, a long-time Canadian trade negotiator. See especially, Rodney de C. Grey (1982), United States Trade Policy Legislation: A Canadian View, Institute for Research on Public Policy, Montreal.

- 6) A National Agricultural Strategy: Report on Challenges Facing Agriculture  
submitted by the Ministers Responsible for Agriculture to the Annual  
Conference of First Ministers, Vancouver, 20-21 November, 1986.