CONSUMER INTEREST IN CANADIAN TRADE POLICY

A study prepared for the
Department of Consumer and Corporate Affairs
by
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March 30, 1982

EXECUTIVE SUMMARY

The framework within which Canadian trade policy is developed and implemented is seriously biased against the interests of consumers. Over recent years there has been a proliferation of restrictions and controls on imports of a wide range of consumer goods, including many food products, and customs duties in the consumer goods sector remain relatively high. This "new protectionism" has been put into place to protect the interests of Canadian producers and manufacturers, with inadequate consideration of consumer interests. Canada's trade policy system needs to be restructured, especially on the import side, so as to eliminate features that are negative from a consumer perspective and which would require more adequate consideration to consumer interests. There is a need also for improved facilities within the system for the independent identification of consumer interests, for measuring these interests and for ensuring that they are taken fully into account in the development and implementation of Canada's trade policies.

These are the general conclusions of this study of consumer interests in Canadian trade policy.

THE "NEW PROTECTIONISM"

The study surveys major developments in Canadian trade policy over recent years from the perspective of consumer interests. Restrictions and controls have been imposed by the Government on imports of almost all clothing and many textile products from "low cost" sources, footwear, a wide range of food items including cereals products, dairy products, eggs, turkeys, chickens, beef, and automobiles from Japan. While the average level of Canadian customs duties has been substantially reduced, duties remain high for many consumer goods: -- above 20 per cent on clothing, many textiles and footwear, and above 10 per cent on many other consumer goods. Duties on many imports of consumer goods from Britain have recently been increased. Greater use is being made of anti-dumping duties; and import prices of a number of goods have been increased by increasing their value for duty by "Ministerial prescription". Moreover, proposals for new legislation now before Parliament could increase the restrictiveness of Canada's import system.

THE TRADE POLICY FRAMEWORK

By a series of legislative measures over recent years, the Government has changed the structure of Canadian trade policy so as to facilitate the use of special measures of protection for domestic producers, processors and manufacturers. This new legislation operates with little consideration of consumer interests, and in some cases precludes consideration of consumer interests. The interests of consumers have generally been given inadequate consideration in the operations of the Textile and Clothing Board, the Anti-dumping Tribunal and the Tariff Board, which focus their inquiries on problems for domestic producers arising

from imports, and make recommendations for special import protection without measuring the costs to consumers. Import controls and prohibitions on food products are imposed with no evident regard for consumer interests, as integral parts of supply management and other programs designed to raise and maintain agricultural prices and farm income.

Since its establishment in 1967 the Department of Consumer and Corporate Affairs has made a useful contribution to the protection of consumer interests within Canada's trade system. As a relative newcomer among departments responsible for trade policy, it has faced difficulties in its efforts to gain recognition of consumer interests. The Department may not always have devoted sufficient resources to its work in trade policy areas, and to its participation in the inter-departmental process of developing and implementing Canada's trade policies.

RECOMMENDATIONS

The specific recommendations of the study include the following.

1. The Department of Consumer and Corporate Affairs should develop a strategy aimed at restructuring Canada's trade legislation and other elements in the system with the objective of removing the negative features that adversely affect consumer interests.

2. The Department should press for the creation of new facilities for independent investigation, analysis and advice to the Government on trade policy issues; to perform these functions, the Department should support the

amalgamation within a single body of the advisory functions of the Tariff Board, the Anti-dumping Tribunal and the Textile and Clothing Board; such a new body should be specifically required, in carrying out its tasks, to measure and assess consumer interests, and take these interests fully into account in its recommendations to the Government.

3. The Department should ensure that sufficient resources are devoted to its role of safeguarding the interests of consumers in trade policy areas, engage itself fully in all interdepartmental discussions of trade policy issues, and participate fully in the preparation of proposals requested by Ministers for developing new trade strategies for Canada in the 1980's.

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CHAPTER 1

TRADE POLICY AND CONSUMERS

"There do not seem to be too many voices for the consumer in Parliament".

- Mr. Bryce Mackasy, M.P., Chairman, Commons Sub-committee on Import Policy, June 16, 1981.

Over recent years Canadian legislation in the trade policy area has been extended in ways which have generally been damaging to the interests of Canadian consumers. The newer trade legislation and the measures taken within its framework have largely been designed to give additional protection from outside competition to Canadian producers in areas of special interest from a consumer perspective, including textiles, clothing, footwear, automobiles and a wide range of food products. The process has involved a shift from the traditional use of the customs tariff for protective purposes to the use of an array of non-tariff measures, especially quantitative controls on imports.

Relatively little attention has been given to the implications of this "new protectionism" for Canadian consumers, despite the large additional consumer costs involved, and despite the contribution of protectionist trade policies to fuelling inflation in Canada. In Canada, as elsewhere, consumer interest groups have tended to focus attention on such areas as the quality of consumer products, product safety, and the effects of restrictive trade practices. Consumer interests in the development and implementation of Canadian trade policy have been inadequately presented and generally overlooked.

SCOPE OF STUDY

The purpose of this study is primarily to examine the evolution of Canadian trade policy over recent years, particularly on the import side, from the perspective of Canadian consumer interests. Chapter 2 reviews the main developments in Canadian trade policy of special interest to consumers since the late 1960's. Chapters 3 to 7 focus on Canadian legislation in trade policy areas, and seek to identify and examine elements of this legislation of particular consumer interest; they also examine, from a consumer perspective, the operations of the three quasi-independent boards of inquiry that play an important role in the conduct of Canadian trade policy: the Tariff Board, the Anti-dumping Tribunal, and the Textile and Clothing Board. Chapter 8 examines import restrictions on a range of food products that are an integral part of agricultural supply management and other programs. Chapter 9 examines the role and activities of the Department of Consumer and Corporate Affairs in trade policy areas, in the context of broader inter-departmental structures. And Chapter 10 presents a number of conclusions and recommendations based on the earlier chapters.

This examination of consumer interests in Canadian trade policy is far from exhaustive or complete; among other things, the study does not cover the complex system of tariffs and controls on imports of alcoholic beverages, in which provincial governments play important roles. Most of the topics addressed herein could usefully be analysed in more depth, with a view to evaluating more precisely the nature and scope of the consumer interests involved. This study may serve to identify areas of trade policy of special interest to consumers that could

be researched and analysed in more detail.

Nor does this study attempt to examine in any depth the broader issues and developments that surround the development of Canadian trade policy and trade legislation, and to link these with their implications for consumer interests. Such developments and issues include a general trend among industrialized countries towards a "new protectionism" arising from changing patterns of world production and trade; changes in the framework of world trade rules over recent years; the problems involved in identifying and measuring the costs of recent developments in trade legislation and trade policy; and the problems involved in advancing the interests of consumers in the process of developing and implementing Canadian trade policy.

While these broader issues and developments are not covered in any detail in this study, they nevertheless require some general consideration as a setting for the material that follows.

"NEW PROTECTIONISM"

Beginning in the early 1970's, there has been an overall increase in protectionist trade measures not only in Canada but in most other industrialized countries; indeed protectionism in many other countries is more severe than in Canada. The causes and extent of this new protectionism have been analysed and measured in a number of studies by the GATT Secretariat, the International Monetary Fund, by academic authorities and others. It is a common view that the increase in protectionism in many industrialized countries reflects in large measure the difficulties facing particular sectors of production

in adjusting to changing patterns of world production and trade, and especially to the emergence of more efficient competing manufacturing industries in Japan, certain developing countries, and elsewhere. Also, there is a growing appreciation that the "new protectionism" has arisen from longer term problems of a structural kind, rather than from short term cyclical changes. These structural problems, of course, increase the difficulties of removing import restrictions once they are imposed. In some sectors, such as steel, subsidies on production or exports by the governments of some producing countries have been the basis for defensive import measures by others. In the agricultural sector, domestic income and price support measures of various kinds have been introduced on a larger scale which require the imposition of controls on imports. While the new protectionism affects many areas of world trade, the impact has been particularly severe on actual or potential exports by developing countries. The new protectionism has thus become an important issue in the "North-South dialogue".[1]

The "new protectionism" is widely considered to represent not merely an increase in restrictions on trade, but a shift in structure and form away from the traditional use of the customs tariff towards more direct quantitative controls, with quotas or prohibitions determined from period to period by governments, and also towards the subsidization of domestic producers. Thus controls on imports are often combined with other forms of assistance by governments to domestic producers in

[1] For a study of Canadian trade barriers against imports from developing countries, see Margaret A. Biggs, The Challenge: Adjust or Protect?, The North-South Institute, Ottawa, 1980.

the form of subsidy programs, or preferences in the procurement policies of governments.[2] The newer system has also been described as a shift towards a system of "contingent protection", involving a greater use of trade measures such as anti-dumping duties, countervailing duties, and other import barriers that may be put in place relatively quickly to deal with a sudden surge of imports, or in retaliation against trade measures taken by other countries that adversely affect the exports of the country concerned.[3] In any event and whatever form the newer protectionist measures may take, they are imposed on top of any normal customs duties; and they will commonly be translated into higher prices for consumers and impose additional costs for the community as a whole.

This 'new protectionism' has to some extent and in some areas been offset by a general decrease in the level of customs duties imposed by Canada as well as other developed countries. These decreases have resulted mainly from a series of multilateral tariff negotiations within the GATT framework, especially the Kennedy Round (1963-67) and the Tokyo Round (1973-79). As an outcome of these and other international negotiations, the average level of Canadian customs duties on manufactured goods has been reduced by around one-half, from around twenty per cent to under ten per cent. Nevertheless, Canadian customs duties remain relatively high on textiles,

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[2] For an examination of recent changes in the form of protectionism, see Melvyn B. Krauss, The New Protectionism: The Welfare State and International Trade, New York University Press, 1978.

[3] This shift towards a "contingent protection" system has been put forward in several articles by Rodney de C. Grey, who headed Canada's delegation at the Tokyo Round; see, for example, his statement on June 5, 1980, before the Senate Committee on Foreign Affairs, pp. 4:6.

clothing, footwear, and many other products of prime consumer interest.

THE CHANGING INTERNATIONAL SYSTEM

The increased use of import restrictions and other trade controls by Canada, and the continued use of relatively high levels of customs duties, reflects in part changes in the international context within which Canadian trade policy is developed, changes in GATT and other international rules and procedures, and the evolution of the trade policies of Canada's major trading partners, particularly the United States, European Community and Japan. The use of protectionist trade measures by these countries inevitably influences their use by Canada. Agreement by Japan to limit automobile exports to the United States and to European countries, for example, results in pressures by the Canadian industry for similar protection, and makes it difficult for Canadian Ministers to resist such pressures. The willingness of larger countries to reduce protective tariffs and other trade barriers in GATT negotiations sets practical limits on the reduction of Canadian tariffs and other trade barriers. While a number of restrictive trade measures may now be more effectively controlled by new GATT codes and agreements adopted during the Tokyo Round, these same codes may also facilitate their use. The rules of the GATT Multifibre Arrangement have been progressively amended to facilitate rather than constrain the use of restrictions on imports of textiles and clothing from "low cost" countries.

Further, the new international trade system has become more complex and legalistic than ever; and corresponding changes in these same directions have been made

or are being made in the trade policy systems of many trading countries, including Canada as well as the United States, European Community and Japan. These changes in Canada's trade policy system, especially on the import side, will make the system less transparent and more impenetrable from outside, and more difficult for broadly based consumer groups to understand how and in what ways their interests are affected by its operation.

Nevertheless, there are some indications of a trend to moderate the use of protectionist trade measures among trading nations. Successive meetings of world leaders at the summit level have pronounced themselves in opposition to trade protection. Within GATT, an important meeting at the Ministerial level will be held in November of this year, which may open the way to new international efforts to liberalize trade in services as well as in goods. Success in these efforts could bring gains for consumer interests in Canada and elsewhere.

COSTS OF PROTECTIONISM

Classical international trade theory demonstrates that restrictions on trade leads to an inefficient allocation of the world's economic resources, both for the world as a whole and for individual countries. Trade protection also favours the interests of particular producers at the expense of the community as a whole, including consumers as a group. Trade protection thus enjoys little or no favour among economists, except perhaps as a temporary measure to encourage an "infant industry".[4]

[4] See, for example, C.P. Kindleberger, International Economics, Irwin, Third Edition, 1963, Chapters 5 and 12.

Canada has a long history of import protection, especially for the manufacturing sector, dating back to the 1870's. The costs involved for the Canadian economy have been the subject of several critical examinations. Among these was a study by J.H. Young in 1957, which estimated that the "cash cost" of the Canadian tariff in 1956 was in the order of $1 billion.[5] A more recent study of protectionism in Canada, issued by the Economic Council of Canada in 1975,[6] indicates that the "cash cost" of Canadian tariffs combined with other import protection would be many times this amount at the present time.

The customs tariff is a tax on imports and as such represents a transfer to the government of income by consumers of imported goods. In the fiscal year 1980-81, Canadian tariff revenues have been estimated to amount to just over $3 billion, rising to over $4 billion in 1983-84.[7] While this amount is only a small proportion of overall government revenue, it is not insignificant. Customs duties, moreover, like sales taxes, are regressive in nature and thus represent a greater burden for low income consumers than for high income consumers. Furthermore, federal and provincial sales taxes are compounded on top of the duty paid value of imports.

Customs tariffs have other important effects, in

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[5] J.H. Young, Canadian Commercial Policy, a study for the Royal Commission on Canada's Economic Prospects, 1957, pp. 67-73.

[6] Economic Council of Canada, Looking Outward, Supply and Services Canada, 1976, Chapters 1-7.

[7] Minutes of Commons Committee on Finance, Trade and Economic Affairs, February 3, 1981, p. 36A:1.

addition to their function as a tax on imports and a source of government revenue. Because domestic consumers must pay higher prices for imported products, domestic producers can maintain higher prices for their production of like or similar goods and services; the effect is to transfer income from consumers of these goods and services to their domestic producers. Moreover, the economy as a whole and consumers as a group suffer further losses, because domestic resources are discouraged from being shifted to relatively more efficient uses from the protected and relatively less efficient sectors of the economy. Higher prices in protected product areas also result in lower levels of consumption and use, and a reduction in living standards. Overall, the cash costs to the economy as a whole and to consumers as a group can substantially exceed the benefits from a customs tariff gained by domestic producers plus the revenue resources transferred to government. If duties are high enough, they may discourage imports of a product entirely, at least from certain countries; on some other products, even a high duty may have little protective effect in practice. Tariffs are generally regarded by economists as a highly unsatisfactory policy instrument. According to Kindleberger: "Anything that a tariff can do, some other weapon of economic policy can do better".[8]

As noted above, customs duties remain at relatively high levels for many products of prime interest to consumers. Appendix 1 contains an illustrative list of consumer type goods showing the level of customs duties that will continue to be imposed on them even after the

[8] Kindleberger, op.cit., p. 242.

cuts resulting from the Tokyo Round of GATT tariff negotiations have been implemented. Moreover, as explained later in this study, even higher levels of customs duties are often imposed on particular imported goods by the use of special anti-dumping duties and by increasing the valuation of imported goods for the purpose of calculating customs duties.

Despite the weakness of the customs tariff as a policy instrument and the losses involved for consumers, it is generally agreed that quantitative restrictions and controls are even less desirable, especially from a consumer perspective.[9] One major objection to quantitative controls is that import levels are determined not by the market place but by arbitrary decisions by government, commonly in response to pressures from special interest groups; imports in some cases may be entirely prohibited. Where imports are permitted, quota systems or licences are commonly used to allocate imports or used to regulate exports; and importers or exporters come to occupy monopoly positions arising from their quota rights. These rights can acquire a value of their own in the form of 'quota rents' which go to importers, wholesalers, retailers and foreign exporters; the result is to increase prices to consumers. Further objections arise from the complexities, delays, and lack of transparency of systems for administering import controls, which represent additional costs and may open the way to favouritism or even corruption. Altogether, quantitative controls on imports not only introduce severe distortions in the market but add substantial further costs to consumers, on top of any

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[9] Kindleberger, op.cit., pp. 224-251; Krauss, op.cit., pp. 13-17.

customs duties that are imposed.

A recent study by Glenn P. Jenkins for the North-South Institute demonstrated the high costs to Canadian consumers, and to the economy, of high tariffs combined with quantitative controls that are imposed on imports of clothing.[10] These controls on imports of clothing are mainly administered by the exporting country concerned, under bilateral arrangements concluded by the Canadian government. Jenkins found that the losses to consumers resulting from tariffs and controls on imports of clothing amounted in total to almost $470 million in the year 1979 alone, of which the costs of the tariff amounted to about $270 million and the costs of the quotas to around $200 million.[11] He measured these costs approximately as follows:[12]

(a) gains to foreign producers arising from value of quota rights	$41 million
(b) transfers to the Canadian government of customs duties	$93 million
(c) additional profits to domestic producers	$267 million
(d) economic waste of resources in production	$46 million
(e) loss of standard of living from reduced consumption	$21 million
Total consumer cost	$467 million

[10] Glenn P. Jenkins, Costs and Consequences of the New Protectionism: The Case of Canada's Clothing Sector, the North-South Institute, Ottawa, July 1980.

[11] Most clothing is dutiable at the MFN rate of 22.5 per cent; quantitative controls are in place for most clothing imports from developing country suppliers under bilateral arrangements.

[12] While the calculations in the Jenkins study have been questioned, they serve to illustrate the large costs and losses for consumers arising from high tariffs and import controls on clothing.

The Jenkins' study, moreover, indicated that the high tariffs and import controls in the clothing sector have a clear bias against lower income Canadians. It found that while an average family in the low income group (less than $10,000 annual income) earned only 15.8 per cent as much as an average family in the high income group (over $30,000 annual income), the poorer families "bear over 47 per cent as much burden of the consumer costs of protection as does a high income family".

NEGLECT OF CONSUMER INTERESTS

The consumer movement that emerged in Canada, the United States and elsewhere in the 1960's has made a major impact in many areas of government policy, legislation and regulation. In the area of trade policy, however, consumer interests have generally been inserted less effectively than in other areas such as the quality of consumer products, product safety, health, and labelling, or in the area of restrictive trade practices. In trade policy areas, consumer interest groups have been less united. Labour unions, for example, with their preoccupation over job security, have tended to become increasingly protectionist in trade areas, whereas they are generally allied with consumer groups in other areas. Domestic producers of manufactured goods, and in certain areas of agriculture, are better organized as pressure groups than consumers, and can command the resources to make more forceful presentations of their interests at political levels and within the country generally. Voters tend to be organized as producers, rather than as consumers, especially during periods of adverse economic conditions and high unemployment.

Despite the substantial impact on consumers of customs duties, import controls and other restrictive trade measures, there has been a remarkable absence of public discussion in Canada of trade policy issues and developments from the perspective of consumer interests. A recent review of Canadian newspapers, periodicals and academic literature found a certain amount of press coverage of particular trade measures such as footwear quotas, Japanese restrictions on exports of automobiles and the results of particular inquiries into dumping; commonly such reporting reflects the interests of producer groups concerned. There is also of course considerable body of recent economic literature, often quite specialized, concerned with particular issues in Canadian trade policy. But there has been almost no analysis of the particular consequences for consumers of the development and implementation of Canadian trade legislation over recent years. Two studies in this area, however, might be noted: one by Ellen Richardson in the mid-1970's examined from a consumer perspective the mandates and operations of the Tariff Board, the Anti-dumping Tribunal and the Textile and Clothing Board;[13] the other by Glenn Jenkins in 1980 was noted in the previous section.

The Consumers' Association of Canada has, of course, made numerous although somewhat uneven efforts to safeguard the interests of Canadian consumers in trade policy areas, through representations to Ministers concerned with trade policy, presentations before Parliamentary

[13] Ellen Richardson, Consumer Interest Representation: Three Case Studies, Canadian Consumer Council (undated). See also, in the United States, Morkre and Tarr, The Effects of Restrictions on United States Imports: Five Case Studies and Theory, Federal Trade Commission, 1980.

committees, and presentations to the Tariff Board and the Textiles and Clothing Board. On some occasions, support for consumer positions has been forthcoming from other groups outside government with parallel interests representing retailers and importers, and from groups concerned with the special problems of developing countries.

Nevertheless it is evident from an examination of the records of Parliamentary committees, the Tariff Board, the Anti-dumping Tribunal and the Textile and Clothing Board, that presentation of consumer interests have not always been adequate, and in some cases have been absent. The deliberations of these bodies, moreover, generally reveal that consumer interests are commonly overlooked or ignored. Mr. Bryce Mackasey M.P., as Chairman of the Commons Sub-committee responsible for examining proposals for new import legislation, commented in this regard:

> I think the consumers in recent months have been neglected and forgotten in a lot of discussion in this country. Come the movement of truth, the consumers have got to be protected.[14]

One conclusion emerging from the present study is that new or improved arrangements are needed to identify consumer interests in particular legislative proposals and measures in trade policy areas, to measure the extent and nature of consumer interests, and to advance these interests in ways that will make a greater impact on the process of developing and implementing Canadian trade policy.

This is not to imply that within the Canadian

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[14] Minutes of Commons Sub-Committee on Import Policy, November 2, 1981.

Government decisions on import policies and measures have been made without regard to consumer interests involved. Since its establishment in the late 1960's the Department of Consumer and Corporate Affairs has had a mandate for seeking to ensure that consumer interests are taken into account in the development and implementation of Canadian trade policy. There is evidence, however, that the Department has not always assigned adequate resources to this side of its work. The interests of the consumer have not always been recognized by other departments with longer standing major responsibilities in trade policy areas. And the interdepartmental structure includes powerful elements that essentially represent producer and other special interest groups. Within the bureaucracy, as in Parliament, the voice of the consumer is often faint or disregarded.

Nevertheless, there appears to be a growing awareness of the high costs of trade protection for the consumer and for broader national interests. Also, it appears to be increasingly recognized in Canada and in other industrialized countries that protectionist trade policies are ineffective and even counterproductive as an approach to dealing with underlying economic problems a structural nature.

CHAPTER 2

RECENT DEVELOPMENTS

This chapter contains a list of legislative and other developments in Canadian trade policy over the past fifteen years which are of special interest from a perspective of consumer interests.

At the beginning of this period, in 1967, the Department of Consumer and Corporate Affairs was established by a special Act of Parliament.[1] The creation of this new department, and the mandate given to it relating to the protection of consumer interests, provided a stronger basis for the insertion of consumer interests into the formulation and implementation of Canadian trade policy. Nevertheless, and despite the efforts of this new Department, developments in Canadian trade legislation and trade policy from the late 1960's have been generally damaging to the interests of consumers. It is true that substantial reductions in Canadian tariffs have been made as a result of multilateral negotiations within GATT. As an outcome of the Kennedy Round (1963-67) and the Tokyo Round (1973-79), the overall level of Canadian customs duties has been substantially reduced from levels in the 1960's; in the sector of manufactured end products, the average level of customs duties has been cut by over one-half, from over 20 per cent to the 8-9 per cent range.[2] However, high tariffs will continue to be imposed on many products of prime interest to consumers. Moreover, overshadowing the reductions in

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[1] Department of Consumer and Corporate Affairs Act, R.S.C. 1970, Chapter C-27.

[2] These lower rates will be achieved by 1987, when the cuts agreed to in the Tokyo Round will be fully implemented.

customs duties since the late 1960's has been the shift in Canadian trade policy toward the use of quantitative controls on imports in order to give additional protection to Canadian producers, in excess of normal customs duties, of a range of products of prime interest to consumers.

KENNEDY ROUND TARIFF REDUCTIONS

In 1968 the Customs Tariff was amended in order to implement the cuts in customs duties that had been agreed during the Kennedy Round of negotiations under GATT (1963-67).[3] These tariff cuts represented some gains for consumers. The average incidence of the Canadian tariff was reduced by around 25 per cent. Duties on final manufactured products were reduced generally from the 22.5-25.0 per cent range to the 17.5 per cent range. However customs duties remained above 20 per cent for a number of products of prime interest to consumers, including most textiles, all clothing and all footwear, in order to preserve a high level of protection against imports for domestic products of these products. Moreover, reductions in duties on many final manufactures were accompanied by reductions in duties on intermediate products and capital equipment; thus there was little decrease in the level of "effective protection" afforded by the customs tariff to many Canadian manufacturers. Further, Canada pursued an "item-by-item" approach in the Kennedy Round negotiations, and declined to enter into an "across-the-board" formula for tariff reductions which was generally followed by most other

[3] See statement by the Minister of Finance, Minutes of Commons Committee on Finance, Trade and Economic Affairs, January 16, 1968. See Minutes of the January 25, 1968, meeting of the Committee for Statements by the Consumers' Association of Canada, and by Dr. H.E. English, Executive Vice President of the Association.

developed countries, and which, if it had been followed, would have achieved generally deeper cuts in customs duties on imports of special consumer interest.

ANTI-DUMPING ACT OF 1968

In 1968, as an outcome of the Kennedy Round, Canada adopted a new anti-dumping system, on the basis of the 1968 Anti-dumping Act. This Act created an Anti-dumping Tribunal as an independent body to conduct inquiries into whether dumping of particular imported goods causes or threatens "material injury" to domestic production of like goods. The new legislation represented certain gains from a consumer perspective, since the use of anti-dumping duties became limited to situations where, after formal investigations, material injury is found to be caused or threatened to domestic production by dumped imports. On the other hand, the Tribunal in conducting its investigations is precluded from taking account of consumer interests in conducting its inquiries; it looks solely into the question of whether dumping of the product under inquiry is causing or threatening material injury to domestic producers. If injury is found, moreover, anti-dumping duties are automatically imposed in the full amount of the margin of dumping as this has been determined by Revenue Canada in its separate investigations.

The number of cases investigated by the Anti-dumping Tribunal during the period 1969-1980 exceeded one hundred, and the cases were more numerous during the latter part of this period. About two-thirds of the cases resulted in findings of material injury or partial injury, and led automatically to the imposition of anti-dumping duties. Many of the products concerned are of direct

interest to consumers.[4]

SECTION 16.1 OF THE ANTI-DUMPING ACT AND FOOTWEAR RESTRICTIONS

In 1971 the Anti-dumping Act was amended to include a new Section 16.1, to provide for investigations by the Tribunal at the request of the Government into possible "serious injury" to Canadian producers, other than producers of textiles and clothing, arising from imports.

This provision of the Act has so far been used mainly as a basis for inquiries by the Tribunal into imports of footwear; and on the basis of its reports and recommendations the Government in 1977 imposed restrictions on imports from all sources of almost all footwear. In November 1981 the Government removed the restrictions on imports of leather footwear, but broadened them to include almost all other types of footwear.

In conductings its inquiries under Section 16.1 of the Act, the Tribunal is virtually precluded from taking account of consumer interests; its mandate is to determine whether the imports concerned are causing or threatening serious injury to domestic producers.

TEXTILE AND CLOTHING RESTRICTIONS

In 1971 the Textile and Clothing Board Act was put into force, establishing a Textile and Clothing Board (TCB) to conduct inquiries into whether imports of any textile or clothing products are causing or threatening "serious injury" to domestic producers. If such injury

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[4] Anti-dumping Tribunal, Annual Reports, Supply and Services, Canada.

is found, the TCB recommends whether "special measures of protection" should be imposed by the Government on imports. The TCB in its inquiries is required to take into account presentations by "an importer, user or consumer" of the products concerned.

On the basis of this legislation, the TCB has carried out a series of investigations into imports of textiles and clothing, the latest in 1979-80.[5] These investigations led to the imposition by the Government of severe restrictions on imports of almost all clothing and on many textile products, in some cases by the imposition of direct controls on imports and in other cases by the conclusion of "voluntary export restraint arrangements" with foreign suppliers among the developing countries and in eastern Europe.

EXPORT AND IMPORT PERMITS ACT

The Export and Import Permits Act provides the main legal basis for the Government to impose restrictions or prohibitions on imports of goods into Canada, and to issue permits to importers for the importation of goods that are subject to quotas. The Act was amended in 1971 by Section 26 of the Textile and Clothing Board Act to authorize the Government by Order in Council to impose restrictions on imports of textiles and clothing following a finding of injury by the TCB; the Government was similarly authorized to impose restrictions on imports of any other product that had been the subject of an inquiry by the Anti-dumping Tribunal under the provisions of Section 16.1 of the Anti-dumping Act.

[5] Textile and Clothing Board, Textile and Clothing Inquiry: Report to the Minister of Industry, Trade and Commerce, June 30, 1980.

Import controls are imposed by placing the product concerned on an "Import Control List". In 1971 this list already included all dairy products, and since then it has been greatly enlarged. It now also includes almost all clothing and footwear, many textiles products, eggs, turkeys, chickens, beef and veal. Imports of some products on the List, butter for example, are rarely permitted; the importation of some other products, for example beef and veal, is permitted at present without restriction under "general import permits"; for most products on the List, however, quantitative restrictions exist and quotas are allocated among importers. One serious drawback of the system, from a consumer perspective, is the absence of any form of "sunset" provisions governing the withdrawal of items from the List.

RESTRICTIONS ON EGGS, TURKEYS, CHICKENS AND OTHER FOOD PRODUCTS

In 1972 the Farm Products Marketing Agencies Act was adopted, which enlarged the scope for restricting imports of food products, in support of supply management programs for particular farm products other than dairy products and grains (which are covered by earlier legislation), and the operations of boards established to administer these. Supply management programs and marketing boards have so far been established for eggs, turkeys and chickens, and controls on imports of these products have been imposed by the Government in order to protect their viability. Similar programs could be established for other farm products, which would in turn require the imposition of controls at the border to defend them against imports.

These import controls on eggs, turkeys and chickens

are in addition to import controls that have long been in pace on all dairy products under the Canadian Dairy Commission Act, and on imports of wheat, barley and oats, and their products, under the Canadian Wheat Board Act. In addition, imports of beef have been controlled over recent years intermittently either by direct restrictions or under bilateral agreements with exporting countries; and as noted below, new legislation has recently been adopted to provide a firmer basis for controls on beef and veal imports.

The imposition of these controls and prohibitions on imports of food products do not involve any determination of injury to domestic producers arising from imports. There is nothing in any of the above legislation, moreover, which calls for any measurement of the consumer costs involved, or for account to be taken of consumer interests.

1973 TARIFF REDUCTIONS

In 1973, as an anti-inflation measure, duties were reduced on over $1 billion of imports on a temporary basis; these cuts were spread over a range of imports of interest to consumers but the list excluded textiles, garments and footwear.[6] These temporary reductions were extended over subsequent years, and were finally absorbed in the reductions that were agreed during the Tokyo Round.

GENERAL PREFERENTIAL TARIFF

In 1974 the Customs Tariff was amended in order to bring into effect the General Preferential Tariff (GPT). This amendment reduced customs duties on a selected range

[6] Budget Speech by the Minister of Finance, February 19, 1973.

of products when imported from any of the developing countries; the GPT rates are generally two-thirds of the applicable MFN rate, or at the level of the British Preferential rate, whichever is lower. While these reductions in customs duties have produced some benefits for Canadian consumers, these benefits have so far been quite limited. Only a small proportion of imports are entitled to these lower rates; many traditional imports from developing countries already entered free of duty; and products of prime interest to consumers such as textiles, clothing and footwear have been excluded from the list of products entitled to the lower GPT rates.

DUTIES ON FRUITS AND VEGETABLES

In 1979, pursuant to an inquiry and recommendations by the Tariff Board, seasonal duties on many fresh fruits and vegetables were increased during peak marketing seasons in Canada, to give additional protection to domestic producers at these times; at the same time, many of the same duties were reduced to zero during other periods of the year. Duties were also increased on many processed fruits and vegetables.[7]

TOKYO ROUND TARIFF REDUCTIONS

On January 1, 1980, the tariff reductions that Canada had agreed to at the Tokyo Round were put into effect by Order in Council, and these were approved by Parliament in 1981. The cuts will be made in stages by 1987; by then, the average of Canadian duties on manufactured goods will be reduced from 14-15 per cent to the 8-10 per cent range.[8] However, few cuts are being

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[7] Department of Finance Press Release, March 12, 1979.

[8] GATT, The Tokyo Round of Multilateral Trade Negotiations, Vol. 2, Geneva, January 1980.

made in the high Canadian duties on textiles, clothing and footwear, which are of great importance from a consumer perpective, and on which customs duties will generally remain in the 20 per cent range; duties will remain over 10 per cent for many other consumer products.[9] In general, Canadian customs duties on manufactured goods will remain somewhat higher than most other countries in the OECD group.

PROPOSED SPECIAL IMPORT MEASURES ACT

In 1980 the Government proposed the enactment of new legislation (the Special Import Measures Act) which would, in effect, amend and extend a good deal of existing trade legislation and enlarge the Government's authority to restrict imports by the use of tariff and non-tariff measures.[10] The proposed new legislation is now being considered by a Parliamentary Committee.

The new legislation would provide quicker and easier procedures for investigations into the dumping or subsidization of exports to Canada. It would permit the Government to enter into arrangements with exporters to raise the price of their shipments, or to limit their quantity, in circumstances where dumping or subsidization is believed to occur, without any formal inquiry into whether domestic producers are being injured. The imposition of countervailing duties would no longer need Cabinet approval, as at present. The Government's authority to monitor "injurious" imports would be extended. The Government would be given greater authority to impose surtaxes, as an alternative to import quotas,

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[9] Appendix 1.

[10] Department of Finance, Proposals on Import Policy, July 1980.

on imports which are determined to be causing or threatening injury to domestic producers. It would also be authorized to impose import surcharges for balance-of-payments reasons for up to six months without approval by Parliament. Further, the proposed legislation would give the Government additional authority to impose tariff and non-tariff measures as a means of retaliation against other countries which introduce measures that adversely affect Canadian exports of services or goods, or that impair Canadian rights under GATT and other trade agreements.

There is nothing in the proposed legislation that reflects any concern about consumer interests. There are no provisions for measuring these interests, or taking them into account in the process of using the proposed new authority to raise barriers to imports.

WITHDRAWAL OF BP TREATMENT FROM BRITAIN, IRELAND AND SOUTH AFRICA

In 1981 the Customs Tariff was amended in order to withdraw long existing and lower British Preferential rates of duty on dutiable imports from Britain and Ireland.[11] As from January 1, 1982, imports from Britain and Ireland are subject to higher MFN rates of duty, at the level these rates will reach when the cuts agreed to by Canada during the Tokyo Round have been implemented. These increases in customs duties on British and Irish products were imposed to retaliate, in effect, for new tariff and other barriers which these countries placed on Canadian exports after they joined the European Community in 1973. Britain has been a

[11] Bill C-50, An Act to Amend the Customs Tariff, passed by the House of Commons, April 14, 1981.

traditional source of imports of many consumer goods; however, the increases in Canadian customs duties on its exports were imposed with no evident consideration for the impact on Canadian consumers.

This amendment also withdrew long standing and lower British Preferential rates of duty on imports from South Africa, which are now dutiable at higher MFN rates. While the withdrawal of these preferences doubtless reflects opposition in Canada to South African apartheid policies, the higher tariffs raise consumer prices for South African goods, notably sugar.

RETALIATORY SURTAXES

The same amendment to the Customs Tariff provided new and far-reaching authority in certain defined circumstances for the Government to impose import measures in order to retaliate against countries which impose barriers to Canadian exports and which impair Canadian rights under GATT and other trade agreements with them. In certain circumstances, the Government by Order in Council is now authorized to impose a retaliatory surtax on imports from an offending country which could amount to one-third of the value of the imported goods. Any such retaliatory import measures would, of course, increases prices of the goods concerned for Canadian consumers. The new legislation does not, however, call for any measurement of the consumer costs involved, or for any account to be taken of consumer interests.

JAPANESE AUTOMOBILES

In June 1981, the Minister of Industry, Trade and Commerce announced that the Japanese Government had agreed to restrict exports of automobiles to Canada during the

year April 1, 1981 to March 31, 1982, to a level that represented a rollback of six per cent from the volume of exports during the previous twelve months.[12] Discussions have taken place recently between the two Governments regarding an extension of these Japanese controls on exports to Canada; according to press reports, the Canadian Government is pressing Japan to reduce its exports to even lower levels.

VALUATION OF IMPORTS FOR DUTY

In August 1981, the Minister of Finance directed the Tariff Board to conduct an inquiry and make recommendations on a new system for valuing imports for duty purposes.[13] Such a new system of valuation, to be introduced by Canada in 1985 pursuant to undertakings entered into during the Tokyo Round, could lead to a general lowering of the valuation base on which customs duties are levied. However, Canada has reserved its right to increase the incidence of customs duties in order to compensate for any reductions in protection resulting from the introduction of the new system.

CHANGES TO GPT TARIFF

An amendment to the Customs Tariff (Bill C-90) was proposed in the Budget Speech of November 12, 1981, and is now under consideration in Parliament which will put into effect several changes in Canada's GPT system. These changes, on balance, could adversely affect consumer interests. On the positive side, GPT rates will be reduced to zero for goods entitled to these rates when imported from any of the group of "least developed

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[12] Department of Industry, Trade and Commerce, Press Release, June 4, 1981.

[13] Department of Finance Release, August 29, 1980.

countries"; GPT rates will be reduced for a few selected products; and the rules of origin governing goods entering under GPT rates will be liberalized in certain respects. However these gains could be overshadowed by the introduction of a "tariff quota" system which could be used to limit the quantities of imports of particular products under GPT rates where these compete with domestic products; the imposition of such tariff quotas would require prior recommendations by the Tariff Board, involving an inquiry to determine whether injury from the product concerned is causing or threatening injury to domestic producers.

FEDERAL SALES TAX ON IMPORTS

In his Budget Speech of November 12, 1981, the Minister of Finance also announced several changes in the tax system that could significantly increase the incidence of customs duties on imports. He proposed that the federal sales tax on imported products should be levied on the basis of their sale price to retailers, rather than on their duty-paid value, as in the past; and he suggested that the cost of transportation of imports to their point of entry into Canada might be added to the price on which customs duties are levied, thus increasing the amount of the duties that are paid.[14]

BEEF AND VEAL IMPORTS

In 1981 the Meat Import Act was adopted, providing a stronger legislative basis for the imposition of restrictions on imports of fresh and frozen beef and veal, which were in place intermittently during the 1970's, and for concluding bilateral agreements with exporting

[14] Budget Speech by the Minister of Finance, November 12, 1981.

countries under which they limit their exports to Canada to agreed quantities.[15] In practice, only the United States, Australia and New Zealand export fresh and frozen meat to Canada; imports from all but a few exporting countries are prohibited under Canadian health regulations. Imposition of such controls on imports of beef and veal would not require any particular inquiry into whether injury to Canadian producers was being caused or threatened by imports, nor any special assessment of the consequences for consumers.

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[15] Bill C-46, An Act to Regulate the Importation into Canada of Fresh, Chilled and Frozen Meat and to Amend the Export and Import Permits Act; passed by the House of Commons, December 11, 1981.

CHAPTER 3

CUSTOMS TARIFF SYSTEM

A. THE CUSTOMS TARIFF

The Customs Tariff[1] is a separate statute that provides the basic authority for the Government to impose customs duties on imports. An attached Schedule A sets out the duties currently in effect, according to product and according to their country of export. The statute contains provisions covering such matters as the remission of duties for certain products in specified circumstances (Schedule B) and the imposition of special countervailing duties and surtaxes in specified circumstances; it provides for changes in customs duties in specified circumstances without further legislative authority and it contains a list of goods that are prohibited entry into Canada (Schedule C).[2]

STRUCTURE OF THE TARIFF

Schedule A contains a list of several thousand products, divided into twelve groups, set out in accordance with the Canadian International Trade Classification (CITC). The duties imposed on imports of these products are shown in ad valorem or less often in specific terms, in five columns which after some recent changes are now headed as follows:

- British Preferential Tariff
- Most-Favoured-Nation Tariff
- General Tariff
- General Preferential Tariff
- U.K. and Ireland

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[1] R.S.C., 1970, Chap. C-41; a "Departmental Consolidation" with amendments to January 1, 1982, is available from Revenue Canada.

[2] For a somewhat dated review of the Canadian tariff system, see G.A. Elliott, Tariff Procedures and Trade Barriers, University of Toronto Press, 1955.

The rates under the General Tariff are the highest, and those under the General Preferential Tariff (GPT) are the lowest. The others are mostly in between. A number of special rates are shown for certain products, mostly food products, from Australia and New Zealand, as agreed under bilateral trade agreements.

GENERAL TARIFF

The highest General Tariff is now applicable only to a very few countries, including East Germany, Saudi Arabia, Oman, Libya, North Korea, and Albania. These are countries with which Canada has no formal trade agreement relationships within GATT or on a bilateral basis. While duties under the General Tariff are thus relatively insignificant in trade terms, the consumer interest should generally be in support of arrangements within which imports from these countries could enter under lower rates of duty.

MFN TARIFF

The MFN Tariff applies to the largest part of Canada's exports by far, and covers imports from countries other than those entitled to the lower and preferential BP or GPT rates; it thus covers imports from Canada's largest sources of imports, including the United States, the European Community and Japan.

The MFN rates largely represent reductions from the higher General Tariff rates that have been progressively made in successive rounds of GATT tariff negotiations. Many of these rates, moverover, are 'bound' against increase except through a difficult process of international negotiations, under quite strict GATT rules; and imports from all GATT members are entitled to these

MFN rates at a minimum. These GATT rules thus represent a valuable safeguard for consumer interests in Canada.

In 1981 the Government obtained Parliamentary approval for the reduction, retroactive to January 1, 1980, of the tariff reductions that Canada had agreed to as an outcome of the Tokyo Round.[3] Most of the reductions affect the MFN Tariff. The agreed reductions are mostly being made in stages, and will be fully implemented in 1987. As noted in Chapter 2, the average of Canadian duties in the manufactured sector will then be in the 8-10 per cent range. However, MFN duties will remain at 20 per cent or above for a number of products of prime interest to consumers, and many rates on consumer type goods will remain in excess of 10 per cent.[4] Canadian duties for consumer goods are somewhat higher than those of most developed countries. Moreover, the Canadian tariff structure, like that of many other countries will continue to incorporate a pronounced element of "escalation", whereby the rates of duties will increase in proportion to the degree of manufacture of the product concerned; higher duties will continue to be imposed on the processed and finished forms of a product than on the raw material from which they are processed. This escalation in rates of duty can given a much higher level of "effective protection" to a domestic industry than would be suggested by the nominal rate of duty on the finished product concerned.

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[3] Bill C-50 was passed by the House of Commons on April 14, 1981; the initial reductions had been already implemented by an Order in Council, PC 1980-200.

[4] Appendix 1.

BRITISH PREFERENTIAL TARIFF

The BP rates apply generally to "British" countries and territories; the list is set out in Section 3(2) of the Customs Tariff. However, from June 1980 the list no longer includes Britain and Ireland, following their accession in 1973 to the European Community, nor South Africa. Pakistan has also been deleted from the list, following its withdrawal from the Commonwealth during the mid-1970's.

The BP rates are generally lower but not uniformly lower than the MFN rates; many are two-thirds of the MFN rate; some others are at the "free" level. However, Canada has no international commitments that prevent it from increasing BP rates, except for rates on certain imports from Australia, New Zealand and the West Indies.

U.K. AND IRELAND TARIFF

The Government in 1980 increased duties from BP to MFN levels on imports from Britain and Ireland in response to increases in many of their duties on Canada's exports, following their entry into the European Community and their adoption of the EEC common external tariff.[5] Whatever the merits of the Canadian response in negotiating terms, to raise duties on imports from Britain and Ireland represents self-inflicted increases in import prices of many products of interest to Canadian consumers, and an overall increase in tariff protection for Canadian producers of competing goods. For example, duties on British exports of chinaware have been raised

[5]The withdrawal of BP duties from Britain and Ireland was effected by Bill C-50, approved by the House of Commons in April, 1981.

from zero to 11.3 per cent, and on scissors and shears from zero to 17.5 per cent.

Similarly, the withdrawal of BP tariff treatment for South Africa represents, from the consumer perspective, a self-inflicted increase in the price of many imports from that country including sugar, whatever the justification for this action by Canada in political terms.

GENERAL PREFERENTIAL TARIFF

The preferential GPT rates apply to virtually all the developing countries that have this status within the United Nations. Section 3.1 of the Customs Tariff governs these GPT rates, and the countries entitled to them are listed in an attached Schedule. The rates are generally but not always the lesser of the corresponding BP rate or two-thirds of the MFN rate. Not all goods are eligible; the exclusions are set out in Section 3.2 and they include mostly goods of a consumer type such as most clothing, textiles and footwear; many temperate zone food products; drugs, soaps and oils; and a miscellaneous list of other consumer goods.

Canada introduced these lower and preferential GPT rates as part of a "Generalized System of Preferences" that was worked out during the early 1970's in UNCTAD and GATT, whereby all of the industrialized countries extend roughly comparable tariff preferences to developing countries. Unlike some other countries, Canada so far has imposed no quantitative limits on imports entering under the GPT tariff, and the list of countries entitled to GPT treatment by Canada is somewhat longer than those of many other developed countries. On the other hand, the GPT preferential margins offered by

Canada have been somewhat meager; moreover, like most other developed countries, Canada excludes many products for which these countries are seeking to develop export markets. Until now only a small part of Canadian total imports enter under GPT duties, but the lower GPT rates are applied to a range of products of considerable interest to consumers. These come mainly from the more advanced countries in the group.[6]

Canada has no binding international commitments to maintain these lower GPT duties for particular products or particular countries. On the other hand, Canada is in a position to broaden and further improve its GPT preferences at any time; indeed, Canada and other developed countries are being pressed to do so by the developing countries in GATT and UNCTAD. Improvements in the GPT scheme would not only benefit Canadian consumers, but would also be consistent with broader Canadian policies to assist developing countries.

Several important changes in Canada's GPT Tariff are now under consideration in Parliament, following an inquiry by the Tariff Board under a Reference sent to it in July 1980 by the Minister of Finance.[7] Bill C-90 is designed to amend the Customs Tariff so as to extent GPT rates to a number of products that are not now covered by them. These changes represent some gains from a consumer perspective. Another change, however, is less welcome; it would authorize the Government to introduce

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[6] For a comparative study of Canada's GPT scheme see G.H. Forrester and M.S. Islam, The Generalized System of Preferences and the Canadian General Preferential Tariff, a background paper prepared for the Tariff Board, 1979.

[7] See Tariff Board report tabled in the House of Commons on May 20, 1981, in response to Reference 158 relating to the General Preferential Tariff, under letters from the Minister of Finance dated July 24, 1980 and August 1, 1980.

tariff quotas, so that a higher MFN duty would apply after a specified quantity of a given product has entered under the lower GPT duty. A third change would be to reduce to free the rate on goods covered by the GPT Tariff when these goods are imported from a designated list of "least developed" countries.[8] While this change would be a welcome encouragement to imports from the poorest group of countries, these countries are generally not large exporters to Canada, and the overall effect would not be significant in terms of Canadian consumer interests.

OTHER FEATURES OF THE TARIFF

The rate of duty for a particular import is conditioned by other features of the Customs Tariff, in addition to the origin of the goods concerned. The rates themselves, and any conditions affecting the rates, have been determined over the years by a complex of economic, political and geographic forces; by pressures from organized producer groups and, on occasion, consumer groups; by the results of international negotiations; and for reasons of administrative convenience. Any detailed analysis of the rates of duty now prevailing from a consumer perspective is beyond the scope of this study. However, certain elements can be identified which lie behind particular rates and which are significant from a consumer perspective.

FORM OF DUTY

Duties may be expressed in ad valorem terms, or in specific terms, or a mixture of the two. Most are in

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[8] These proposed changes were explained by the Minister of State (Finance) during the Second Reading of Bill C-90 in the Commons on February 10, 1982.

ad valorem terms, thus highlighting the importance of valuation of goods for customs purposes. Specific duties are found mainly in the agricultural and textiles sectors, often mixed with ad valorem rates. From a consumer perspective, specific duties are less desirable, except during periods of price inflation; they can be "regressive" in nature, since they have a greater impact on lower-priced lines of a product, and will have a greater impact when prices fall. In line with international trends, Canada is progressively converting many specific duties to their ad valorem equivalents, largely in the context of negotiations during the Tokyo Round.

Ad valorem duties can also be imposed with regressive effects, for example, when an item is classified in such a way that the rate of duty is higher for lower priced lines of a product than for higher priced lines.

VARIABLE DUTIES

Canadian duties on many fruits and vegetables are designed to provide protection to domestic producers during the peak growing and marketing seasons against competition from imported products, especially from the United States. These often combine both ad valorem and specific duties, the latter designed to give additional protection against low priced imports. These duties are in effect for varying periods of the year, as determined within specified limits by the Department of National Revenue, and may be applied at different times in different regions of Canada.

DUTY FREE GOODS

Many goods used by Canadian producers as inputs into their operations are free of duty, for the purpose of

reducing costs of production in Canadian industry, agriculture and other sectors. Far fewer consumer-type goods are duty free. However, tariffs are at the level of free or at very low rates for a range of tropical food products not produced in Canada such as tea, coffee, rice, bananas and oranges, from most if not all sources. Other duty free (or exempt) imports include crude petroleum (but not refined products), antiques, handicrafts, gifts from abroad up to a certain value, and goods brought in by returning travellers or returning residents up to certain amounts and under specified conditions.

DRAWBACKS AND SIMILAR FEATURES

Canada's tariff structure contains other features that are designed to reduce the cost to domestic producers of imported materials, machinery and other inputs. Schedule B lists goods of this kind which are eligible for "drawbacks" or reimbursement of duties, up to 100 per cent. Many individual tariff items feature an "end use" element, permitting free entry or entry under low duties of such goods as machinery, materials and tools when used for specified purposes, or under specified conditions. Agricultural implements, for example, have been free of duty for many years. As a result of the Canada-U.S. Automotive Agreement, producers of automotive products (but not individual consumers) may import vehicles and original parts free of duty, provided they meet certain conditions in their manufacturing and sales. Much equipment used for commercial fishing is free of duty. These features of the tariff are of indirect interest to consumers, to the extent they lead to lower prices for the final products of Canadian industry, agriculture and other sectors of production.

GOODS "NOT MADE IN CANADA"

Of similar interest is a long standing feature of the Canadian tariff whereby imports deemed to be of a class or kind not made or produced in Canada may be entered free of duty or at lower rates than a similar product deemed to be made in Canada. This provision is in Section 6 of the Customs Tariff; traditionally, a product is deemed to be "made in Canada" if 10 per cent or more of normal consumption is available from domestic sources. Again, this feature of the tariff is mainly of interest to producers, but is of indirect interest from a consumer perspective.

TARIFF CLASSIFICATIONS

From a consumer perspective, the way in which an item is classified or defined in the tariff can have considerable significance. For example, certain tariffs especially in the food sector are broken down so as to impose higher duties on a product when it is packaged in consumer-size quantities than when imported in larger quantities for the wholesale trade. Such tariffs, moreover, often include the container in the weight of the product for duty purposes, thus further increasing the incidence of the duty on the consumer-size import.

Also, in negotiations with other countries, items may be reclassified and more narrowly defined so that a reduction in duty will apply only to the specific item of interest to the negotiating partner and leave intact a higher rate on the same or a similar product from other countries. Such "specialization" of the tariff can take many forms (size, weight, colour, value, etc.), and can have disguised protective effects as well as increasing the complexity of the tariff for importers

and consumers.

Canada is likely to undertake in the near future a major overhaul of its tariff classification system to bring it closer into line with a revised international system within the Customs Cooperation Council in Brussels. This exercise, and any consequential adjustments in the rate structure, would be of great importance from a consumer perspective.

PROHIBITED GOODS

Schedule C of the Customs Tariff sets out a list of "prohibited goods". Some prohibitions are included for evident social, environmental and similar purposes. Others, however, are included for protectionist purposes, such as the prohibitions on imports of margarine, and on most used or second hand motor vehicles and aircraft.

COUNTERVAILING DUTIES

A countervailing duty is an additional duty, over and above the normal customs duty, that may be imposed by an importing country to offset a subsidy given by the government of a foreign country to a producer or exporter. Subsidies can take various forms (financial grants, loans on concessional terms, special tax advantages, etc.); and they are given by governments for a variety of economic, social and political reasons. Subsidies can have significant effects on international trade, and their use appears to have increased in recent years.

Consumers in importing countries can gain benefits from subsidies paid to producers and exporters in foreign countries, in the form of lower prices for imported products. Producers of similar goods in the importing

country, however, commonly protest that subsidized imports represent "unfair" competition, and press their governments to impose offsetting countervailing duties, so as to raise the price of subsidized imports.

The use of countervailing duties by Canada has for many years been authorized under Section 7 of the Customs Tariff, but Regulations for their use were issued only in 1977 (P.C. 1977-838, March 24, 1977). Such duties may only be imposed on goods "of a class or kind made or produced in Canada"; they are to be "equal to the amount of the subsidy", as determined by the Minister of National Revenue.

The use of countervailing duties by Canada is constrained by international commitments, notably by Article VI of the General Agreement on Tariffs and Trade, and by a supplementary Agreement on Subsidies and Countervailing Measures that was concluded during the Tokyo Round and accepted by Canada.[10] One of the main GATT constraints, from a consumer perspective, is that countervailing duties may only be imposed when it has been demonstrated that imports benefitting from foreign subsidies are causing or threatening "material injury" to an established industry or retarding "materially" the establishment of a new industry.

Briefly, under existing legislation and practices, the imposition of a countervailing duty by the Canadian Government would require:

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[10] The full title is the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade; the text is in GATT, Basic Instruments and Selected Documents, 26th Supplement, Geneva, 1980.

- a determination by the Department of National Revenue that an imported product has been subsidized, and a calculation of the amount of the subsidy.
- a request by the Governor in Council to the Anti-dumping Tribunal to investigate whether the subsidized import is causing of threatening injury to a domestic producer.
- a determination by the Anti-dumping Tribunal that injury is being caused or threatened.
- a decision by the Governor in Council, on the advice of the Ministers of National Revenue and Finance, that a countervailing duty should be imposed.[11]

It is evident that Cabinet has full control over the use of countervailing duties. This control reflects in part the consideration that serious disputes between governments can easily arise from the use of countervailing duties by one to offset the subsidization by another of production or exports.

Canada has made little use to date of countervailing duties. However, the threat of their use provided a basis for persuading several exporters of baler twine and several European exporters of cheese to increase the prices of their shipments to Canada. Further, the recently proposed changes to Canadian import legislation, which are discussed separately in this study, would enlarge the possibilities for the use by Canada of countervailing duties.

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[11] See Revenue Canada pamphlet, Canada's Countervailing Duty Legislation.

TARIFF SURTAXES

For some years, the Customs Tariff under Section 8 has provided authority for the Government to impose surtaxes on imports, over and above normal customs duties, in two circumstances:

(a) in retaliation against a country that treats Canadian exports less favourably than those of other countries; where the import into Canada concerned is duty free, the surtax is limited to one-third of its value.

(b) against imports causing or threatening damage to Canadian producers of like or directly competitive products, in an amount considered by the Governor in Council sufficient to prevent such injury; in this case an extension of the surcharge beyond 180 days requires Parliamentary approval.

As of April 1981, Section 8 was amended by Bill C-50 to give the Government further authority to impose retaliatory surtaxes. These may now be imposed on goods from another country if that country has introduced barriers to Canadian exports which impair "tariff or trade concessions previously extended to Canada...and has not made equivalent new concessions in respect of imports from Canada".

This extensive authority to impose surtaxes on Canadian imports has not in practice been greatly used by the Government, at least in recent years. However, the "Proposals on Import Policy" issued in July 1980 by the Department of Finance, recommends an enlargement of the Government's authority to use surtaxes, and a broadening of the circumstances in which surtaxes may be imposed.

CHANGING THE CUSTOMS TARIFF

Because of its nature, the Customs Tariff has been subject to frequent amendment, both with respect to its general provisions and especially to the structure and incidence of the rates of duty. Most of the changes in duties in recent years have resulted from successive rounds of tariff negotiations under GATT, especially the 1963-67 Kennedy Round and the 1973-79 Tokyo Round. In this regard, the Customs Tariff gives the Government greater authority to reduce tariffs than to raise them. Section 11 provides that without time limit or constraints, the Government in Council "may by order in council make such reductions of duties on goods imported into Canada... as may be deemed reasonable" by way of compensation for concessions granted by other countries in negotiations. In practice, however, the Government has submitted to Parliament for approval any significant reductions resulting from international negotiations; Bill C-50, for example, included the reductions in duties resulting from the Tokyo Round.

This authority under Section 11 can also be used to compensate other countries for new barriers raised by Canada to their exports. For example, in 1981 temporary reductions of duties were introduced by Order-in-Council PC 1981-1382 of May 18 on certain goods imported from the European Community, as compensation for the adverse effects on the Community's exports of footwear to Canada as a result of import quotas.

The Customs Tariff gives the Government authority to reduce tariffs in a variety of other circumstances as well. The provisions of Section 16, in this regard, are of potential importance from a consumer perspective.

Under this Section, the Governor in Council is authorized to initiate inquiries through the courts into combinations in restraint of trade among manufacturings or dealers "at the expense of the consumers" of any article; and if a combination is found by the court to exist "the Governor in Council may admit the article free of duty or reduce the duty thereon as to give to the public the benefits of reasonable competition in the article..." This authority has not been used by the Government, at least in recent years, but it would appear open to consumer groups to make proposals for its use where combinations in restraint of competition are believed to exist.

The authority of the Government under the Customs Tariff to increase customs duties is much more limited. In general, rates of duty on particular products can only be increased with the approval of Parliament. It is true that the Governor in Council is authorized by Section 4(1) to withdraw MFN tariff treatment, in whole or in part, from any country to which it has been extended, thus subjecting its exports to the higher General rates; and similarly, the Governor in Council can withdraw BP treatment from any "British country", thus subjecting its exports to the higher MFN or even the General Tariff rates. However, any such changes in tariff treatment must be approved by Parliament within 180 days; otherwise the former tariff treatment is restored. Thus, the Government obtained Parliamentary approval, in Bill C-50, for raising duties on British, Irish and South African imports from BP to MFN levels.

As noted earlier, a further obstacle exists to raising customs duties under the MFN Tariff, or denying MFN tariff treatment to countries entitled to

such treatment. These obstacles arise from Canada's international commitments under GATT, or under certain bilateral agreements. These international commitments thus stand in the way of unilateral increases in MFN duties that could seriously affect the interests of Canadian consumers.

The Government has far greater flexibility, both under the Customs Tariff and under its international obligations, to withdraw the GPT rates in whole or in part from the developing countries now enjoying them, in which case either the BP rate would apply (for imports from "British countries"), or the MFN rate would apply. The Government is not, however, authorized to change GPT duties on particular products either upwards or downwards; such changes require formal amendments to the Customs Tariff.

From the above, it is evident that Cabinet exercises almost complete control over any changes in the Canadian tariff, although the practice of submitting any significant changes for Parliamentary approval opens the way for debate over such changes in Parliament and its committees. Where major changes are proposed, the Government may also invite a broader expression of views, as has been done in the case of the far-reaching "Proposals on Import Policy", issued by the Department of Finance in July 1980. These proposals have been the subject of public hearings by a sub-committee of the House Committee on Finance, Trade and Economic Affairs. Such hearings present opportunities for consumer groups and allied interest groups to express their views. Ultimately, however, any important decisions with respect to Canada's tariff system are taken by the Cabinet and can be brought into force by the Government's majority in the House of Commons.

B. THE CUSTOMS ACT

The Customs Act[12] contains a body of general statutory provisions controlling the importation of goods into Canada, and also an array of provisions concerned with the administration and enforcement of the Customs Tariff. Under the Customs Act, there exists in addition a large body of regulations, Orders in Council and guidance to customs officers and the public; the latter form a "D" series of memoranda issued by Revenue Canada.[13] A pronounced feature of the Customs Act is the degree of authority and discretion that is given to the Minister of National Revenue and his Department for the administration of the tariff system. Decisions on tariff matters taken internally by Revenue Canada can have a significant impact on the actual amount of customs duties that are paid on imported goods. Rulings by Revenue Canada on the valuation of goods for customs purposes, for example, can increase the amount of the duty on an imported product well above the level of the duty set out in the schedules to the Customs Tariff. From a consumer perspective, therefore, attention should be given not only to the provisions of this legislation and changes that are made from time to time, but also the manner in which it is administered.

Under the Customs Act, customs officers carry responsibilities not only for the administration and enforcement of the Customs Tariff, but also for the entry of goods into Canada under several other statutes in which there are important consumer interests, such as the Export and Import Permits Act and the Food and Drug Act.

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[12] R.S.C., 1970. Chap. C-40; an office consolidation of the Customs Act, updated to April 1980 is available from Supply and Services Canada.

[13] Revenue Canada, Customs and Excise, Memoranda D 1-55.

VALUATION FOR DUTY

From a consumer perspective, the provisions of the Customs Act governing the valuation of imports for duty purposes are of the greatest interest. Since most Canadian duties are expressed in ad valorem terms, the value established for duty purposes directly affects the actual amount of the duty: the higher the valuation placed on an imported article, the higher the amount of duty that must be paid. The consequences of increasing values for duty are more severe for imports carrying relatively high rates of duty; and as noted elsewhere, ad valorem rates remain high for many products of special interest to consumers. While most imports are, in effect, dutiable at their invoice values, the Customs Act permits alternative methods of calculating the value of goods for duty purposes; and it gives the Minister of National Revenue and his Department considerable discretion in this regard. Over the years, this discretionary authority has been used many times to give additional protection to domestic producers by raising the value of imported products, including many consumer type products, and thus raising the price at which they are sold to consumers in Canada.

The provisions governing the valuation of goods for duty purposes are set out in Section 35 to 44 of the Customs Act.[14] These provisions may be summarized as follows.

FAIR MARKET VALUE

Section 36 sets out the main rule for valuing goods for duty, under which most imports enter Canada. This rule, in brief, is that the value for duty is equal to

[14] A useful guide to the Canadian system was issued in 1977 by Revenue Canada, Customs and Excise in a pamphlet titled Value for Duty.

the "fair market value" in the country of export of a "like" product sold at the same time and in the place from which the product was shipped to Canada, and sold to a purchaser in that place in an "arm's length" transaction at the same level of trade as the Canadian importer.

The price at which goods are sold under comparable conditions in exporting countries is often higher than the price at which the same goods are offered "for export". The Canadian fair market valuation system is designed to prevent sales at such lower export prices into Canada, by increasing the value for duty to equal the domestic price in the exporting country. Thus the fair market value system operates generally to add an element of protection to Canadian producers of like products, and to deny customers the benefits of lower export prices at which foreign goods might otherwise be available.

COST OF PRODUCTION

Section 37 of the Customs Act provides that where no "like" goods are sold in the country of export but "similar" goods are sold, the value for duty of the imported product shall be established on the basis of its cost of production plus an additional amount equivalent to the gross profit on sales of "similar" goods by producers in the exporting country. This cost of production formula is sometimes used as a basis for the calculation of duties on products manufactured in state-trading countries, where domestic market situations may not provide a practical basis for establishing the "fair market value" of the product. It is often difficult, however, to assemble the information needed to establish value for duty on the basis of cost of production.

ARBITRARY DETERMINATION

Section 40 represents a form of pressure on exporters to cooperate in providing information to Revenue Canada to permit the determination of the value for duty of imported products under Sections 36 and 37. Section 40 states that "where sufficient information has not been furnished or is not available", Revenue Canada may itself determine the manner in which value for duty is established. A Revenue Canada directive issued in 1979 states that "where sufficient information has not been furnished to enable the determination of cost of production, gross profit or fair market value under Sections 36 or 37, the fair market value of the imported goods shall be, unless otherwise prescribed, determined on the basis of the selling price to the purchaser in Canada, f.o.b. port of embarkation, plus an advance of fifty per cent".[15]

MINISTERIAL PRESCRIPTION

Section 39 of the Customs Act provides a further method for valuation which is of substantial interest from a consumer perspective. This section permits in certain circumstances the establishment of value for duty by "Ministerial prescription". Valuation of imports by Ministerial prescription has been used for a variety of goods in the consumer sector; its use is not limited to imports from state-trading countries in Eastern Europe and certain "low cost" exporting countries in eastern Asia; footwear imports from Italy, Spain and Brazil have also been valued for duty purposes at levels established by Ministerial prescription.

This system of valuation has a long and controversial

[15] Revenue Canada Memorandum D34-63, January 18, 1979; underline added.

history in Canadian tariff policy.[16] It was used at an earlier period to establish margins for the purpose of imposing anti-dumping duties; indeed, its current use has an effect similar to the use of anti-dumping duties. However, there is an important difference in the procedures for the use of the two instruments. Anti-dumping duties can be imposed, since 1968, only if it is determined by the Anti-dumping Tribunal that the imports concerned are causing "material injury" to Canadian producers; no such injury determination is required for the establishment of higher values for duty by Ministerial prescription under Section 39.

Under Section 39(a) of the Customs Act, the Minister of Revenue Canada may prescribe the value for duty of an imported product when he considers that it "cannot be determined under Sections 36 or 37 for the reason that like or similar goods are not sold in the country of export or are not sold in such country in the circumstances described in these sections". Section 39(a) valuations are commonly made on the basis of a comparison with the fair market value of a like product when imported from a third country; the selection of this third country for comparison, however, is at the discretion of Revenue Canada.

A Revenue Canada guide states that third countries chosen for comparisons for Section 39(a) valuations are normally "nearby free economies that export to Canada in commercial quantities". However, the United States was selected for a Section 39(a) valuation of leather footwear in 1981 from four eastern European countries;[17]

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[16] See, for example, G.A. Elliott, Tariff Procedures and Trade Barriers, University of Toronto Press, 1955, pp. 212-215.

[17] Revenue Canada, Interim Memorandum D34-38, July 6, 1981.

and the United States was also chosen for a 39(a) valuation of bicycles in 1978 from three east European countires.[18] Because U.S. prices of footwear and bicycles are relatively high, the choice of the United States for third country comparisons, have the effect of substantially increasing the valuation of footwear and bicycles from the exporting countries concerned, and hence their selling price in Canada. A more recent example of the application of Section 39(a) was the revaluation in October 1981 of Lada vehicles from the USSR to correspond to the value of Toyota Corollas imported from Japan; as reported in the press, this action was translated into a $130-$150 price increase of Ladas at the retail level.[19]

An alternative method of valuing imports by Ministerial prescription is provided by Section 39(d). Under this provision the Minister may prescribe the value for duty when he "is of the opinion that by reason of unusual circumstances the application of Sections 36 and 37 is impractical".[20]

Section 39(d) has been used on numerous occasions in the past several years to increase valuations of footwear, clothing and other consumer-type products from various countries, mainly "low cost" countries. A notable recent example was the decision in March 1978 that all Brazilian footwear would be valued "on the basis of the selling price to the purchaser in Canada, f.o.b. port of embarkation, plus an advance of 50 per cent".[21] The amount

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[18] Revenue Canada, Memorandum D34-55, April 24, 1978.
[19] Ottawa Citizen, October 23, 1981.
[20] Underline added.
[21] Revenue Canada, Memorandum D34-56, April 27, 1978.

of the advances of values resulting from valuations under Section 39(d) has varied considerably Recent prescribed advances have ranged from 5 to 50 per cent.

A review of recent Revenue Canada memoranda indicates that Ministerial prescriptions under Sections (a) and (d) to establish value for duty have been used on over 20 occasions since 1976. The products involved have mostly been clothing and footwear, but have included as well bicycles, colour television sets, crystal tableware, alarm clocks, wood stoves and motor vehicles. The exporting countries involved have been mostly in eastern Asia (Japan, Taiwan, Korea, Hong Kong, Singapore and China) or eastern Europe (Poland, Czechoslovakia, Romania, Hungary, East Germany and the USSR); however, the list also includes Italy, Spain and Brazil.

Higher values for duty are often "prescribed" for a product that is already subject to quantitative import controls, and already subject to anti-dumping duties, on top of normal customs duties; rulings on handbags from Korea provide an example of such "double jeopardy" barriers.

The list of products affected by Section 39 valuations may soon be further extended. Revenue Canada recently issued a notification that "major value for duty reviews" were in progress or were to be undertaken with respect to nine products, a number of which are of prime interest to consumers, including automobiles from the United Kingdom, France, Germany, Italy, Sweden and Japan; pianos from Japan and Korea; tufted carpets from the United States; and hammers and wrenches from Japan, Taiwan and the United States. Interested parties wishing

to submit information concerning these reviews were invited to do so by writing to Revenue Canada.[22]

It is of interest, from a consumer perspective, that there is no appeal from valuations prescribed by the Minister of Revenue Canada under Section 39, except on matters of law. At an earlier period appeals to the Tariff Board from similar rulings were permitted.

PLANNED CHANGES IN VALUATION SYSTEM

The Canadian system for the valuation of goods on the basis of fair market value, cost of production, arbitrarily assigned values, or by Ministerial prescription differs in various respects from the systems used by most other countries. Moreover, the Canadian system of valuation has long been regarded as inconsistent with the GATT rules. Article VII:2(a) requires that values "should be based on the actual value of the imported merchandise", and that values should not be based on "arbitrary or fictitious values".

One important outcome of the Tokyo Round was a new agreement among the industrialized countries to adopt a common system of customs valuation.[23] Under the new GATT rules, goods are to be valued for customs purposes on the basis of their "transaction price". Valuations under the Canadian system based on fair market value, cost of production and by Ministerial prescription would thus be precluded by the new agreement.[24]

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[22] Revenue Canada, Memorandum D34-100, October 1, 1981.

[23] Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade; the text is in GATT, Basic Instruments and Selected Documents, Twenty-Sixth Supplement, Geneva, 1981.

[24] See R. de C. Grey, Trade Policy in the 1980's, C.D. Howe, 1981, Chapter 5.

The adoption by Canada of the new GATT agreement will involve far-reaching changes in the existing Canadian system, and a consequential reduction in the overall protective element in the existing system. The changeover should be generally beneficial from a consumer interest perspective.

The Canadian Government signed the new GATT agreement in 1979, however, with two qualifications. One permitted Canada to delay implementing the new rules for a period of four years until 1985, to allow additional time to adjust the Canadian system. The second reserved Canada's right to negotiate upward adjustments in its ad valorem tariff in order to compensate for loss of protection to domestic producers as a consequence of changing to the new system.

The Tariff Board was directed by the Minister of Finance in a letter dated August 29, 1980, to consider the two matters in connection with the change to the new GATT system:

> (1) whether draft legislation which was submitted for consideration by the Board "could provide a suitable basis for valuing Canadian imports in accordance with the agreement"; and
> (2) the impact that implementation of such legislation would have on tariff protection.[25]

The Board's report on the first phase of the reference was submitted in March, 1981.[26] Its report on

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[24] Reference No. 159 from the Minister of Finance to the Chairman of the Tariff Board, August, 1981.

[25] A report by the Tariff Board; Reference 159; "The GATT Agreement on Customs Valuation, Part 1; Proposed amendments to the Customs Act", Supply and Services Canada, 1981. This report contains a useful analysis of issues related to Canadian value for duty provisions.

the second phase is expected by July, 1982.

The Board in its first report[26] recommended that administrative guidelines, to be developed by National Revenue, "should contain specific rules for the valuation of goods from state-controlled or non-market economies". It also noted that opportunities would continue for the use of anti-dumping measures or emergency import measures under the proposed Special Import Measures Act; and that such measures could continue to use Ministerial prescriptions as a basis for valuation, where appropriate.

From a consumer perspective, the Board's second report will be of special interest. The Board was directed, among other things, to submit its views on "whether or not a tariff rate adjustment would be the most appropriate or feasible means of providing the protection now accorded by the use of Ministerial prescriptions as a basis for valuation"; moreover, the Board was directed by the Minister "to consider whether some of the problems which the current valuation system seeks to address might better be dealt with under other instruments of import policy, including those discussed in the recently published discussion paper on Import Policy".[27]

It is to be hoped that consumer views and interests will be taken into account by the Board in the preparation of its second report and recommendations. From a consumer perspective, it would be desirable to avoid or

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[26] Release from the Office of the Minister of State for Finance, December 21, 1981.

[27] The text of the Minister's letter to the Chairman of the Tariff Board is contained in the Board's first report.

minimize any increases in tariff rates to compensate for any reduction in overall protection resulting from the change to the new GATT system. Proposals for increases are likely to affect sectors of special interest to consumers, where duties are already high.

CHAPTER 4

THE TARIFF BOARD: LEGISLATION AND OPERATIONS

A. THE TARIFF BOARD ACT

The Tariff Board Act[1] has a long history in Canada's trade policy, dating back to the late 1920's. Its provisions and the operations of the Tariff Board under it are of substantial interest from the perspective of consumer interests. The Tariff Board is an independent tribunal and "court of record", composed of seven members appointed by the Governor in Council.

The Act gives the Board two major functions. One is to adjudicate appeals to it from rulings with respect to customs and excise matters that have been made by Revenue Canada. The Board's second main function is of more direct interest from a consumer perspective. This function, as set out in Section 4(2) of the Act, is to serve as a board of inquiry into matters relating to the Canadian tariff, at the request of the Minister of Finance.

INQUIRIES UNDER SECTION 4(2)

Section 4(2) of the Act reads as follows:

> The Board shall make inquiry into any [other] matter, upon which the Minister desires information, in relation to any goods that, if brought into Canada or produced in Canada, are subject to or exempt from duties of customs or excise, and shall report to the Minister, and the inquiry into any such matter may include inquiry as to the effect that an increase or decrease of the existing rate of duty upon a given commodity might have upon industry or trade, and the extent to which the consumer is protected from exploitation.

[1] R.S.C. 1970, Chap. T-1.

Thus the Board has been authorized, in conductings its inquiries, to take consumer interests into account, although its mandate in this respect is permissive rather than mandatory. Consumer interests would be better protected if the Act made it mandatory for the Board to take consumer interests into account, and also obliged the Board to present an evaluation of the expected impact on consumer interests of its recommendations.

COURT OF APPEAL FUNCTIONS

The function of the Tariff Board as a court of appeal from decisions by Revenue Canada is also important from a consumer perspective. Appeals may be made under Section 47 of the Customs Act with respect to tariff classifications, valuation of goods for customs purposes, and duty drawbacks, by firms or invididuals who consider themselves aggrieved by National Revenue rulings; appeals may be made under Section 19 of the Anti-dumping Act by firms and individuals aggrieved by Revenue Canada decisions with respect to margins of dumping. Decisions may also be requested by Revenue Canada with respect to tariff classifications and valuation for duty purposes.[2] Tariff Board decisions may in turn be appealed on matters of law to the Federal Court of Canada and to the Supreme Court. While these appeal procedures may in practice not often be used directly to protect consumer interests, they serve to protect them indirectly. Their existence doubtless exerts pressure on Revenue Canada from making rulings that might otherwise damage consumer interests. A consumer or a consumer group, moreover, could doubtless bring an appeal before the Board or become a third party in

[2] Tariff Board Reports, Vol. 4, Part 2, 1967-1969, Supply and Services Canada 1977, contains "An Informal Guide for Parties in Appeals before the Tariff Board".

an appeal brought by, for example, an importer of consumer products. In practice, such interventions by consumers or consumer groups do not appear to have been made, at least in recent years. Nevertheless, the possibilities for appeals to the Tariff Board should be counted among the defenses available to consumer groups within the framework of Canadian trade policy.

SECTION 16 OF THE CUSTOMS TARIFF

Under Section 4(3) of the Act, the Tariff Board may be directed by the Governor in Council to hold an inquiry under Section 16 of the Customs Tariff into activities "among manufacturers or dealers" in restraint of competition. No such investigation appears to have ever been made by the Board. The existence of Section 16 in the Customs Tariff, however, offers interesting possibilities for the use of tariff policy to oppose restrictive trade practices among domestic producers.

B. SECTION 4(2) REFERENCES

From a consumer perspective, the Board's most important activities have been in the form of inquiries that it has carried out in response to "References" to it by the Minister of Finance under Section 4(2) of the Tariff Board Act.

The issues selected by the Minister of Finance to refer to the Tariff Board under Section 4(2) have generally been controversial and complex. The Board's hearings allow the presentation of conflicting points of view and interests in an adversarial setting. Consumer groups, individuals, and the Department of Consumer and Corporate Affairs may present evidence and views in support of

consumer interests, as written briefs or orally.

In conducting its inquiries and reaching its conclusions and recommendations, the Board can also draw on its own staff of experts and its own research resources. Such expertise is commonly needed to deal with the complexities of the issues referred to it, and to evaluate the consequences of its findings and recommendations in terms of Canadian trade and economic interests. These issues commonly involve international as well as domestic considerations.

The procedures involved in inquiries by the Tariff Board are designed to attract the attention of interested parties and groups, and often receive broader media attention. Interested parties are invited to submit their views and interests, in advance of public hearings. Hearings can involve statements by participants, questioning by Board members, and exchanges of views among participants.

On the basis of briefs and evidence presented to it, and of its own internal research and evaluation, the Board submits its reports to the Minister of Finance, including its recommendations. These reports virtually always carry the endorsement of all Board members. The Minister of Finance must table in Parliament reports from the Board within 15 days of receipt; tabling can involve a further invitation to interested parties to comment on the Board's recommendations, especially if changes are proposed in customs duties. In general, most Tariff Board recommendations have been accepted and implemented by the Government.

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CONSUMER PRESENTATIONS

A review of some recent reports by the Board indicates the extent to which consumer views were present at the following recent inquiries, which are of special interest from a consumer perspective:

Ref.	152	Fresh and Processed Fruits and Vegetables	Consumers' Association of Canada
	153	Bakers' Yeast	Apparently none
	154	Edible Oil products	None
	155	Institutional Exemptions	Associations representing universities and schools
	156	Antiques, Collectibles and Hobby Equipment	Many specialized firms, organizations and individuals. No "consumer group" representation.
	158	General Preferential Tariff (Part I)	Consumer and Corporate Affairs
	159	GATT Agreement on Customs Valuation	Evidently none

As will be evident, consumer interests were presented at few of these inquiries. No assessment is possible here of the presentations that were made with respect to consumer interests, in terms of their effectiveness. But on the face of it, consumer representation at Tariff Board hearings has been limited, to say the least.

Admittedly, some of the issues involved in these recent inquiries are complex and technical; others may seem somewhat removed from direct consumer concern. However, as noted elsewhere in this study, such complex issues as changes in the General Preferential Tariff and in Canada's customs valuation system have important

implications for consumer interests. The appearance of lack of consumer interest might well influence the Board's findings and recommendations.

Further, it cannot be assumed that consumer interests at Board inquiries will be reflected adequately by the presentations of other groups whose interests might parallel those of consumers, for example, importers, retailers and Canadian exporters. Importers may also be producers whose interests could be in opposition to consumer interests, and exporters may similarly have interlocking interests as producers.

CONSIDERATION OF CONSUMER INTEREST

From a review of recent Board reports, it is evident that the Board has rarely attempted a separate or structured assessment of consumer interest, as such, or separately evaluated the effects on consumers of its recommendations. This statement requires some qualification. The Board's 1977 report on fresh and processed fruits and vegetables contained a section entitled "The Consumer Interest" which contained an assessment of consumer interests regarding "off-season" tariffs on fresh fruits and vegetables, although it did not address itself to proposed tariff changes on the processed products. Also, the Board's reports on duty exemptions for scientific and educational equipment (1978), and on antiques, collectibles and hobby equipment (1979) were concerned with tariffs on products where "consumers" were in many cases themselves the importers of the goods concerned.

The Board's recommendations, from a consumer perspective, might be categorized as follows:

- fruits and vegetables: - a reduction of rates of

duty for certain items (mainly in the form of reductions in "off-season" rates for fresh products) combined with tariff increases for others (mainly processed); in addition, a new system of surtaxes was recommended to deal with low priced imports of certain products;

- scientific and educational equipment: - the Board recommended that the scope for duty-free entry be narrowed, in order to give additional protection to certain Canadian manufacturers of the products concerned;
- antiques, etc.: - it was recommended that the area of duty-free imports be enlarged;
- General Preferential Tariff: - the list of imports entitled to GPT rates should be extended and duty-free entry should be introduced for some of these products; off-setting those improvements in the GPT system, the Board recommended a new system of tariff quotas which could limit quantities of imports of particular products at the lower GPT rates;
- customs valuation: - the Board recommended that all freight, insurance and handling charges incurred in the country of export should be added to the price of the imported product for the purpose of establishing its value for duty.

In summary, it is difficult to avoid the impression that consumer interests have not always been given due weight in the Board's reports. This may in part reflect the failure of consumer groups to present their interests adequately before the Board. Moreover, the Board's inquiries are normally closely constrained by the terms of the references that are sent to them by the Minister of

Finance; the Board has no mandate to initiate inquiries of its own. Further, the Board must operate within a framework of established tariff and customs legislation which is biased generally against consumer interests.[3]

[3] See Ellen Richardson, Consumer Interest Representation: Three Case Studies, Canadian Consumer Council (undated) for an examination of the Tariff Board from a consumer perspective in the mid-1970's.

CHAPTER 5

THE ANTI-DUMPING SYSTEM

Anti-dumping duties are special duties imposed on an imported product, in addition to any normal customs duties, in circumstances where the foreign exporter sells to customers in Canada at prices that are lower than the 'normal price' charged to customers at home, and when "material injury" is caused or threatened to Canadian producers of like goods because of this "dumping". The theory is that the dumping duties will increase the price of the imported goods to Canadian consumers, and thus help bolster sales by domestic producers.

At an earlier period Canada's anti-dumping system was governed by provisions contained in the Customs Tariff and related provision of the Customs Act. In 1968, following a strengthening of GATT rules on anti-dumping, a wholly new Anti-dumping Act[1] was adopted and a five member Anti-dumping Tribunal was established to assist in its operation.

Anti-dumping duties are, by Canadian law, set at "an amount equal to the margin of dumping of the entered goods"; no lesser amount may be imposed; and they are imposed on top of any normal customs duty. This margin is "the amount by which the normal value of the goods exceeds the export price of the goods"; the Act contains complex rules for determining "normal value" and "export price". Under the Act, dumping duties may only be imposed on a definitive basis if the Anti-dumping Tribunal

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[1] R.S.C. 1970, Chap. A-15; a useful pamphlet describing the use of Canadian anti-dumping duties has been issued by Revenue Canada.

has ruled that dumping "is causing material injury to the production in Canada of like goods, or is materially retarding the establishment of the production in Canada of like goods".

Dumping has been described as a form of price discrimination involving sales in export markets at lower prices than at home.[2] Such pricing practices can of course bring positive benefits to consumers in an importing country, and to the economy of the importing country in general. The imposition of anti-dumping duties will prevent any such benefits to consumers.

Rodney Grey has commented on this feature of anti-dumping practices as follows:

> That is not to say that welfare may not be decreased if injurious dumping is precluded by anti-dumping action. It can be argued that, if dumping can be expected to continue, the gains to consumers may exceed the loss to producers. But the injury to producers may be here and evident; the possibility of continued dumping to the future benefit to consumers can be only a possibility. In any event, voters tend to be organized as producers, rather than as consumers.[3]

It is often claimed that dumping is one of the "unfair" trade practices that an importing country is justified in countering by restrictive import measures. But many economists would argue there is nothing unfair about dumping, as such, unless the motive is "predatory"; i.e., aimed at destroying competitors in the importing country, with a view to then raising prices to consumers. In this

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[2] See R. de C. Grey, The Development of the Canadian Anti-dumping System, Private Planning Association of Canada, 1973, p. 2.

[3] Grey, op.cit., p. 4.

regard, it is considered by some authorities that "predatory dumping" should be dealt with not by trade policy measures, but under legislation designed to deal with restrictive trade practices.[4]

Canada's anti-dumping system has a long history, dating back to 1904, and was the first of its kind. A high tide in its use was in the early 1930's to give additional protection to Canadian producers, especially from U.S. exports. One authority has called anti-dumping duties "Canada's distinctive contribution to the trade barriers of the great depression".[5] By the early 1950's, Canada's use of anti-dumping duties had become more restrained, partly as a result of the rules in Article VI of the General Agreement on Tariffs and Trade. Until 1968, however, Canada's anti-dumping legislation and practice remained inconsistent with several key elements of GATT rules. In particular, Article VI of the General Agreement forbade the imposition of anti-dumping duties without a determination of injury to a domestic producer. Canadian legislation required no formal investigation into injury. To some extent, this inconsistency with GATT rules was ameliorated by the limitation of anti-dumping duties to goods of a class or kind made in Canada. Nevertheless, the absence of formal findings of injury was criticized by Canada's trading partners. Moreover, Canadian consumers failed to benefit from the limitations imposed by the GATT rules. These rules were

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[4] Barcelo, "Subsidies, Countervailing Duties and Anti-dumping after the Tokyo Round", and Metzger, "The Anti-dumping System and the Trade Agreements Act of 1979"; papers presented at a seminar in May 1980 by the Canada-U.S. Law Institute, University of Western Ontario.

[5] G.A. Elliott, Tariff Procedures and Trade Barriers, University of Toronto Press, 1955, p. 187; see also Gordon Blake, Customs Administration in Canada, University of Toronto Press, 1957, p. 100.

strengthened and elaborated by a Code adopted as an outcome of the Kennedy Round (1963-67), following which, as noted above, Canada adopted a separate Anti-dumping Act.

THE 1968 ANTI-DUMPING ACT

From a consumer perspective, the 1968 Act was a considerable improvement over the earlier system. It separated the question of whether dumping was occurring from the question of injury to Canadian producers. The Anti-dumping Tribunal was established to investigate allegations of injury to Canadian producers, hold public hearings, and issue its findings. The Act laid down detailed criteria and procedures for Revenue Canada to follow in determining the existence of dumping and measuring its extent. The Anti-dumping Tribunal was empowered to review its earlier determinations at any time, and rescind any earlier findings.

On the other hand, the Act has left the initiation of procedures for using anti-dumping duties to the discretion of the Deputy Minister of Revenue Canada, or to complaints to him by domestic producers, provided he has some evidence that dumping is occurring and that domestic producers are being injured or threatened with injury. The Tribunal can also initiate the process, if during an inquiry into injury from dumping it concludes that similar goods from another source are also being dumped. The Act gave considerable discretion to the Deputy Minister of Revenue Canada in determining margins of dumping, under criteria set out in the Act. Appeals against these determinations can be made to the Tariff Board or, on questions of law, to the Federal Court of Appeals. There is no appeal, however, from decisions by the Tribunal with respect to injury, except on

questions of law to the Federal Court.

Further, the Act requires the Tribunal to confine its inquiries to the question of injury to domestic producers arising from dumping; it is thus precluded from giving any consideration to the interests of consumers, or to broader national interests, however much these may be affected. And, as noted earlier, positive determinations by the Tribunal lead automatically to the imposition of anti-dumping duties which must always be imposed at the full amount of the margin of dumping, as this has been determined by Revenue Canada. There is no provision for imposing a smaller duty, even if a smaller duty were warranted by the particular circumstances. In this regard, it should be noted that the GATT rules, as now elaborated, suggest the use of duties at levels that are less than the full margin of dumping; and it is understood that the European Community's legislation requires that before any such duty is imposed, it must be shown that their imposition would serve the interests of the Community.[6] No such provision exists in the Canadian legislation, although Section 7 permits the Government by Order in Council to grant exemptions to "any goods or classes of goods".

THE GATT RULES

The rules of the General Agreement which govern the use of anti-dumping duties are significant from a consumer perspective, since they constrain the operation of Canada's anti-dumping system and provide a degree of international supervision over its use. The basic rules are contained in Article VI; these were elaborated and

[6] See statement by K. Stegemann to the Commons Sub-Committee on Import Policy, January 28, 1982.

strengtehened by the Anti-dumping Code adopted in 1967 as a result of the Kennedy Round, and this Code was amended as an outcome of the Tokyo Round.[7] It is understood that the Tribunal in carrying out its work takes into account Canada's obligations within GATT. While Canada's anti-dumping system now appears to be reasonably consistent with the GATT rules, Rodney Grey in a recent study has pointed to one aspect of the Canadian system that is out of line with the new GATT Code (and also with U.S. anti-dumping practices).[8] The new GATT code requires that, in general, both the question of dumping and the question of injury to producers be looked at simultaneously. Adherence to this feature of the Code would preclude the current Canadian practice of imposing dumping duties on a provisional basis, pursuant to a perfunctory look into the question of injury by Revenue Canada but before any thorough investigation has been made by the Tribunal From a consumer perspective, it is to be hoped that Canada will terminate this feature of its anti-dumping system.

SECTION 16.1 AMENDMENTS

In 1971 the Anti-dumping Act was amended to authorize the Governor in Council to request the Anti-dumping Tribunal to investigate and report on imports of goods which, although not being dumped, "may cause or threaten injury to the production of any goods in Canada". This provision can and has been used as a basis for the imposition of import restrictions of a "safeguards' nature under circumstances governed by GATT Article XIX. As of 1980, the Tribunal has carried out investigations under

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[7] The amended Code forms the 1979 "Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade"; text is in GATT, "Basic Instruments and Selected Documents, Twenty-Sixth Supplement", Geneva, 1980.

[8] Rodney de C. Grey (1980), Trade Policy in the 1980's, C.D. Howe Institute, pp. 73-74.

Section 16.1 on two products: footwear and preserved mushrooms. Three separate investigations regarding footwear imports were made, in 1973, 1977 and 1981. The 1977 report led to the imposition by the Government of global quotas under the Export and Import Permits Act, which were recently modified in the light of the Tribunal's 1981 report.

From a consumer perspective, it is to a degree reassuring that Section 16.1 provides for a formal investigation by an independent body as a basis for decisions regarding restrictions on imports of an important sector of consumer goods such as footwear. On the other hand, Section 16.1 is concerned solely with the question of injury "to the production of any goods in Canada". It contains no reference to consumer interest; indeed it would appear to preclude any consideration by the Tribunal in its investigations of the interests of Canadian consumers, or of broader national interests. The references with respect to footwear which the Governor in Council has sent to the Tribunal under Section 16.1 reflect this weakness; they entirely ignore consumer interests.

While the legislative framework for Section 16.1 inquiries by the Tribunal is parallel in important respects to the framework for its inquiries relation to injury from dumping, there are several significant differences. Section 16.1 inquiries must be specifically requested by the Governor in Council, whereas inquiries as to injury from dumping are triggered by decisions within Revenue Canada, generally following complaints from domestic producers. Under Section 16.1 the Tribunal serves an advisory capacity to the Government in accordance with terms of reference for particular inquiries.

And findings of injury by the Tribunal under Section 16.1 do not automatically lead to restrictive import meausres; these require separate decisions by the Governor in Council.

ACTIVITIES OF THE TRIBUNAL

As noted above, the Tribunal has two distinct functions: (a) under Section 16 of the Act it serves as a "court of record" to determine the existence or otherwise of "material injury" to a domestic producer arising from dumped imports; and (b) under Section 16.1 of the Act, and at the request of the Government, it inquires into and advises the Government on injury to the production of goods in Canada arising from imports in circumstances that do not involve dumping.

DUMPING INQUIRIES

As noted above as well, the Tribunal does not deal with the question of whether the imported goods are being dumped. This has already been determined, at least on a preliminary basis, by Revenue Canada, and anti-dumping duties are already being imposed on the imported goods, on a provisional basis, before the Tribunal begins its inquiry. If the Tribunal makes a positive determination of material injury, Revenue Canada then makes a "final determination" of dumping, and anti-dumping duties are continued on a definitive basis until the Tribunal may rescind its original determination. Previous findings of injury by the Tribunal may be reviewed by it at any time at its discretion, and in fact are reviewed periodically. Where injury is found no longer to exist from dumping, the Tribunal's earlier determinations are rescinded, and dumping duties are discontinued.

From 1969 to 1980 the Tribunal conducted some 100 inquiries into injury arising from dumping.[9] About one-half led to findings of material injury or the threat thereof; in another 40 cases "no injury" was found; the remainder led to mixed outcomes.

Many of the imports determined to cause injury were consumer-type goods. These included:

- electric can openers (Japan)
- women's footwear (Italy, Spain)
- T.V. sets (Japan, Taiwan)
- apple juice concentrate (five European countries)
- bicycle tires and tubes (five Asian and European countries)
- zippers (Japan)
- photo albums (Japan, Korea)
- frozen dinners (a U.S. firm)
- colour T.V. sets (Japan, Taiwan, Singapore)
- rubber balloons (Mexico)
- chain saws (a U.S. firm)
- ladies' handbags (Korea, Hong Kong)
- bicycles (Korea, Taiwan)
- canned tomatoes (Taiwan)
- wooden clothespins (four countries)
- rubber boots (four countries)
- shotgun shells (four eastern European countries)
- power tools (Japan)

The Tribunal has made positive findings of injury on a much longer list of producer type goods. The imposition of anti-dumping duties on these goods generally leads, of course, to higher consumer costs for

[9] Anti-dumping Tribunal, Annual Reports.

the end product. For example, dumping duties imposed in 1976 on hydraulic turbines from the Soviet Union, and in 1980 on hydroelectric generators from Japan, doubtless result in higher consumer prices for electricity in areas served by this equipment.

It would be impossible to make any useful estimate of the overall cost to Canadian consumers (or to the economy generally) of the imposition of anti-dumping duties over past years, or to balance these costs against the benefits to Canadian producers. Professor Stegemann of Queen's University has recently written several studies on this subject, and made a presentation on the subject at a recent hearing of the House of Commons Sub-Committee on Import Policy.[10] Moreover, any estimate of the consumer cost of the anti-dumping system would need to take into account that the existence of the system doubtless serves in itself to discourage exporters from selling their goods in Canada at lower prices which might lead to complaints about dumping.

CONSUMER INTERESTS

In view of the narrowly defined frame of reference of the Tribunal, as set out in the Act, it is not surprising that consumer groups have not participated in Tribunal inquiries into dumping. Participation in these inquiries is almost always confined to the Canadian complainant on the one hand and, on the other, the foreign exporter joined with the Canadian importer. The voice of the consumer, who must bear the cost of anti-dumping duties, and who has a great interest in the outcome of

[10] See Minutes of Proceedings, January 28, 1982, Sub-Committee on Import Policy, for a statement by Professor Stegemann.

the inquiry, is absent. It is also clear that the Tribunal has avoided going beyond the narrow confines of its terms of reference to give any consideration to consumer interests in its inquiries.

SECTION 16.1 INQUIRIES

As noted earlier, Section 16.1 of the Anti-dumping Act, added in 1971, provided a new basis for imposing restrictions on imports into Canada in circumstances where such imports "may cause or threaten injury to the production of any goods in Canada that the Governor in Council refers to the Tribunal for inquiry and report". The Tribunal made three inquiries under this provision of the Act into imports of footwear, in 1973, 1977 and 1980-81.

The inquiry by the Tribunal in 1973 into footwear imports under Section 16.1 led to a determination that imports of footwear were not causing or threatening serious injury to Canadian production.[11] In March 1977 the Governor in Council directed the Tribunal to make a second inquiry under Section 16.1 to determine whether footwear, except rubber and canvas footwear, was being imported or likely to be imported "at such prices, in such quantities and under such conditions as to cause or threaten serious injury to Canadian production of like or competitive goods"; the Tribunal was directed, further, to submit an interim report if it found imports to be causing or threatening "immediate serious injury".

CONSUMER INTERESTS

Despite the obvious and large importance to consumers of footwear, neither the 1973 reference nor the

[11] Anti-dumping Tribunal, Report Respecting the Effects of Footwear Imports on Canadian Production of Like Goods, Ottawa, April 1973.

1977 reference contained any mention of consumer interests. Indeed, the terms of these references would appear to have precluded the Tribunal from even accepting submissions by consumer groups. None were presented. Neither of the Tribunal's reports contained any mention of consumer interest with respect to imports of footwear, or the imposition of controls on imports.

The Tribunal's 1977 inquiry led to an interim finding in July of "immediate serious injury" from imports in the women's and girl's sector of footwear production, and to a final determination in September of serious injury, or the threat thereof, "in all sectors of production, other than footwear the main component of which is rubber or canvas".[12] Pursuant to the Tribunal's report, the Government imposed global quotas on imports of footwear, except rubber, canvas, and certain types of special footwear, at levels which represented severe cut-backs from levels of imports in the base period (September 1, 1976-August 31, 1977).[13] The 1977 quotas were imposed for a three year period; in July 1980 the quota period was extended to November 30, 1981.

In July 1980, the Governor in Council directed the Tribunal to conduct a third inquiry into imports of footwear under Section 16.1. This time, the Tribunal was directed to determine whether serious injury or the threat thereof would arise "in the absence of special measures of protection"; in addition, the Tribunal was directed to examine "the extent to which the Canadian

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[12] Report by the Anti-dumping Tribunal Respecting the Effects of Imports on the Canadian Footwear Industry, Supply and Services, Canada, September, 1977.

[13] Initially the quota was set at 64 per cent of base period levels; it was subsequently increased to 80 per cent.

footwear industry has restructured since the Anti-dumping Tribunal's Report of 1977 and the extent to which the industry has improved its competitive position against imports".[14] It will be noted that in this latter respect, the Tribunal was directed to enlarge its inquiry beyond the determination of injury from imports. The reference again contained no mention of the consumer interests involved.

Nevertheless, the Tribunal's 1981 report listed the presentation of a brief at this inquiry by the Consumers' Association of Canada, and noted that the CAC was "particularly concerned with increasing prices and the availability of low-priced footwear" (p. 4). Otherwise consumer interests were not presented. The hearings were attended by a long list of representatives from the domestic footwear industry, importers, retailers, exporters and foreign governments, many of whom also submitted briefs.

The Tribunal's 1981 report gave short shrift to consumer interests in footwear imports. The Report acknowledged "It is...certain that as a consequence of quotas, the average price of footwear to the consumer has increased"; far larger price effects were, however, attributed to increases in the cost of leather and man-made materials. In any event, the report continued: "In the light of the Tribunal's terms of reference, these concerns cannot be a matter of central interest in this report, although the Tribunal recognizes that they are of substantial interest in the broader context" (pp. 106-107).

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[14] Report of the Anti-dumping Tribunal Respecting the Canadian Footwear Industry, February 1981, Supply and Services Canada, 1981.

The Tribunal's 1980-81 inquiry led to the conclusion that no injury was caused or threatened by imports from developed market economy countries nor from state-trading countries; with respect to imports from state-trading countries, it noted that "the valuation procedures established under existing customs and Anti-dumping legislation provide an important measure of protection for the domestic industry". The Report also noted that all imports "must face hefty duty rates under the Canadian tariff structure" and, in addition, that "advances for duty purposes" existed for imports from Italy, Romania, Poland and Czechoslovakia.

Imports from "low cost" countries, however, were found to threaten serious problems for Canadian producers. The Tribunal concluded that Canadian production of a number of classes of footwear, including both leather and non-leather footwear, "would in all likelihood be seriously injured in the absence of special measures of protection" from certain developing countries, namely, Taiwan, South Korea, Hong Kong, Brazil and India. Protection against Brazilian imports, it noted, was "somewhat less urgent as imports from that country are subjected to a 50 per cent advance in duty".

In the light of the Tribunal's September 1981 report, the Minister of Industry, Trade and Commerce announced on November 24 a number of changes in the quota restrictions, which departed in some respects from the Tribunal's findings. One change was to remove quotas on imports of leather footwear from all sources; another was to continue existing global quotas on other types of footwear from all sources, and extend the restrictions to cover shoes made of canvas. The overall

effect of these changes was to terminate restrictions on imports of most footwear from developed countries, while intensifying restrictions on imports of special interest to developing countries. From press reports, it is evident that domestic producers of leather footwear are not at all satisfied with the termination of import restrictions in this sector of the trade, and that they are exerting strong pressure on the Governmen to re-impose quotas on imports of leather footwear, at least from "low cost" sources.

CHAPTER 6

TEXTILE AND CLOTHING RESTRICTIONS

From a consumer perspective, the extensive restrictions that have been placed on imports of clothing and textiles over more than a decade represent one of the most regressive developments in recent Canadian trade policy. This restrictive import system has operated since 1971 within the framework of the Textile and Clothing Board Act.[1] The Act was designed as a central part of a broader "Canadian Textile Policy",[2] to provide a new and firmer basis for the Government to impose restrictions on imports of clothing and textiles when imports are determined by the Textile and Clothing Board (TCB) to be causing or threatening serious injury to Canadian producers.

Beginning in the late 1950's, Canada controlled imports of a limited number of textiles and garments under bilateral arrangements negotiated with several exporting countries, involving quotas administered by them. The 1971 legislation not only added new authority to exercise control on the import side, but also served to strengthen pressure on reluctant exporting countries to conclude satisfactory control agreements, under threat of unilateral import measures which could otherwise be imposed by Canada.

Within the framework of the 1971 Act, import restrictions and restraints on clothing and textiles have taken

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[1] S.C. 1970-72, Chap. 39.

[2] The "Canadian Textile Policy" was announced by the Minister of Industry, Trade and Commerce in a statement to the House of Commons on May 14, 1980; this policy is examined in Caroline Pestieau, The Canadian Textile Policy: A Sectoral Trade Adjustment Strategy, C.D. Howe Research Institute, 1976.

two forms, as follows:

- quotas placed by Canada on imports of particular products from particular countries, or on a global basis from all sources; global quotas on almost all clothing were imposed between 1976 and 1979;
- quotas placed by exporting countries on particular products under bilateral arrangements; such arrangements now cover most imports of clothing and many textile products from all of the major "low cost" exporters and state trading countries.

INTERNATIONAL RULES

Canada's import policies for textiles and clothing operate within the framework of (a) the GATT "safeguards" provisions of Article XIX and (b) the 1973 Multifibre Arrangement (MFA) and the Protocols under which it has been extended.[3] Under GATT Article XIX, any restrictions on imports must be imposed on a global basis; such controls must be temporary, and exporting countries may demand compensation. By contrast, the MFA provides a framework for controlling imports on a discriminatory basis under bilateral arrangements or, in certain circumstances, under quotas administered by importing countries. The international rules are basically designed to protect the interests of producers in importing countries and those of the exporting countries. They are not concerned with consumer interests in importing countries. Moreover the MFA rules have become progressively more restrictive by the Protocols adopted when it was renewed in 1977 and 1981. Nevertheless, from a consumer perspective the operation of these rules warrants close attention since

[3] The text of the MFA is in GATT Basic Instruments and Selected Documents: Twenty-first Supplement, Geneva, 1974. The 1977 and 1981 Protocols extending it are in subsequent issues in this series.

they continue to impose at least a degree of international constraint on Canada's import regime for textiles and clothing.

1971 TEXTILE AND CLOTHING BOARD ACT

The 1971 Act established a Textile and Clothing Board (TCB), consisting of three members, with authority to inquire into complaints about imports by producers of textiles and clothing products, to hold hearings, and to submit its findings and recommendations to the Government.

The TCB is authorized to conduct inquiries (a) in response to complaints received from a Canadian producer who considers that the importation of any textile or clothing goods "is causing or threatening serious injury to his production in Canada of any textile and clothing good"; (b) on its own initiative; or (c) at the request of the Minister of Industry,Trade and Commerce.

> Inquiries by the TCB are for a single purpose:
>
> ...in order to determine whether the textile and clothing goods that are the subject of the inquiry are being imported in such quantitites and under such conditions as to cause or threaten serious injury to the production in Canada of any textile and clothing goods.

The Act does not define "serious injury". However, GATT Article XIX and the MFA contain various criteria and conditions relating to injury.

The Act requires the TCB to take into account in its inquiries certain factors which, in principle should offer some assurance that consumer and related interests will not be ignored or overlooked. Among these are:

- "the probable effect of any proposed special measures of protection on various classes of consumers";
- the GATT rules, the MFA rules, and those of other relevant international agreements.
- the principle that special measures of protection should not be maintained to encourage lines of production that have no prospect of becoming competitive behind normal protection offered by the customs tariff.

The Act also provides that the TCB may in its enquiries receive evidence from any "interested party", which is defined to include a "user or consumer" of the goods in question, as well as producers, importers, labour unions and others. A producer submitting a complaint is required to file a plan describing the adjustments the producer proposes to make in his operations aimed at phasing out inefficient operations and increasing his ability to become internationally competitive.

If as a result of an inquiry the TCB determines that imports are causing or threatening serious injury to production in Canada, it is required to recommend to the Minister of Industry, Trade and Commerce whether "special measures of protection should be implemented". It may also make interim recommendations, even before concluding its inquiry, for the immediate implementation of such measures. In either case the TCB is required to "specify the recommended scope and duration of the special measures". The Minister is not, however, obliged to adopt the recommendations of the TCB. The implementation of its recommendations is a matter for decision by the Government.

IMPLEMENTATION OF IMPORT CONTROLS

In order to provide authority for the imposition of import controls, the Textile and Clothing Board Act, by Section 26, amended the Export and Import Permits Act, so as to enable the Governor in Council, on the advice of the Ministry of Industry, Trade and Commerce, to add to the Import Control List any textiles and clothing products that had been determined by the TCB to be causing or threatening serious injury to Canadian producers "in order to limit the importation of such goods to the extent and for the period that, in the opinion of the Governor in Council, is necessary to prevent or remedy the injury". In addition, Section 26 authorized the Government to place other products on the Import Control List and to restrict their entry, when imports of the product concerned had been determined by the Anti-dumping Tribunal under Section 16.1 of the Anti-dumping Act to be causing or threatening injury to Canadian production. Section 27 of the Act amended the Customs Act so as to permit the Government to "prohibit or otherwise regulate the entry" of goods that are being imported in a manner that circumvents a bilateral agreement concluded with an exporting country. This amendment gave the Government a stronger hand in negotiating and policing the operation of Canada's bilateral restraint agreements with exporting countries.

TCB INQUIRIES 1971-1977

Special measures of protection for Canada's textiles and clothing industry pre-date the establishment of the TCB, but since the early 1970's the TCB has played a central role in the import regime for textiles and clothing. Between 1971 and 1976 its inquiries and recommendations provided a basis for continued import restrictions or exporter restraints on a range of individual products from particular countries, as well as for a system of global

quotas on a number of products including lower priced men's and boy's shirts, work gloves, acrylic yarn and knitted fabrics.[4] During this period, Canadian controls on imports of textiles and clothing were relatively selective and moderate, at least in comparison with the import regimes of most other developed importing countries.

During 1975 and 1976 producers mounted a strong campaign for more severe controls, especially on imports of clothing. The issue became highly political. In September 1976, the Minister of Industry, Trade and Commerce directed the TCB to undertake a broad inquiry into injury to Canadian producers of clothing. This inquiry had hardly opened when the TCB, under a strong pressure from a group of garment makers, issued an "Interim Report" under Section 17(2) of the Act. It recommended the immediate imposition of global import restrictions by Canada on almost the whole range of clothing items, with a roll-back in quantities to 1975 levels. These recommendations were hastily implemented by the Government in late November, causing great consternation internationally and opening a new restrictive area in Canadian import policies for textiles and clothing products.[5]

Meanwhile the TCB proceeded with its full inquiry into clothing imports, held a series of hearings, and issued

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[4] An analysis of TCB inquiries and recommendations in the 1971-75 period, and of controls on imports pursuant to TCB recommendations is in Pestieau, op.cit., Chapter 3.

[5] The unfolding of this abrupt retreat into protectionism is described in David R. Protheroe, Imports and Politics, Institute for Research on Public Policy, Ottawa, 1980, pp. 117-125.

its final report in May 1977. Its recommendations differed in form from those in its earlier interim report, but from a consumer perspective were equally damaging. In summary, it recommended: (a) the global import quotas should be converted into bilateral restraint arrangements with 21 "low cost" and state trading countries, under which these countries would control the flow of their imports into Canada; (b) the product coverage of these bilateral arrangements should be similar to the coverage under the global quotas; and (c) imports from the "restrained" sources should be held to existing levels or reduced.[6] Over the following year or so, the Government proceeded with the negotiation of such bilateral arrangements, and concluded arrangements of a comprehensive kind with the seven main "low cost" exporting countries; arrangements with smaller "low cost" suppliers were also made but their produce coverage was more selected than the TCB had recommended. The extension of these arrangements with an eventual 17 exporting countries was piecemeal and resulted from monitoring of contracts and imports which demonstrated potential increases from smaller suppliers; with these, negotiations were all initiated after arrangements with the larger 7 suppliers went into effect.

1979-1980 INQUIRY

In 1979, the TCB on its own initiative opened a further major inquiry covering the whole range of textiles and clothing products, held hearings and issued its Report in June 1980.[7] It recommended, in summary, that restrictions should be imposed on a longer list of products from all "low-cost" and state-trading countries

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[6] Textile and Clothing Board, Clothing Inquiry, May 1, 1977. This Report also contains the text of the "Interim Report".

[7] Textile and Clothing Board, Textile and Clothing Inquiry, June 30, 1980, Vols. 1 and 2.

under bilateral agreements or under unilateral import controls; that levels of imports should be held initially to existing levels or below, and thereafter permitted to grow by a maximum of one to four per cent, depending on the product; and that these controls on imports should be extended for a full decade, until 1990.[8] The results of the negotiations conducted over the past year pursuant to the recommendations of the TCB were tabled recently in the House of Commons by the Secretary of State for External Affairs; they clearly fall short in many respects of the comprehensive long term restraint agreements with the whole range of "low-cost" and state-trading countries, as recommended by the TCB.

In summary, since the mid-1970's, the TCB has come forward with a series of recommendations for increasingly severe restrictions on imports of textiles and esp-cially clothing. Its general approach was stated in its June 30, 1980 report: "In the opinion of the Board...Canada cannot continue to accept increasing quantities of textiles and clothing from "low-cost" and state-trading sources. Such an approach would destroy government and industry efforts to maintain in Canada a modern, efficient and competitive textile and clothing industry" (p. 114). It is noteworthy that the restrictive import measures recommended by the TCB in its two recent major reports were considerably more severe than the Government was able to negotiate with exporting countries, or attempted to negotiate.

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[8] See Government of Canada, News Release, dated June 19, 1981, for its response to the TCB Report of June 30, 1980.

CONSUMER PRESENTATIONS

Ellen Richardson in her mid-1970's study of the TCB observed that "Direct consumer representation before the Textiles and Clothing Board to date has been almost nil".[9] She noted, however, that representations had been made by other interest groups whose interests might parallel those of consumers, such as the Textiles Importers Association and representatives of exporter interests.

It is understood that consumer groups were not asked for their views by the TCB before it sent its dramatic Interim Report to the Minister of Industry, Trade and Commerce in early November 1976. The Interim Report refers only to an "Emergency Interim Submission" by representatives of garment manufacturers at a private hearing on November 1.[10]

The TCB Report on its full 1976-77 inquiry indicates the participation or submission of briefs by the Consumers' Association of Canada (CAC) and also separately by the Quebec Chapter of the CAC; the views of the latter were highly protectionist and almost diametrically opposed to those of the national CAC. The report also indicates that informal meetings or interviews were held with the Department of Consumer and Corporate Affairs, along with a number of other federal and provincial government departments. The TCB report on its 1979-80 major inquiry lists the participation or submission of briefs by only the Consumers' Association of Canada. The narrowness of these presentations of consumer interest to the TCB is striking, considering the importance of TCB recommendations in terms of the prices and availability of textiles and

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[9] Ellen Richardson, Consumer Interest Representation: Three Case Studies, Canadian Consumer Council, undated, p. 44.

[10] "Interim Report Purcuant to Section 17(2)", in TCB, Clothing Inquiry, May 29, 1977, pp. 6-1 to 6-6.

and clothing products in Canada.

CONSIDERATION OF CONSUMER INTERESTS

On the basis of its 1977 and 1980 reports, the extent of TCB consideration of consumer interests is not impressive, to say the least. In the 1977 report the CAC presentation is summarized briefly, but is followed by a summary of the contradicting views of the Quebec Chapter. The text refers to presentations by the Retail Council of Canada, the Canadian Textiles Importers' Association and the Toronto Better Business Bureau as representing "similar arguments to that of the CAC".

These meager accounts of consumers' views, occupying two and one half pages, were followed by over four pages of analysis by the TCB which appears designed essentially to demolish the main objection to restrictions voiced by the CAC (i.e., that these led to higher prices for wearing apparel in Canada, with adverse consequences for consumers, especially low-income families). The TCB's rebuttal went to extremes: it contended, among other things, that undue dependence on foreign sources of supply for garments "might not necessarily result in price reductions but rather bring about price increases which would likely be borne by the Canadian consumer"; and it resorted to the generally discredited "national defence" argument, warning that "there are serious hazards in relying too heavily on foreign sources of a basic commodity should Canada be affected by an international crisis".

In the 1980 TCB report covering both textiles and clothing, consumer interests got even shorter shrift. A section on "Consumers' Concerns" occupied slightly more than a single page. A brief summary of CAC concerns

was again followed by an analysis by the TCB aimed primarily at demolishing these concerns. The TCB argued that clothing prices had increased "at a much lower rate than the overall Consumer Price Index"; and it stated that price increases for garments had occured because "selling prices are being adjusted to reflect at least partially, increased costs" (pp. 108-109). In another section of its Report, the TCB dealt in much the same way with the issue of availability of low priced children's clothing. The concerns expressed by consumers and others in this regard were again dismissed: The report observed with evident approval that "...considerable evidence was presented to the Board by Canadian manufacturers of children's wear showing that significant quantities of children's garments are being produced in Canada in the lower price ranges. These manufacturers denied emphatically that there were shortages of children's wear at lower price points in Canada". The TCB noted in this regard that Canadian garment manufacturers had increased their prices, but this was attributed to "increased costs of production". It noted also that imported garments had increased in price because of a combination of factors: "trading up as a result of restraints; increased manufacturing costs and quota charges in some exporting countries; and increased foreign exchange costs". The TCB concluded that "It cannot be determined which of these factors has had a greater impact on the upward movement of prices of imported goods" (pp. 91-93).

On the basis of evidence in recent TCB reports, it would be almost correct to conclude that the TCB has ignored or overlooked consumer interests in its inquiries. TCB reports show hardly any effort to take

into account, as Section 18 of the Act requires, "the probable effect of any proposed special measures of protection on various classes of consumers". Moreover, the treatment that has been given in TCB reports to consumer interests appears to be unfair; concerns about import restrictions expressed by the CAC and others appear to be presented in TCB reports mainly for the purpose of knocking them down with conflicting analysis and statistical data.

On the basis of the above analysis, it seems fair to conclude that the TCB serves largely as a special and unique instrument for collecting and presenting to the Government pressures from a particular group of domestic industries for controls on imports. The TCB can thus hardly fail to be hostile to the interests of consumers.

CHAPTER 7

THE EXPORT AND IMPORT PERMITS ACT

The Export and Import Permits Act[1] was originally brought into force during the Second World War and re-enacted in 1954; it provides a legal basis and a set of procedures for imposing quantitative restrictions and embargoes on both imports and exports where these are required by certain other legislation and in certain specified circumstances, such as "to implement an intergovernmental arrangement or commitment".

THE IMPORT CONTROL LIST

The authority and conditions for controlling imports are established by Section 5, which authorized the Governor in Council to establish an "Import Control List".[2] The Governor in Council may place on this List "any article the import of which he deems it necessary to control" for the purposes specified in Section 5; there are at present some 65 items on the List. These controls may be summarized as follows:

- controls in support of legislation and programs for the support of farm incomes and agricultural prices, including the Canadian Dairy Commission Act, the Farm Products Marketing Agencies Act, and the newly enacted Meat Import Act; thus the Import Control List includes the whole range of dairy products, eggs, chickens, turkeys and their products, and beef and veal.
- controls on imports of textiles and clothing products when, as a result of an inquiry by the

[1] R.S.C. 1970, Chap. E-17.

[2] The current Import Control List is in the Export and Import Permits Act Handbook, issued by the Department of Industry, Trade and Commerce.

Textiles and Clothing Board, these have been determined to be causing or threatening "serious injury to Canadian producers of like or directly competitive goods"; thus the List contains a catalogue of textiles products and clothing.

- controls of imports of "any goods", other than textiles or clothing goods, when, as a result of an inquiry by the Anti-dumping Tribunal under Section 16.1 of the Anti-dumping Act, these have been determined to be causing or threatening "serious injury to Canadian producers of like or directly competitive goods"; thus, the List contains most footwear products.
- controls that are needed "to implement an intergovernmental arrangement or commitment"; thus, the List includes coffee in any form in support of Canada's participation in the International Coffee Agreement, cocoa and cocoa products in support of Canada's participation in the International Cocoa Agreement (until recently), and a list of "endangered species" and certain whale products.

The legal basis for Canadian participation in international agreements such as those on coffee and cocoa that may involve restrictions on imports into Canada rests on the "regulation of trade and commerce" clause in Section 91.2 of the British North America Act. This clause also provides the legal basis for the Government to enter into the numerous bilateral arrangements covering textiles and clothing products, whereby exporting countries undertake to limit their exports to Canada.

Where controls are imposed on imports of goods entering Canada, whether or not quantitative restrictions

are applied, importers are required to obtain permits from the Office of Special Trade Relations (TSP), now established in the Department of External Affairs. These permits are commonly obtained through brokers who charge fees for their services. No goods on which such controls are imposed can be cleared through Customs without this permit. When a particular product is under a quota limitation and the quota has been filled, no further permits are issued until new quota allocations are made. The sale or transfer of import permits among importers is prohibited under Section 16 of the Act; but by the nature of things these import entitlements can acquire a value of their own and become translated into higher prices at the retail level for consumers. Other costs are of course involved in the operation of the import control system. The paperwork, delays and other expenses incurred by importers become translated into higher prices for consumers. In addition, the administration of the system imposes a substantial financial burden on the federal government, and ultimately on taxpayers.

The amount of the quotas for particular products is determined within the framework of the legislation and programs for the particular product concerned, not by the Office of Special Trade Relations. (This office carries responsibility for the negotiation of bilateral restraint agreements with exporters of textiles and clothing, now under the authority of the Secretary of State for External Affairs.) The allocation of quota entitlement among importers is commonly on the basis of their past record of imports of the product concerned.

For some of the products on the Import Control List, for example coffee and beef, there are no quota limits,

or quotas may be imposed sporadically. Although permits are required in order to import these products, these are issued freely on request.

"IMPORT SURVEILLANCE"

Beginning in 1975, the Government introduced an "import surveillance" system, under the general authority covering the conclusion of international arrangements and agreements. These commonly contain "equity clauses" relating to imports into Canada from third countries. This system serves to monitor the flow of imports of textiles and clothing products which are not subject to quantitative limitations under bilateral restraint agreements with exporting countries, but which nevertheless are considered to be "sensitive". Importers are required to obtain individual import permits which are freely granted on condition that specified information about contracts, delivery dates and other such matters are provided. In effect, the system operates as an early warning system which can facilitate the quick imposition of quantitative controls if these are deemed necessary. The system can also act as a discouragement to the development of trade in products under surveillance. The paperwork, delays and expense involved in obtaining the required permits, as in the case of import permits generally, become translated into higher retail prices for consumers.

It should be noted that the importation of a range of products into Canada is controlled or prohibited under a variety of other legislation apart from the Export and Import Permits Act, and for a variety of purposes including health and safety and to meet labelling requirements. For example, imports of wheat, oats, and barley and their products are controlled under the Canadian Wheat Board Act, and licences for the import of these products are administered by the Canadian Wheat Board.

CHAPTER 8

IMPORT RESTRICTIONS ON FOOD PRODUCTS

An extensive network of import controls is imposed on food products by the Government in order to defend a variety of agricultural supply management and other programs, that have been established to support domestic prices of the products concerned and to support the income of domestic producers. Consumers have an obvious and large interest in these controls on external sources of supply as well as in the operation of the programs themselves, which generally result in higher consumer prices. It is, of course, difficult to disentangle the consequences for consumers of the import controls from the other effects of the operation of these programs. In the words of the Economic Council of Canada, import controls are a "standard adjunct" to supply management programs.[1]

GATT RULES

The GATT rules exert some constraint on the imposition of import controls on food products, which are widely used by many countries. Article XI tolerates quantitative restrictions on agricultural products where these are necessary in order to implement domestic programs that limit quantities produced or marketed; such import restrictions, however, must not reduce the quantities of imports relative to domestic production. The conformity with the GATT rules of Canadian import controls in this area is questionable, as are the import policies of many other GATT members. However, the GATT rules serve to give some protection to Canadian consumers against abuses in this area; the agricultural import measures imposed by

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[1] Economic Council of Canada, Reforming Regulation, Supply and Services Canada, 1981, Chap. 6, p. 55; see also Food Prices Review Board, Final Report, 1976, pp. 42-45.

GATT member countries are often challenged in GATT, and as a result are occasionally modified.

It is also of interest from a consumer perspective that as a result of the Tokyo Round a new GATT "Standards Code" was adopted, by which Canada and other signatories have committed themselves not to create unnecessary obstacles to imports by the use of product standards. Such standards, applied for health, safety and a variety of other reasons, can also be used for protectionist purposes especially in the food products area, and operated so as to adversely affect the interests of consumers.

The following are among the main areas of import controls on food products of special interest from a consumer perspective.

CEREAL PRODUCTS

Under the Canadian Wheat Board Act, the Board must license all imports of wheat, oats and barley, and their products. Licences for these grains and their flours are rarely issued, although some quantities of oats and barley were licenced for import in 1980 to meet domestic scarcities. A range of designated products manufactured from these grains may be imported freely under "Special Blanket Import Licences"; but these products can only be imported in small consumer-size quantities, which increases their price to consumers. For example, batters and mixes, breakfast cereals, and boxed baby food can only be imported in packages of one pound or less; canned baby food in containers weighing a half-pound or less; and pasta products in packages of five pounds or less. Fresh bread, biscuits and pastries, however, can be imported freely, subject to payment of whatever customs duties are applicable;

these duties are generally modest, where they exist.[2]

DAIRY PRODUCTS

Under the Canadian Dairy Commission Act the Governor in Council may place on the Import Control List any product "the import of which he deems necessary to control for the purpose of implementing any action taken under this Act to support the price of any dairy product". All dairy products are on the List. Apart from cheese, imports of dairy products are rarely permitted.[3] For cheese, an annual import quota of 50 million pounds was introduced in 1975, but was reduced to 45 million pounds in 1979 despite continued growth in overall domestic consumption. Moreover, European exporting countries have agreed to certain minimum pricing arrangements for shipments to Canada, covering even types of cheese that are not produced here, which raise their price for Canadian consumers.[4]

EGGS, TURKEYS AND CHICKENS

The Farm Products Marketing Agencies Act came into force in 1972 and established a basis for the creation of marketing boards for farm products other than those covered by the Wheat Board Act and the Dairy Commission Act. To date, marketing boards have been established for eggs, turkeys and chickens, involving supply management programs that control not only domestic production, prices and trade, but imports as well. On the advice of the marketing agency concerned, the Department of Agriculture effectively determines annual import quotas for these products, and any supplementary quotas that may be

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[2] Revenue Canada, Memorandum D55-25.

[3] Canadian Dairy Commission, Annual Reports.

[4] For a detailed review of Canada's cheese import policies, see Canadian Importers' Association, Cheese Imports in the 1980's, March 1982.

permitted. The quantities of imports allowed entry into Canada vary from year to year, but represent a small proportion of domestic consumption.[5]

BEEF AND VEAL

Import control measures of various kinds were imposed during several periods during the 1970's, including export restraints by Australia and New Zealand under bilateral arrangements; in addition, health regulations prohibit the import of fresh and frozen meat of all kinds from all but a few countries. A new and firmer basis for restricting exports has recently been established, in the form of a Meat Import Act that was passed by the House of Commons in December 1981 (Bill C-46), and which so far covers only beef and veal. Under this legislation "such restrictions...as the Minister considers appropriate" may be imposed on beef and veal imports by the Minister of Agriculture, with the concurrence of the Minister of Industry, Trade and Commerce. The restrictions may be imposed at any time, and for any period. It is not necessary to demonstrate that domestic producers are being injured by imports. No consideration need be given to the interests of consumers (or to national interests) although the Act requires the appointment of an advisory committee, one of whom is to represent "consumers", which may be consulted at the discretion of the Minister. Import controls may be replaced under this Act by controls administered by exporting countries. Limitations on the size of import quotas exist as a result of commitments entered into by Canada within GATT with Australia and New Zealand. At present, no quotas are actually in effect,

[5]National Farm Products Marketing Council, Annual Reports.

and beef and veal may be imported under a General Import Permit.

It is of interest that no domestic supply management programs exist for beef and veal, which might legitimize the imposition of import controls under GATT rules.

CONSUMER INTERESTS

The import systems for these major areas of food products should give rise to particularly great concern from a consumer perspective. There are almost no elements in these systems that protect consumers. The systems are not only designed to serve the interests of producers and processors, but are effectively operated by them, under legislation that gives them virtual monopoly power over imports as well as over domestic production, pricing and marketing.

The import systems for these food products, moreover, are particularly complex and impenetrable to outside scrutiny. They are structured so as to make it almost impossible for consumer interests to influence their operation, and to seek more liberal access for imports into the Canadian market. In these circumstances, it is ironical that the GATT rules and pressures from exporting countries may represent in this areas the main safeguards for Canadian consumers against systems that are essentially hostile to their interests.

It is noteworthy in this regard that the Economic Council of Canada, in its recent report covering supply management programs, called for an overhaul of these programs; and it recommended that if significant import protection is to be maintained, import quotas should be replaced by tariffs.[6]

[6]Economic Council of Canada, op.cit., p. 66.

CHAPTER 9

GOVERNMENT DEPARTMENTS

This chapter examines the functions and roles of government departments and agencies concerned with trade policy, and the extent to which consumer interests are taken into account in the development and implementation of trade measures at the bureaucratic level.

DEPARTMENTAL RESPONSIBILITIES

Until a recent reorganization of departmental responsibilities, the main responsibility for Canadian trade policy rested with three departments: Finance, Industry, Trade and Commerce, and External Affairs. The responsibilities of the two last departments in this area have now been combined. National Revenue carries major responsibility for the implementation of the customs tariff system. The departments of Agriculture, Fisheries, Energy, Mines and Resources, Consumer and Corporate Affairs, and others have a variety of trade policy interests in areas of their responsibility, and participate in the development and implementation of policies of special concern to them.[1]

The increased use of quantitative import controls as a trade policy instrument has led to a modificiation of traditional patterns of responsibility for trade policy among government departments. New arrangements were needed to reach agreement on recommendations to Ministers for the use of quantitative controls, their severity and their duration. New arrangements were required to issue

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[1] See David R. Protheroe, Imports and Politics, Institute for Research on Public Policy, Ottawa, 1980. Chapter 5 discusses the responsibilities and functions of government departments and agencies in trade policy areas.

import permits and generally administer quota arrangements imposed on the import side. New arrangements were needed to negotiate bilateral restraint arrangements with exporting countries, to supervise the flow of imports under these arrangements, to participate in GATT negotiations and on-going GATT supervisory arrangements relating to the use of quantitative import controls.

These changes tended to shift the balance of influence over trade policy towards departments or sections of departments with important "import protection constituencies" such as the industry side of Industry, Trade and Commerce, and certain sections of Agriculture, and away from departments or sections of departments concerned with Canada's export interests, or with more generalized responsibilities for trade policy such as Finance and External Affairs. Internationally, and within GATT, Canada's traditional role as a major defender of a liberal and open trade system was correspondingly weakened. In Ottawa, these changes tended to work against the interests of consumers, as Canadian trade policy became increasingly preoccupied with safeguarding the interests of Canadian producers.

MANDATE OF THE DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

The establishment of the Department of Consumer and Corporate Affairs in 1967 represented a considerable advance for the consumer movement in Canada, and provided a new basis for the insertion of consumer interests into trade policy development and implementation.[2] It is regrettable that the "duties, powers and functions of the

[2]The Department was established by the Department of Consumer and Corporate Affairs Act of 1967-68, R.S.C. 1970, Chap. C-27.

Minister" listed in Section 5 of the Act do not include a specific reference to trade policy and especially import policies and tariffs, since few areas of government policies have a greater impact on Canadian consumer interests. However Section 5 includes a general reference to "consumer affairs", and Section 6 of the Act directs the Minister to carry out a range of activities designed to protect and assist the interests of Canadian consumers. Thus the Act clearly authorizes, indeed it requires, the Department of Consumer and Corporate Affairs to involve itself in the development and implementation of trade policy for the purpose of ensuring that the interests of consumersare taken into account.

The role and responsibilities of the Department of Consumer and Corporate Affairs in the area of trade policy may be distinguished from its role and functions (a) in such areas as product safety, hazardous substances, and product labelling, and (b) in the area of competition policy.

PRODUCT STANDARDS

In the area of product standards, the objectives of the Department may be regarded as promoting the provision of adequate information about consumer products, ensuring that such products meet acceptable standards of quality, hygiene and safety, obliging producers to respond to consumer complaints, protecting consumers against false advertising, and so on. Legislation and regulations to secure these objectives, such as the Consumer Packaging and Labelling Act, the Textile Labelling Act, and the Hazardous Products Act, have important consequences for imported goods as well as domestically produced goods. Such legislation and regulations in Canada and other countries have been recognized to have incidental and

often deliberate trade restrictive effects; and if they are deliberately used for protective purposes, product standards requirements could work against the interests of consumers, rather than in support of their interests. From a trade policy perspective, accordingly, the Department has an interest in ensuring that its own product standards regulations, and those administered by other departments such as Agriculture, do not operate to discriminate unreasonably against imported products. Indeed the Government has assumed obligations to avoid the use of product standards to raise unnecessary barriers to imports, as a signatory to the Agreement on Technical Barriers to Trade (Standards Code) which was concluded during the Tokyo Round.

COMPETITION POLICY

The role of the Department in the area of competition policy may similarly be distinguished from its role with respect to trade policy. In this area, and within the framework of the Combines Investigation Act, the Department is concerned with mergers, monopolies, arrangements to reduce competition and other restrictive trade practices, with the objective of safeguarding the competitiveness and efficiency of Canadian markets. Consumer interests in these areas are generally quite different from those in the area of trade policy. In the one, trade restrictive measures among business firms are generally involved; on the other, it is import restrictive measures imposed by the Government that are of concern. In Canada, and in other countries, the two sets of issues are generally dealt with separately, and by different units and departments, within the government. Internationally, as well, the two sets of issues are dealt with under different institutions and rules.

There may be certain areas where trade policy and and competition policy may overlap. For example, one reasons sometimes given for the use of anti-dumping duties is to prevent so-called "predatory dumping". The motivation for this form of dumping has been described as "to eliminate a competitor in the importing country and then subsequently to cease dumping, to raise prices, and to extract a monopoly profit".[3] Predatory dumping does not appear to be common, however, at least in Canada. Professor Stegemann recently told a Parliamentary Committee: "I would submit that there has not been a single case since the Anti-dumping Act came into effect in 1969 in which it could have been argued that foreign suppliers would gain substantial monopoly power by dumping in the Canadian market".[4]

CCA TRADE POLICY INTERESTS

Within the departmental structures, the insertion of consumer interests into the development and implementation of trade policy has faced serious obstacles from the beginning. In trade policy areas, government legislation and policies are largely designed to serve the interests of domestic producers and exporters, without much regard for consumer interests; and they operate, moreover, within a set of international rules designed to protect importer and exporter interests. Officials charged with consumer interest responsibilities tend to approach trade policy discussions with a background of mistrust about the traditional operation of trade policy. The "old hands" in other departments, not unnaturally, have reacted

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[3] Rodney de C. Grey, The Development of the Canadian Anti-dumping System, Private Planning Association of Canada, 1973, p. 4.

[4] Minutes of Commons Sub-committee on Import Policy, January 28, 1982.

with a wariness towards the newcomers charged with protecting consumers, and may be disinclined to consult them regularly and to take them into their confidence.

A related difficulty may be the result of the inherent immobility of bureaucratic structures. Gilbert Winham observed in his study of trade policy processes during the Tokyo Round: "In most issue areas, and certainly in commercial policy, the actual making of trade policy is a bureaucratic activity....The nature of bureaucratic activity is that it is a learned response to a set of problems. It handles the problems for which it was created very well, but it does not easily adjust to new issues".[5]

Efforts to protect consumer interests have not easily fitted into the existing "bureaucratic activity". Finance Department, with its general responsibilities for domestic economic policy, may be inclined to take a broader view of consumer interests in trade policy areas; but Finance Department also has a long established responsibility for import protection measures within the tariff system, for anti-dumping policies and, at an earlier period, for quantitative controls under bilateral or multilateral arrangements. Industry, Trade and Commerce has until recently carried primary responsibilities for the support of Canadian exports and opening foreign markets; but it also carried major and often conflicting responsibilities for the development of Canadian industry. External Affairs has been primarily concerned with advancing Canadian interests internationally, rather than

[5] Gilbert R. Winham, "Bureaucratic Politics and Trade Negotiations", in International Journal, Canadian Institute of International Affairs, Winter 1978-9.

consumer interests at home. To a degree, the interests of CIDA overlap those of Consumer and Corporate Affairs in trade policy areas. However, CIDA interests are generally limited to issues involving only the developing countries; and, important as these are, they are narrower than those which consumer interest officials must pursue over a broader range of import and tariff policies. Moreover, the poorer and less developed countries of the Third World, where CIDA's interests tend to be concentrated, are generally not the main targets of Canadian import restrictive measures.[6]

C.C.A. RESOURCES IN TRADE POLICY AREAS

The Department of Consumer and Corporate Affairs does not appear to have always been able to devote sufficient resources to its work in trade policy areas, and to have played a consistently active role in interdepartmental discussions in this area. Other departments such as Finance, IT&C, External Affairs and Agriculture have, of course, accumulated over the years a great deal of experience and expertise in these areas; and relative newcomers in the field have inevitably been at a disadvantage in pursuing their interests in interdepartmental discussions. It is essential that CCA officials carrying responsibilities in this area have sufficient experience and continuity in office to deal confidently with the complex of issues, legislation, practice and international rules relating to trade policy; the Department also requires sufficient resources to engage effectively in interdepartmental discussions at several levels of responsibility.

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[6] See Margaret A. Biggs, The Challenge: Adjust or Protect?, North-South Institute, Ottawa, 1980, for a study of Canadian import policy from the perspective of the interests of developing countries.

The need for adequate resources and expertise in trade policy has increased as a result of the growing complexity of trade legislation and regulation in Canada, in the United States and other trading partners, and in GATT and other international bodies concerned with trade issues. The complexities of the trade policy system were increased greatly as a result of the Tokyo Round, and the outcome of negotiations to continue the Multifibre Arrangement. The Canadian import system, moreover, is likely to become even more complex as a result of prospective legislative changes.

The recent amalgamation of the foreign trade functions of the Departments of Industry, Trade and Commerce and External Affairs may improve somewhat the interdepartmental process of policy development, from a CCA perspective. The new organizational structure may lead to improved management and coordination of trade policy, facilitating a more effective input by Consumer and Corporate Affairs. Also, the separation of the foreign trade sector of Industry, Trade and Commerce from its industry-oriented sectors should shift Canada's trade policy somewhat away from an excessive preoccupation with the interests of domestic producers. A situation of change in the management of Canadian trade policy offers in itself an opportunity for Consumer and Corporate Affairs to seek to insert consumer interests more effectively into interdepartmental processes in this area.

RESEARCH AND ANALYSIS

A further and serious obstacle to the insertion of consumer interest into the development and implementation of Canadian trade policy arises from the weakness of the

base of research and analysis with respect to consumer interests in this area. A review of available studies indicates a remarkable lack of attention to consumer interests in trade policy issues, and to the costs to consumers of import controls and tariffs. Moreover, an examination of the records of the work of the Tariff Board, Anti-dumping Tribunal and Textile and Clothing Board indicates that these bodies, in performing their various tasks, have not generally carried out the research and analysis needed to identify consumer interests in the issues before them, measure these interests, and balance them against the interests of producers and others in the community. Indeed, the framework of reference within which the Anti-dumping Tribunal operates, and also within which food import policies are determined, virtually precludes any consideration of the interests of consumers. It is also evident that the Economic Council of Canada, independent research institutes and universities have not devoted much attention to consumer interests in trade policy, although some valuable work has been done in this area by the Council and within the North-South Institute.

In these circumstances, it is of interest that proposals for new legislation on import policy now under consideration in Parliament open up the question of the functions of the Tariff Board, Anti-dumping Tribunal and Textile and Clothing Board. It is for consideration whether the "judicial" functions of the Tariff Board should be divided from its other functions, and these others combined with those of the Tribunal and the TCB within a new amalgamated body. Such a new body might then be given a broader mandate and the needed resources to carry out a continuing program of independent research

and analysis in trade policy areas, and to make recommendations to the Government on particular policy issues. It would be essential, of course, from a consumer perspective, that the mandate of any such new body should include the identification of consumer interests, their measurement, and an evaluation of consumer interests in recommendations and advice to the Government.

CHAPTER 10

CONCLUSIONS AND RECOMMENDATIONS

The conclusions and recommendations based on this study are as follows.

CONCLUSIONS

1. Developments in Canadian trade policy over recent years have adversely and seriously affected the interests of consumers. Beginning in the early 1970's a series of protectionist trade legislation has been adopted, within the framework of which Canada's trade system has been changed from a system based largely on the customs tariff to a system that incorporates a large number of quantitative restrictions and controls on imports, especially imports of consumer goods. Restrictions and controls now are imposed on imports of almost all clothing and many textile products from "low cost" sources, non-leather footwear from all sources, a wide range of important food products, and automobiles from Japan. Thus, import controls are imposed on goods that represent a large portion of non-housing expenditures by consumers. Moreover, proposals for new legislation now before Parliament would facilitate and extend the use of quantitative controls and other special import measures.

2. This proliferation of "new protectionism" has been offset only to a small extent by reductions in Canadian customs duties on consumer goods as a result of GATT negotiations in the Kennedy Round and the Tokyo Round. While the average level of duties has been substantially reduced, duties remain above 20 per cent on clothing, many textiles and footwear, and remain above

10 per cent on a long list of other consumer products. Duties on many imports from Britain have actually been increased recently. Also, a greater use has been made of special anti-dumping duties, many of which are imposed on consumer goods; and the value for duty of some other consumer goods from a number of countries has been increased by "Ministerial prescription", leading to increases in their import price.

3. During this period Canada's trade system, especially the import system, has become more complex and legalistic, less transparent, and generally comprehensible only to specialists in the field. This places at a disadvantage broadly based consumer groups in seeking to protect their legitimate interests in the operation of the system, as compared with well organized interest groups with greater resources to engage the services of specialists in pursuit of their interests.

4. The legislation adopted in recent years, and the import measures imposed under this legislation, have substantially increased the bias in Canadian trade policies against the interests of consumers and in favour of the interests of domestic producers, processors and manufacturers. The restrictions and controls imposed under this legislation on imports of clothing, textiles and footwear have been put in place to protect domestic producers against the existence or threat of injury from competing imports; and the numerous restrictions on imports of food products are integral parts of domestic programs designed to maintain or increase producer prices and incomes. High tariffs, anti-dumping duties and other tariff measures are similarly imposed largely to protect the interests of domestic producers.

5. The burden of these import restrictions, controls, high tariffs and additional duties is large and has fallen largely on consumers, especially lower income consumers. Their impact has undoubtedly added to inflation in Canada. Controls on imports of clothing alone in the single year 1979 have been estimated to result in costs and losses to consumers amounting to around $470 million, with the burden falling disproportionately on lower income groups. Nevertheless, the framework of legislation and other governmental mechanisms within which these measures are imposed has been structured so as to discourage and in some cases to preclude inputs by consumer groups in support of their legitimate interests. The Anti-dumping Tribunal, for example, is virtually precluded from hearing presentations from consumers in its inquiries into possible injury to domestic producers arising from imports; and consumer interests have generally not been adequately presented at inquiries by the Textile and Clothing Board or the Tariff Board, on the basis of which decisions are made by the Government on the use of special import measures to protect domestic producers. These bodies, moreover, generally give inadequate consideration to consumer interests in reaching their findings and recommendations to the Government on special protection for domestic producers.

6. The general lack of recognition both within and outside government of the important interests of consumers in trade policy areas has contributed to the neglect of their interests in the process of developing and implementing Canada's trade policies and practices. There is a need for the creation of an independent body within the trade policy system with a mandate and resources to identify consumer interests in trade policy issues, measure and evaluate these interests, bring them to public

attention, and ensure that consumer interests are taken fully into account in recommendations to Ministers on trade policy issues. This need might be met by amalgamating the investigative and advisory functions of the Tariff Board, the Anti-dumping Tribunal and the Textile and Clothing Board, as has been suggested during recent hearings by the Commons Sub-committee on Import Policy. It would be essential, however, that the mandate of any new body of this kind should include a requirement to take consumer interests fully into account in carrying out its responsibilities.

7. The Department of Consumer and Corporate Affairs has made a useful but uneven contribution to the insertion of consumer interests into the interdepartmental process of developing and implementing Canadian trade policy. These efforts have been supported from outside by the Consumers' Association of Canada and other groups; but these contributions have similarly been uneven. The Department may not always have devoted sufficient resources to its work in trade policy areas, thus weakening the role it has been assigned in the process of formulating recommendations and advice to Ministers on trade policy issues, within the interdepartmental structure. Moreover, the Department may not always have distinguished its work in the area of trade policy from its work in other areas of consumer protection, and with respect to restrictive trade practices. The issues arising in these various areas are of a different order; in trade policy areas, the issues largely involve import measures taken by the Government itself which adversely affect consumers.

RECOMMENDATIONS

1. The Department of Consumer and Corporate Affairs should give high priority to the development of a strategy for the protection of consumer interests in trade policy areas. The general goal of such a strategy should be to ensure that the interests of consumers are taken fully into account in the development and implementation of trade policies, especially import policies.

2. A main longer term objective of such a strategy should be the restructuring of Canadian trade legislation and other elements in the trade policy system, so as to remove the negative features which adversely affect consumer interests; the system should be restructured to ensure that the process of developing and implementing trade policy will require the identification of consumer interests, the measurement of these interests, and their evaluation in relation to those of producer groups and other broader national interests.

3. An immediate objective of such a strategy should be to create improved structures for independent investigations, analysis and advice to the Government on trade policy issues that would incorporate requirements and procedures designed to ensure that consumer interests are taken fully into account. Support should be given to proposals for the reorganization of the investigative and advisory functions of the Tariff Board, the Anti-dumping Tribunal and the Textile and Clothing Board so as to create a single independent and authoritative body, with greater resources to analyse particular policies and issues, to conduct public hearings, and to provide advice to the Government. It would be essential, however, that such a body, in carrying out its tasks, should be

specifically required to identify and assess consumer interests and take these interests fully into account in making its recommendations to the Government. In addition, the Department should encourage the Economic Council of Canada, independent research institutes and universities to give greater attention in their programs to consumer aspects of Canadian trade policies.

4. The Department should ensure that sufficient resources are devoted to its role of safeguarding the interests of consumers in the development and implementation of Canadian trade policies, especially on the import side. It should engage itself fully in all interdepartmental discussions of trade policy issues, and be adequately represented on all senior level bodies dealing with these issues. In particular, the Department should participate fully in discussions of proposals for new trade strategies for Canada in the 1980's which have been requested by Ministers.

The Department of Consumer and Corporate Affairs should encourage the Consumers' Association of Canada and other consumer groups to take a strong and continuing interest in trade policy developments, and give its support to these efforts. It should monitor the activities relating to trade policy of consumer groups in the United States, European countries and elsewhere. It should strengthen its links with departments and agencies in other governments which play a role in the protection of consumer interests in the trade policy area; and it should participate fully in Canadian activities in intergovernmental organizations such as OECD and GATT, when trade policy issues of special concern to consumers are on the agenda.

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APPENDIX 1

ILLUSTRATIVE LIST OF CUSTOMS DUTIES ON SELECTED CONSUMER GOODS

Product	MFN Rate
Clothing	22.5
Man-made textile products	25.0
Gloves and mittens	25.0
Cotton sheets and towels	22.5
Blankets, wool and synthetic	22.5
Hats and caps	20.0
Footwear	22.5
Clocks	22.5
Scissors, Shears	17.5
Glass tableware	20.0
Tablespoons, knives, forks	17.5
Chinaware	11.3
Purses	17.5
Bicycles	17.6
Baby carriages	12.5
Golf clubs, tennis racquets and baseball bats	11.3
Skis and fittings	11.3
Sailboats, skiffs, canoes	15.0
Perfume	12.3
Jewellery	13.2
Toys	12.5
Canned meat, ham, poultry	15.0
Tomato ketchup, other vegetable sauces and juice	15.0
Corn oil, sunflower oil, peanut oil	15.0
Canned peaches, cherries, apricots	15.0
Strawberry jam	15.0
Soup mixes	13.6

Appendix 1 cont'd.

	MFN Rate
Chocolate bars and candy	12.5
Jellies, jams, marmalades	10.0
Cocoa	10.0
Nuts of all kinds	10.0

Source: Customs Tariff, Schedule A, January 1, 1981. The MFN rates shown are those that will be in effect in 1987, after the reductions agreed to during the Tokyo Round are fully implemented. Many of these rates are higher at the present time. For a number of products somewhat lower rates exist under the BP and GPT schedules.