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NON-TARIFF BARRIERS IN CANADA-U.S. TRADE:
A CASE STUDY OF THE STEEL INDUSTRY

by

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Economic Policy and International Affairs Branch
Bureau of Competition Policy
Consumer and Corporate Affairs Canada
June 1987

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FOREWORD

This study examines the nature of non-tariff barriers in Canada-U.S. trade and their impact in an industry of high importance to both the Canadian and U.S. economies. It focuses on the role of contingency protection measures such as safeguard restrictions, antidumping and countervailing duties in the steel industry. It considers the implications of these measures in light of the mutual interdependence of steel users and producers in Canada and the U.S. The study provides support for some of the key Canadian objectives in the bilateral trade negotiations such as the proposal for a new framework to govern bilateral trade disputes.

The study provides a number of insights into the role of non-tariff barriers in Canada-U.S. trade. One important finding that has not previously received due recognition is that, in practice, there is a significant degree of overlap and substitutability among the various types of contingency trade remedies. Another contribution of the study is to show that where, as in the steel industry, there is a high degree of interdependence between the Canadian and U.S. economies, non-tariff barriers are likely to impose substantial costs on both users and producers in the two countries.

The study illustrates a number of concerns underlying the Canadian position in the bilateral trade negotiations with the U.S. These include: (i) the danger of Canada-U.S. trade being adversely affected by measures aimed primarily at third countries; (ii) the tendency for non-tariff barriers implemented by one country to trigger costly retaliatory measures by the other; (iii) the possibility that antidumping proceedings may be initiated in response to pro-competitive price cutting; and (iv) the growing importance of voluntary restraints on trade. The study as a whole strongly supports the need for a new framework to govern trade disputes and limit the role of non-tariff barriers in Canada-U.S. trade.



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**NON-TARIFF BARRIERS IN CANADA-U.S. TRADE:
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EXECUTIVE SUMMARY

Non-tariff barriers are central to ongoing Canadian efforts to secure and enhance access to export markets, including the bilateral negotiations with the U.S. regarding a possible comprehensive trade agreement. This study provides an in-depth analysis of the implementation and impact of non-tariff barriers in a highly important sector of the Canadian and U.S. economies, the steel industry. The primary goal of the study is to provide an analysis of non-tariff barriers that will be helpful in supporting Canadian objectives in the bilateral trade negotiations. The study is also intended to facilitate effective participation by competition authorities in proceedings relating to non-tariff barriers in Canada-U.S. trade, by analyzing the anti-competitive effects of such barriers in a particular industry.

Chapter II of the study examines the structure of the Canadian and U.S. steel industries, including production and domestic supply, the extent of competition in North American steel markets, and the importance of Canada-U.S. trade for the operation of these markets. The chapter indicates that access to the U.S. market is important to enable the Canadian steel industry to undertake restructuring made necessary by increasing import competition originating from producers in newly industrialized countries. It also shows that Canada-U.S. trade

in steel has provided substantial benefits to users and producers in both countries by facilitating the efficient operation of natural transborder steel markets.

Chapter III of the study examines the legal and institutional framework governing the implementation of non-tariff barriers in Canada-U.S. trade. The analysis focuses on safeguard measures, voluntary export restraints, antidumping duties, countervailing duties and preferential government procurement practices. The chapter notes relevant features of recent Canadian and U.S. trade legislation as well as several Bills that are currently before the U.S. Congress which would further strengthen U.S. contingency protection laws.

Chapter IV examines the implementation and impact of specific non-tariff barriers affecting Canada-U.S. trade in steel. The measures covered include: (i) U.S. safeguard quotas and duties and Canadian retaliatory duties affecting bilateral trade in specialty steel; (ii) Informal restraints, connected with the U.S. National Policy for the Steel Industry, affecting Canadian carbon and alloy steel exports to the U.S.; (iii) Canadian and U.S. antidumping and countervailing duty actions affecting bilateral trade in certain steel products used by the oil and gas industry; and (iv) U.S. federal government procurement policies that restrict the use of Canadian made steel in U.S. highway construction.

The analysis in Chapter IV illustrates a number of concerns regarding the implementation of non-tariff barriers in Canada-U.S. trade. One important finding that has not previously received due recognition in the literature is that, in practice, there is a significant degree of overlap and substitutability among the different types of non-tariff barriers studied. In addition, the study documents instances of Canada-U.S. trade being adversely affected by measures aimed primarily at third countries and the tendency for non-tariff barriers implemented by one country to trigger costly retaliatory measures by the other. In regard to safeguard measures and voluntary export restraints, further concerns are raised relating to U.S. Congressional influence over these measures, and the lack of restraints against their repeated use in an industry.

Chapter IV illustrates features of the Canadian and U.S. antidumping systems that promote the use of protective measures against normal competitive responses to changing demand and supply conditions. It also illustrates the uncertainty over Canadian producers' access to U.S. markets which can arise from U.S. allegations of unfair Canadian subsidization. The analysis of the implementation of preferential U.S. government procurement policies for steel used in highway construction points to the lack of restrictions to prevent the use of such measures. The chapter demonstrates that the non-tariff barriers studied have imposed extensive and wide-ranging costs on steel users and producers in both Canada and the U.S.

Chapter V of the study discusses the implications of the findings in Chapters II to IV for the ongoing Canada-U.S. trade negotiations and the role of competition authorities in proceedings relating to non-tariff barriers. The study provides analytical support for a number of possible Canadian objectives in the negotiations. These include: (i) the replacement of antidumping laws in regard to Canada-U.S. trade with reliance on the two countries' competition laws; (ii) the development of a framework to replace or limit the application of countervailing duty laws in the two countries' bilateral trade; (iii) measures to limit the application of safeguard restrictions including a mutual exemption for Canada and the U.S. from each other's current safeguard laws; and (iv) a reduction in non-tariff barriers in Canada-U.S. trade arising from preferential government procurement preferences. Finally, the study supports the assumption by competition authorities in Canada and the U.S. of an enhanced role in proceedings relating to the implementation of non-tariff barriers. This would entail expanded use by competition authorities of currently available means for intervention in these proceedings, the adoption of provisions in a Canada-U.S. trade agreement and other trade legislation to facilitate intervention by competition authorities and improved coordination of interventions by Canadian and U.S. competition authorities in bilateral trade proceedings.

NON-TARIFF BARRIERS IN CANADA-U.S. TRADE:
A CASE STUDY OF THE STEEL INDUSTRY

I. Introduction

The growing incidence of non-tariff barriers in Canada's bilateral trade with the United States has been highlighted in a number of recent studies.¹ Reflecting the threat that such barriers pose to Canada's access to the U.S. market, they are a central issue in the ongoing bilateral free trade negotiations.² There remains, however, uncertainty as to the treatment of specific trade restrictions in a possible Canada-U.S. trade agreement. Further analysis is needed of the impact of non-tariff barriers in specific industries, to support specific proposals for changes in the legal framework governing the two countries' bilateral trade.

In considering the impact of non-tariff barriers, it is important to examine their effects on users as well as producers. As a recent critic of the Macdonald Commission has suggested, a pre-occupation with exporters' interests in trade liberalization can obscure those of consumers, limiting understanding of and support for the long run objectives of freer trade.³ Canadian users are adversely affected by restrictions on foreign producers' access to the Canadian market (e.g., antidumping measures), since this deprives them of competitive alternatives to domestic suppliers. In the long run, users are also affected by foreign restrictions placed on Canadian exporters, since such restrictions tend to engender retaliatory restrictions in Canada.⁴ An understanding of the inter-related effects of non-tariff barriers on exporters and users leads to a fuller and more balanced appreciation of the case for free trade.

In examining the role of non-tariff barriers, it is also important to take into consideration the organization of Canadian industries. The economic effects of non-tariff barriers depend partly on the structure of the

industries affected. Separate treatment of Canada-U.S. trade under a bilateral framework agreement may be justified by characteristics such as a high degree of interdependence between Canadian and U.S. industries and the existence of natural transborder markets.

This study examines these issues in the context of Canada-U.S. trade in the steel industry. The remainder of Chapter I provides an introduction to the nature and role of non-tariff barriers, the importance of the steel industry to the Canadian economy and the methodology employed in the study. Chapter II examines the structure of the Canadian steel industry and the importance of Canada-U.S. trade in the industry. Chapter III outlines the legal and institutional framework governing the implementation of non-tariff barriers in Canada-U.S. trade. Chapter IV examines the development and impact of specific non-tariff barriers to Canada-U.S. trade in the steel industry. Chapter V provides conclusions and policy implications. The primary intent of the study is to provide an analysis of non-tariff barriers in a particular industry that will contribute to the understanding of such measures and their treatment in a comprehensive Canada-U.S. free trade agreement. The study is also intended to highlight the interface between trade policy and competition policy and examine the role that competition policy authorities can play in helping to mitigate the impact of non-tariff barriers.

(1) The Role of Non-Tariff Barriers

The emergence of non-tariff barriers as a critical problem in Canada-U.S. trade reflects important underlying developments in the structure of world trade and the international legal framework governing trade. In the past two decades, as a result of the Dillon, Kennedy and Tokyo Rounds of negotiations under the General Agreement on Tariffs and Trade (GATT), the level of most countries' tariffs has decreased substantially. By 1987, when the

Tokyo Round cuts are fully implemented, 95% of Canadian industrial exports to the U.S. will be subject to tariffs of 5% ad valorem or less, and there will be no tariffs at all on many goods.⁵ In the place of tariffs, the U.S., Canada and other major trading countries are increasingly relying on non-tariff barriers -- especially "contingency" measures such as antidumping, countervail and "safeguard" actions -- as the primary instruments of import protection policy. As Rodney Grey, former Canadian Ambassador to the Multilateral Trade Negotiations, explains,

The United States [and Canada] have now moved a considerable distance from a classic, tariff-centred commercial policy system and towards a system in which "contingent" policy instruments - that is measures of "stand-by protection" or techniques of administered trade - are to be the effective centre of the system. Indeed, it is beyond argument that the acute problems of providing import protection are not dealt with by the tariff rate structure, but by these other regulatory devices.⁶

In addition to the contingency measures, there has been increasing use of government procurement policies as a non-tariff barrier to promote the development of domestic industries.

In the U.S., the increased use of non-tariff barriers for import protection has coincided with the re-emergence of the Congress as an influential participant in the formulation of U.S. trade policy. Throughout most of the post-World War II period, U.S. Presidents, who have generally been supportive of world trade liberalization, exercised the dominant influence in U.S. trade policy making. With the passage of the Trade Agreements Act of

1979, which adopted the Tokyo Round GATT agreements in a form acceptable to U.S. producers, Congress substantially re-asserted the authority over trade policy that it had previously delegated to the President.⁷ This change is significant since the Congress tends to be more susceptible to pressure from regional producer interests than the President. This reflects the fact that members of the House of Representatives are elected by individual Congressional districts, while the President is elected by the country as a whole. The trend toward increased Congressional involvement in trade policy making is reflected in the passage of the U.S. Trade and Tariff Act of 1984, which has substantially facilitated U.S. producers' access to contingency protection.⁸ This trend has continued with the recent introduction in the Congress of a number of subsequent bills that would further strengthen the U.S. contingency protection system.⁹

The trend toward increased use of non-tariff barriers also reflects the emergence of the Newly Industrialized Countries as a competitive threat to the traditional industrialized countries in many basic industries. In the steel industry, the "newly steel active countries," comprising South Korea, Brazil, South Africa, Taiwan, Argentina, Mexico and Venezuela, increased their share of world steel production from 4% in 1970 to more than 12% in 1982, roughly equivalent to that of the U.K. and West Germany combined.¹⁰ The trend toward greater use of non-tariff barriers to remedy "injury" to domestic industries has also been encouraged by currency fluctuations resulting in rapid changes in the competitiveness of domestic vis-à-vis foreign producers.

Finally, there has been a divergence between the industrial policies of the U.S. and many of its major trading partners, with the latter permitting broader scope for government intervention to promote economic development. This has contributed to a widespread perception in the U.S. that its trade partners are engaging in unfair trade practices. This perception, in turn, has resulted in demands for strengthening of contingency protection laws to ensure that domestic and foreign producers compete on a "level playing field". There are, however, serious questions as to whether a strengthening of the contingency trade laws is likely to restore the competitiveness of producers in the traditional industrialized countries.¹¹

The institutional and legal framework pertaining to non-tariff barriers (NTBs) has changed dramatically in the past decade. The Tokyo round of GATT negotiations, concluded in 1979, substantially amended the articles and codes governing the use of NTBs in international trade. In the case of certain NTBs, most notably government procurement and technical barriers to trade, the expanded articles and codes represent a significant step towards reducing the threat they pose to international trade. In regard to safeguards, antidumping actions, and countervailing actions, however, a major outcome of the Tokyo Round of negotiations has been to expand and entrench their use as non-discretionary measures of contingent protection.

In 1984, both the U.S. and Canada substantially revised their contingency trade laws. Particularly in the U.S., the thrust of these revisions was to extend the coverage of contingent protection measures, streamline procedures and facilitate access by domestic producers to such measures. These changes and others that have subsequently been proposed particularly in the U.S., entail

increased risks of disruption to efficient bilateral trade flows. Recent U.S. legislation has also heightened the importance of government procurement policy as a non-tariff barrier.¹² These aspects of the legal and institutional framework for NTBs are examined more closely in Chapter III of the study.

(2) The Importance of the Steel Industry

The steel industry was selected as the focus of the study for several reasons. The industry is of high importance to Canada in terms of its contribution to national output, value added, employment and exports. In 1985, the value of Canadian iron and steel mill shipments was \$7.8 billion. The industry has historically ranked among the five largest Canadian industries in terms of total value added. In 1985 employment at Canadian iron and steel mills was over 47,000 persons, and exports of primary steel mill products were valued at \$1.4 billion.¹³ Steel is also an important input to a broad range of Canadian secondary manufacturing industries, including motor vehicles, agricultural implements, urban mass transit equipment and general construction. Efficiency in the steel industry is an important determinant of the competitiveness of these industries. In the motor vehicle parts manufacturing industry, for example, more than 28% of the value of parts, materials and supplies was attributable to iron and steel mill products.¹⁴

The steel industry provides a useful opportunity to examine the operation of natural transborder markets and Canada-U.S. economic interdependence in a particular industry. As detailed in Chapter II, interdependence is evident at several levels of the industry. Canada's exports of primary and certain "first tier" steel products to the U.S. were valued at \$2.5 billion in 1985, representing 19% of Canadian steel industry output. The "first tier"

generally refers to products such as steel wire products and pipe and tubing, which are steel based and are frequently manufactured by primary steel mills. About 12%, by weight, of Canadian primary steel exports to the U.S. were in the form of semi-finished products destined for further processing at U.S. mills.¹⁵ The pattern of Canada-U.S. trade in the industry reveals the existence of unique transborder user-supplier relationships based on reasons of location and firm specialization. The steel industry is also characterized by extensive two-way trade between the Canada and the U.S. in the industry's inputs and materials.¹⁶

The steel industry provides an opportunity to examine several current examples of the implementation of non-tariff barriers to Canada-U.S. trade. Specific measures that have been implemented or actively considered by Canadian and U.S. government agencies within the past four years include:

- A U.S. safeguard action against specialty steel imports in December 1983;
- A Canadian action against U.S. specialty steel imports, implemented in retaliation against the U.S. specialty steel safeguard restrictions;
- Possible "voluntary" restrictions on exports to the U.S. of Canadian-made carbon and alloy steel, a much more important component of the domestic steel industry. While Canadian producers were formally exempted from U.S. restrictions applied in 1984, they subsequently came under pressure to accept similar restraints;

- Inter-related U.S. and Canadian dumping and countervail actions respecting certain tubular steel products used in petroleum extraction ("oil country tubular goods"). The U.S. complaints were apparently viewed by some Canadian producers as part of a campaign to compel them to accept broader voluntary export restraints;
- Preferential treatment for U.S. manufactured steel products in highway construction projects subsidized under the U.S. Surface Transportation Assistance Act.

These measures are examined in detail in Chapters III and IV of the study.

Finally, the steel industry provides an opportunity to study the role of non-tariff barriers in an industry undergoing far-reaching structural adjustment. As elaborated in Chapter II, increasing competition from low-cost producers in the newly industrialized countries is forcing the industry to adopt new forms of technology and organization. Similar pressures are being experienced in a broad range of North American manufacturing industries (e.g., automobiles). These industries have also employed non-tariff barriers in attempts to forestall adjustment to foreign competition. Thus, insights obtained from analysis of the steel industry should be applicable to numerous other industries.

(3) Structure of the Study

Chapter II of the study examines aspects of the structure of the Canadian steel industry, focusing on the world environment of the industry, the international competitiveness of the Canadian and U.S. steel industries,

the need for structural adjustment and the state of competition in the industry. It also examines in detail the nature of Canada-U.S. interdependence in the industry, including trade in primary and secondary steel products, trade in steel industry inputs and transborder ownership of iron and coal mines.

Chapter III examines the legal and institutional framework for the application of non-tariff barriers in Canada-U.S. trade. It deals specifically with safeguard measures, voluntary export restraints, antidumping and countervailing duties and also government procurement as a non-tariff barrier. In each case it discusses the rationale of the specific type of barrier, relevant provisions of the General Agreement on Tariffs and Trade, and corresponding provisions of Canadian and U.S. international trade legislation. The chapter also examines recently proposed or implemented amendments to Canadian and U.S. trade legislation that could facilitate increasing use of non-tariff barriers in Canada-U.S. trade.

Chapter IV examines several specific examples of non-tariff barriers to Canada-U.S. trade in steel. The cases examined include the above-noted proceedings dealing with U.S. and Canadian safeguard and retaliatory restrictions on specialty steel, the voluntary restraints on Canadian carbon and alloy steel exports to the U.S., the Canadian and U.S. antidumping and countervail actions affecting oil country tubular steel products and the preferential procurement policies adopted under the U.S. Surface Transportation Assistance Act.

Chapter V provides conclusions and policy implications. The Chapter discusses the findings of the study in relation to Canadian objectives in the bilateral trade negotiations with the U.S. and the role that competition agencies should play in mitigating the costs of non-tariff barriers in Canada-U.S. trade.

NOTES TO CHAPTER I

1. See Royal Commission on the Economic Union and Development Prospects for Canada, Report (Ottawa: Supply and Services Canada, 1985), pp. 231-276 and references cited therein.
2. Government of Canada, How to Secure and Enhance Canadian Access to Export Markets (Ottawa: 1985).
3. Ronald Shearer, "The New Face of Canadian Mercantilism: The Macdonald Commission and the Case for Free Trade," Canadian Public Policy, Vol. XII, 1986, pp. 51-58.
4. This pattern has been observed a number of times in the steel industry and in other industries such as potatoes and fish. Several examples are documented in Chapter IV.
5. Canada, Standing Senate Committee on Foreign Affairs, Canada-United States Relations, Vol. III., Canada's Trade Relations with the United States (Ottawa: 1982), p. 9.
6. Rodney de C. Grey, United States Trade Policy Legislation: A Canadian View (Montreal: Institute for Research on Public Policy, 1982), p. 8.
7. Grey, id., pp. 14-15.
8. The key provisions of the U.S. Trade and Tariff Act of 1984 respecting contingent trade protection are discussed in Chapter III of this study.
9. The recently introduced U.S. bills include H.R. 3, the Trade and International Economic Policy Reform Act of 1987; S. 490, the Omnibus Trade Bill of 1987, and H.R. 1155, the Trade, Employment and Productivity Act of 1987.
10. See the discussion in Chapter II, infra.
11. David G. Tarr, "Does Protection Really Protect?" Regulation, November-December 1985, pp. 29-34.
12. See the discussion of the U.S. Surface Transportation Assistance Act in Chapter III, infra.
13. Canada, Department of Regional Industrial Expansion, Manufacturing and Trade Measures: 1966-1984 (Ottawa: 1986); Statistics Canada, Employment Earnings and Hours, No. 72-002, Vol. 62, 1985, issues 1-12;

The chapter also demonstrates that the steel industry is characterized by extensive mutually beneficial interdependence between Canada and the U.S. at various levels of trade in steel and steel related products. This interdependence is manifested not only by the extent of bilateral trade in steel mill products but also by the nature of this trade and by extensive bilateral trade in steel industry inputs. Access to the U.S. market is important for Canadian steel producers to attain economies of scale and specialization and efficient levels of capacity utilization. The interdependence between the Canadian and U.S. steel industries and markets implies that non-tariff barriers to bilateral trade will impact adversely on users and producers in both countries.

(1) The Changing Supply and Demand Conditions in World Steel Markets

Since the early 1970s there have been important changes in world steel supply and demand conditions. On the supply side, there has been substantial growth in world steel production capacity, led by newly industrialized countries such as South Korea, Brazil, Taiwan, Argentina, Mexico and Venezuela. These countries' share of the non-Comecon countries' steel production increased from 4% in 1970 to more than 12% in 1982, roughly comparable to that of the U.K. and West Germany combined.¹ This expansion is largely the result of three fundamental characteristics of the newly industrialized countries' economies: (i) lower skilled labour costs; (ii) industrial strategies which have emphasized import substitution and growth in traditional heavy industries; and (iii) growing demand for steel-based industrial infrastructure and manufacturing. At the same time, there has been little compensating reduction of production in the traditional non-North American steel producing regions of the world. Japan's share of the OECD

countries' steel production as of 1982 had remained relatively constant at approximately 24%.² In the EEC attempts to rationalize production capacity have been delayed by government ownership of steel mills and related political pressures.

On the demand side, there has been a secular decline in the steel intensity of the OECD economies. Since 1973, growth in steel consumption in the OECD countries has declined by an average of 1 per cent annually.³ This decline reflects two principal developments: First, the OECD countries have generally completed their steel-intensive infrastructure, including roads, railways, buildings and factories. Second, there has been a trend towards the use of thinner steels and lighter substitute materials such as aluminum and plastics, to economize on fuel and materials costs in traditionally steel-based products, particularly automobiles. This trend has limited the growth potential of the North American steel industry.

The interaction between expanded world production capacity and declining steel demand in the industrialized countries has produced substantial excess capacity in the steel industry - estimated at one third of world production capacity in 1983. In 1984, the gap between current consumption and world production capacity was more than 100 million tons per year, an amount that is greater than the entire annual output of the U.S. steel industry.⁴

These changes in world supply and demand conditions have occurred against a background of gradually declining but still significant tariff levels. For example, the U.S. tariff on imports of semi-finished carbon steel from Most Favored Nations (MFN) declined from 14.5% ad valorem in 1967 to 6% in 1980. By the end of 1987, when the Tokyo Round tariff cuts will be fully implemented, the U.S.

Statistics Canada, Manufacturing Industries of Canada:
National and Provincial Areas, No. 31-203, various
years.

14. Figure constructed from Statistics Canada, The Input
Output Structure of the Canadian Economy: 1979-1981,
No. 15-201E, July 1985.
15. The nature and extent of Canada-U.S. bilateral trade in
steel is examined in detail in Section 6 of Chapter II.
16. See Section 7 of Chapter II.

II. The Structure of the Canadian Steel Industry: The World Environment and the Importance of Canada-U.S. Trade

This chapter examines several aspects of the structure of the Canadian steel industry. It discusses the world environment of the industry and the international competitiveness of Canadian steel producers. It considers the extent of concentration in the supply of steel products in the domestic market and related competition policy issues. The chapter also examines the nature and extent of Canada-U.S. interdependence in the steel industry, and the implications of this interdependence for the future of the industry.

The chapter reaches several findings that are relevant to the study of non-tariff barriers and the design of public policy in the steel industry. In particular, ongoing changes in the world environment of the industry have created a need for structural adjustment in both the U.S. and Canada. In both countries low-priced imports from the newly industrialized countries - including South Korea, Brazil, Taiwan, Argentina, Venezuela and Mexico - account for a growing proportion of total steel imports. Import competition is unlikely, however, to eliminate the role of domestic steel production in either Canada or the U.S. Foreign competition through international trade is important to the maintenance of incentives for efficient structural adjustment in the steel industry. Indeed, international trade is essential to the maintenance of competition in an otherwise highly concentrated domestic steel industry. Non-tariff barriers that limit the role of foreign competition in specific steel product markets can leave domestic users dependent on a small number (in many cases, only 2 or 3) of domestic suppliers.

tariff on these products will have declined further to 4.2%. Similarly, the U.S. MFN tariff on hot-rolled carbon steel plates will have declined from 8% in 1967 and 7.5% in 1980 to 6% in 1987. In Canada, the MFN tariff on cold-rolled carbon steel sheets will have declined from 15% in 1967 and 12.5% in 1980 to 8% in 1987. In both the U.S. and Canada, the majority of steel products will remain subject to MFN tariff rates of 4-12% in 1987.⁵

The growing importance of the newly industrialized countries in world steel trade is reflected in the changing composition of steel imports by country of origin in both the U.S. and Canada. Table 1 presents information on the countries of origin of steel imports in both countries. The table shows that the OECD countries' share of total Canadian steel imports has decreased from 95% in 1975 to 91% in 1985. The share of imports of the non-OECD countries, including the newly industrialized countries, has risen from 5% to 9%. This trend towards increased Canadian imports from newly industrialized countries recently led to the withdrawal of general preferential tariff rates previously provided to these countries on a wide range of steel products.⁶ In the U.S., the shift in favour of the latter countries has been more dramatic. The share of U.S. imports held by the OECD countries decreased from 95% in 1975 to 75% in 1985. During the same period, the non-OECD countries' share of U.S. imports increased from 5 to 25%.

Declining tariff levels and increasing competition from the newly industrialized countries have also resulted in a substantially increased overall level of steel imports in the U.S. The level of imports as a proportion of U.S. consumption of primary steel products, wire products and pipe and tubing increased from 13.5% in 1975, to 16.3% in 1980 to 27.8% in 1985.⁷ It is important, however, to note that the overall level of import penetration in Canada has

Table 1

Canada and U.S., Composition of Steel Imports by Countries
of Origin, Select Years

A. <u>Canada</u>			
Countries of Origin	% of Total Imports (by Value)		
	1975	1980	1985
United States	52%	56%	46%
Japan	16	16	8
All OECD Countries	95	92	91
Non-OECD Countries	5	8	9

B. <u>United States</u>			
Countries of Origin	% of Total Imports (by Weight)		
	1975	1980	1985
Canada	8%	15%	12%
Japan	49	39	25
All OECD Countries	95	84	75
Non-OECD Countries	5	16	25

Sources: Department of Regional Industrial
Expansion, Commodity Trade by Industrial
Sector, 1985 and Manufacturing and Trade
Measures, 1985; American Iron and Steel
Institute, Annual Statistical Report, 1985.

not undergone a similar increase. The level of imports as a proportion of Canadian steel consumption actually decreased from 19% in 1975 to 16% in 1980 and remained constant at 16% in 1984.⁸

(2) The Competitive Environment of the North American Steel Industry and the Need for Structural Adjustment

The changing shares of world steel production of the traditional and newly industrialized countries reflect substantial differences in production costs in the various countries. Table 2 presents information on labour, materials and capital costs for basic steel production in the U.S., South Korea, Japan and West Germany. The table shows that in 1984, the average total cost of producing a ton of hot-rolled steel was \$336 in the U.S., \$243 in West Germany, \$270 in Japan and \$250 in South Korea (all figures in U.S.\$). The relatively high U.S. total cost figure illustrates the major source of the U.S. steel industry's problems in competing against foreign steel producers.

A comparable figure to those provided in table 2 reflecting average Canadian costs of steel production is not available. It is noteworthy, however, that a recent study of Dofasco, the second largest Canadian steel manufacturer, reported that the company's costs are competitive with the costs of steel production in Japan, as well as the EEC and newly industrialized countries. The report also found that Dofasco's costs of producing a ton of steel sheet were about \$20 less than those of other major Canadian producers and about \$80 less than those of U.S. producers.⁹

The individual cost components noted in Table 2 reveal important considerations concerning the long run competitive advantages of the newly industrialized countries vis-à-vis North American producers. First, the table

Table 2
Breakdown of Steel Production Costs for Selected Countries, 1984
 (U.S. Dollars)

Category	Average Costs per Ton of Hot-Rolled Products			
	United States	South Korea ¹	Japan	West Germany
Labour	74.53	18.10	45.86	58.59
Materials and Other Costs ²	208.20	155.09	150.63	143.23
Interest and Depreciation	53.48	78.34	70.97	37.30
Total Costs	336.21	250.63	270.92	242.99

1. For South Korea, costs are based on the Pohang Iron and Steel Company Ltd.
2. Other Costs include electricity and miscellaneous costs not covered by the other cost categories.

Source: World Steel Dynamics, Core Report V. (New York: Paine-Weber, October, 1985).

indicates that producers in the newly industrialized countries have a substantial competitive advantage in terms of labour costs. As the table indicates, average labour costs for producing a ton of hot-rolled steel were approximately \$75 in the U.S., \$46 in Japan, \$59 in West Germany and \$18 in South Korea. The corresponding figure for Canada was approximately \$55-60.¹⁰ These data reflect both average wage rates and man-hours per ton of steel. The newly industrialized countries' advantage is more apparent when hourly wage rates are compared. Average steelworker wage rates in 1984 were \$3 per hour in South Korea as compared to \$11-12 per hour in Japan and West Germany, about \$17 per hour in Canada and \$23 per hour in the U.S.¹¹

Second, materials costs in South Korea are comparable to those of most traditional steel producing countries (and lower than the U.S.). According to the data in Table 2, in 1984 average materials costs per ton of hot-rolled steel were approximately \$155 in South Korea, as compared to \$208 in the U.S., \$151 in Japan and \$143 in West Germany. The comparatively low figures for South Korea and Japan reflect ease of access to low cost iron ore deposits in Brazil and Australia and to extensive coal deposits, in Australia and Western Canada.

The interest and depreciation costs noted in Table 2 are based on accounting data for plant and machinery of varying ages, and thus do not necessarily reflect the long run user costs of capital. However, these figures do suggest that industrialized country producers may have a moderate advantage vis-à-vis producers in the newly industrialized countries in this component of steel production costs.

Finally, the newly industrialized countries have an important additional source of competitive advantage that

is not reflected in Table 2. Unlike the latter, the former countries' domestic markets are growing. A growing home market can contribute substantially to efficiency and competitiveness in the steel industry by facilitating the adoption of advances in production technology.¹² In fact, the newer steel mills in South Korea, Taiwan and Brazil embody state-of-the-art technology. Based on these considerations, producers in the newly industrialized countries are expected to play an increasingly important role in the world steel industry throughout the 1980s and 1990s.¹³ These countries' competitive advantage should be particularly significant in the supply of raw-steel, basic structural shapes and lower value-added flat-rolled steel products that are in comparatively greater demand in their home markets.

It is important to consider specifically the competitiveness of Canadian vis-à-vis U.S. steel producers. As noted, average total costs of steel production in Canada compare favourably with those of the U.S. Canada's relative competitiveness is attributable to a number of factors. In particular, traditionally high capacity utilization rates in Canada have resulted in lower unit costs than those in the U.S. The average level of capacity utilization in the Canadian steel industry in the period 1972-81 was approximately 90%, as compared to 84% for U.S. firms.¹⁴ Because of the high fixed cost of steel production facilities, higher levels of capacity utilization yield significant savings in unit costs. Another factor which has provided Canadian steel producers with an important advantage over their U.S. counterparts has been the relative newness of Canadian steel facilities and Canadian producers' ability to adopt technological advances. As of 1981, the estimated average age of U.S. as compared to Canadian steel production facilities was 18.8 versus 13.4 years. Japanese facilities, by contrast, had an average age of 11.7 years.¹⁵

Finally, as noted average Canadian wage rates in the steel industry have traditionally been lower than U.S. rates.

Apart from the above factors, the underlying determinants of the competitiveness of the Canadian steel industry are similar to the U.S. in several respects. The Canadian and U.S. industries pay comparable prices for iron ore, coal and steel scrap. Canadian and U.S. producers have traditionally obtained their iron ore supplies from mines in Minnesota and Quebec/Labrador. These sources are becoming less competitive than the more concentrated, abundant supplies in Brazil and Australia used by certain newly industrialized country steel producers. In addition, Canadian capital costs are considered to be somewhat higher than those of the U.S.¹⁶ The Canadian steel industry has derived advantage from the depreciation of the Canadian dollar since 1976, but the extent of this advantage is limited, since iron ore, coal and scrap inputs are generally internationally priced (in U.S. \$).

To sum up, while Canadian steel producers currently have significantly lower average costs than their U.S. counterparts, their competitive advantage should not be over-rated. In the long run both countries' producers face a need to adjust to increasing competition from the newly industrialized countries. The scope for and nature of such adjustment are considered in the next section.

(3) The Scope for Adjustment and Sources of Renewal in The North American Steel Industry

The process of adjustment in the North American steel industry will entail adoption of improved technology, greater specialization in the industry's product range and production processes, retirement of inefficient capacity, changes in resource input sourcing and modification of

wage rates and working conditions. To some extent these changes are already occurring in both the U.S. and Canada. The changes are expected to result in a more internationally competitive North American steel industry that is better adapted to serve user needs.

An important aspect of adjustment in the North American steel industry has been the growth of the electric "mini-mill" sector. Mini-mills employ electric furnace technology to melt down and re-constitute steel scrap. These mills avoid the need for the capital-intensive coke ovens and blast furnaces used in basic oxygen furnace and open hearth mills. (Figure I provides further information on these three methods of raw steel production.)

An important advantage of mini-mills over traditional steel production facilities is their much lower minimum efficient scale (MES). Mini-mills have an MES of as low as .2 million tons per year, depending on their product mix. This is in contrast to an MES of 3-4 million tons per year for both basic oxygen furnace and open hearth (integrated) steel mills.¹⁷

In addition to their much smaller capital requirements, mini-mills have important advantages arising from their flexibility in regard to location and product range. Unlike integrated steel mills which require access to iron ore and coal, mini-mills utilize steel scrap and electricity as their primary inputs. This, combined with their relatively small minimum efficient scale, enables them to locate in smaller regional markets and tailor their product lines to fit the needs of local users. In this way, mini-mills have been able to maintain higher levels of capacity utilization than integrated mills. In addition, due to their smaller, regional character, many mini-mills employ non-union labour. As indicated in Figure I, between

Figure 1

Primary Steel Mill Equipment And Technology

Production Method	Primary Resource Inputs	Process	Minimum Efficient Scale	Percent of Total Canadian Production by Different Production Methods		Notes
				1965	1983	
1. Open Hearth	Iron ore, coal and steel scrap	Steel produced in open-hearth coal-fired furnaces.	4 million tons per year (MTY)	55	7	<ul style="list-style-type: none"> - Capital intensive. - Use has declined substantially in favour of the other processes.
2. Basic Oxygen Furnace	Iron ore, coal and steel scrap	Steel produced in coal-fired, oxygen-injected furnaces.	3 to 4 MTY	32	67	<ul style="list-style-type: none"> - Capital intensive. - Cost performance depends on high capacity utilization.
3. Electric Furnace	Steel scrap or iron ore and electricity	Usually involves melting down and re-constituting of steel scrap in electric furnaces	0.2 MTY or greater, depending on product mix	13	26	<ul style="list-style-type: none"> - Relatively low capital costs. - Efficient for unsophisticated primary steel products and specialty steels - Most economical when used with steel scrap.

Sources: Barnett and Schorsch, Steel: Upheaval in a Basic Industry (Cambridge, Mass.: 1983), pp. 160-64 and Aubrey Silbertson, "Economies of Scale in Theory and Practice," The Economic Journal, March 1972 (Supplement), Vol.82, pp.369-391.

1965 and 1985 electric furnace producers (mini-mills) doubled their share of Canadian steel capability from 17 to 34%. Mini-mills are best suited to the manufacture of the simpler, relatively low value-added steel products such as wire rod, re-inforcing bars and structural shapes. They are also used to produce specialty steel (stainless and alloy tool steel) which is normally made in relatively small quantities.

An important additional aspect of the adjustment required in North American steel production will be the adoption of production processes to reduce labor and material costs, and improve the quality of final output. An example of the type of technology required is continuous casting.¹⁸ This technology involves the manufacture of semi-finished steel products from molten steel in one continuous process. The intermediate step of moulding ingots preparatory to the manufacture of semi-finished shapes is thus eliminated. Continuous casting increases yields of semi-finished steel products from molten steel by 10%. For this reason, and because handling and reheating are reduced, continuous casting substantially lowers energy, materials and labour costs. Canadian electric mills have successfully adopted technology, and have actually exported it to the U.S. through their subsidiaries and joint ventures. In 1985, 44% of all Canadian raw steel production was continuously cast.¹⁹

Within the integrated sector of the North American steel industry, adjustment will require further specialization of product lines. Domestic integrated producers are most likely to remain competitive in product areas such as the more sophisticated, higher value-added sheet and strip that are used largely in consumer goods manufacturing industries (e.g., automobiles). As noted above, producers in developed countries have a comparative

advantage in these products, at least in their domestic markets, because of their superior marketing systems and proximity to users and larger markets for such goods.²⁰ In addition, the mini-mills have traditionally been less active in this segment of the market due largely to production and material limitations.²¹ One North American integrated firm which has benefitted from concentrating in sheet and strip products is Dofasco. The company is the second largest Canadian steel producer and has achieved the highest level of profits among the integrated Canadian producers over the past four years.²²

Effective adjustment is also likely to require further specialization in the production process. For example, U.S. steel mills are expected to eliminate some of their "front end" raw steel making capability, in favour of rolling and finishing of semi-finished steel slabs purchased from foreign producers.²³ This is another way of specializing in their area of comparative advantage i.e., sophisticated finishing and marketing of steel products. Adjustment to competition from offshore suppliers may also involve negotiation of steel worker wage and benefit concessions. Another important factor in reducing labour costs is re-negotiation of union work rules that are considered to encourage overmanning and limit the efficient deployment of workers.²⁴

Finally, the adjustment process will inevitably involve continued elimination of excess capacity in the North American steel industry. Despite substantial cuts in plant capacity, the level of capacity utilization in the U.S. steel industry remained below 70% in 1986.²⁵ Further cuts are considered necessary to restore the industry to efficient utilization levels (generally considered as 80% or higher). The problem of excess capacity has traditionally been less acute in Canada. However, gradual elimination of

inefficient capacity is being undertaken in this country as well.²⁶ For example, Stelco recently phased out its open hearth steel making capacity. Algoma recently reduced its capacity from 3.5 to 2.5 million tons per year.

It should be emphasized that the achievement of efficient adjustment in the steel industry depends directly on the existence of effective competition as an incentive.²⁷ Competition is also important to ensure that the benefits of productive efficiency gains are passed through to users. The current impetus for adjustment results primarily from the low-price competition generated by offshore suppliers. However, the extent of competition among domestic suppliers is also important - particularly when the role of imports is limited by non-tariff barriers in specific product markets. The extent of competition in the Canadian steel industry is considered further in the next section.

In addition, Canada-U.S. bilateral trade can play an important role in facilitating structural adjustment in the Canadian and U.S. steel industries. For Canadian producers, this trade is necessary to provide access to sufficiently large markets to support Canadian production in areas where it is likely to remain competitive. Conversely, U.S. producers will benefit if their markets are augmented to include Canadian demand. Canada-U.S. trade can also facilitate specialization of producers in the production process. These aspects of Canada-U.S. trade in steel are examined in section 6 of the Chapter.

(4) The Competition and Trade Policy Interface in the Steel Industry

International trade is an important source of competition in an otherwise highly concentrated Canadian steel industry. Table 3 presents information on the shares

Table 3

Production Capability of Canadian Steel Firms (Ranked by Capability), 1985¹

Firm	Province	Steel Capability by Production Process (000's tonnes)		Capability of Firm as Percent- age of Total Canadian Capa- bility	Cumulative Percentage of Canadian Capability
		BOF or OH	EF		
1. Stelco	Quebec	-	308		
	Ontario	6,691	-		
	Alberta	-	295		
	All Provinces			35.7	35.7
2. Dofasco	Ontario	4,090	-	20.0	55.7
3. Algoma	Ontario	3,492	-	17.1	72.8
4. Sidbec	Quebec	-	1,326	6.5	79.3
5. Lasco	Ontario	-	910	4.4	83.7
6. Ipsco	Saskatchewan	-	680	3.3	87.0
7. Sydney Steel	Nova Scotia	500	-	2.4	89.4
8. Atlas Steel	Quebec	-	68		
	Ontario	-	318		
	All Provinces			1.9	91.3

TABLE 3 CONTINUED ON NEXT PAGE

Table 3 (Cont'd)

Production Capability of Canadian Steel Firms (Ranked by Capability), 1985¹

Firm	Province	Steel Capability by Production Process (000's tonnes)		Capability of Firm as Percent- age of Total Canadian Capabil- ity	Cumulative Percentage of Canadian Capability
		BOF or OH	EF		
9. Slater	Quebec	-	38		
	Ontario	-	330		
	All Provinces			1.8	93.1
10. Ivaco	Ontario	-	320	1.6	94.7
11. Manitoba Rolling Mills	Manitoba	-	300	1.5	96.2
12. Western Canada Steel	Alberta	-	100		
	B.C.	-	175		
	All Provinces			1.3	97.5
13. Others		-	519	2.5	100.0
Total		14,773	5,687	100.0	

1. Capability is the estimated maximum output of steel firms under normal operating conditions. Capability may be less than capacity as the former takes into account such production constraints as bottlenecks and regular shut-downs for maintenance or repair.

Source: Energy, Mines and Resources Canada, Metallurgical Works in Canada: Primary Iron and Steel, 1985, Pub. No. MR206, Supply and Services Canada Cat. No. N38-2/206.

of Canadian steel production capacity held by individual domestic firms. The table shows that, as of 1985, the three Ontario-based integrated producers, Stelco, Dofasco and Algoma, together controlled 70% of total Canadian steel capacity. Furthermore, the four largest Canadian producers (including Sidbec-Dosco, a Quebec-based electric furnace mill) together controlled close to 80% of total domestic production capability. The remainder of the domestic steel industry is composed of a number of electric furnace mills and an open hearth facility (the Sydney Steel Corporation of Nova Scotia).

The industry is characterized by even higher levels of concentration in the production of individual primary steel mill products. Table 4 presents data on the number of domestic producers in 17 individual primary steel mill product categories. The table shows that in 11 of the 17 primary steel mill product categories, there are four domestic suppliers or less. Furthermore, in 7 of these categories, including such high-demand categories as galvanized sheet and strip and tin plate, there are only 1 or 2 domestic suppliers. These data carry important implications for the impact of non-tariff barriers in the steel industry: depending on the products and proportion of foreign suppliers affected, safeguard, antidumping and countervailing duties can leave Canadian users dependant on a small number of domestic suppliers.

Table 4 also provides a useful picture of the product range of individual Canadian steel companies. Among the three major integrated producers, two (Stelco and Algoma) produce a broad range of structural products (e.g., rails, track accessories and structural shapes) as well as flat-rolled products used largely in consumer goods industries (e.g., hot- and cold-rolled sheet and strip). The other major integrated producer, Dofasco, which in

Table 4

Products made by Canadian Steel Producers, 1984

Product Category	Stelco	Dofasco	Algoma	Sidbec	Lasco	Ipsco	Sydney Steel	Atlas	Slater	Ivaco	Manitoba Rolling Mills	Western Canada Steel	Others ¹	Number of Canadian Producers
1. Semi-finished shapes	x	x	x	x	x	x	x	x	x	x	x	x	2	14
2. Hot-rolled Sheet and Strip	x	x	x	x		x		x						6
3. Cold-rolled Sheet and Strip	x	x	x	x				x						5
4. Enameling	x	x												2
5. Plate	x	x	x			x								4
6. Galvanized Sheet and Strip	x	x												2
7. Electrical Steel or Black Plate	x	x	x											3
8. Electrolytic Tin Plate	x	x												2
9. Hot-rolled Bars and Light Structural Shapes	x			x	x			x	x		x	x	1	8
10. Cold-finished Bars	x							x					1	3
11. Rails			x				x							2
12. Track Accessories	x		x				x				x		1	5
13. Structural Shapes (3")	x		x	x	x	x					x		1	7
14. Wide Flange Steel Shapes			x											1
15. Wire Rods	x			x						x				3
16. Stainless Steel Bars and Rods								x					1	2
17. Stainless Steel Sheet								x						1

1. Others includes Courtice Steel Ltd., the Crucible Steel Division of Colt Canada Inc, and The cold-rolling facilities of Union Drawn Steel Company Ltd.

Sources: American Iron and Steel Institute, Directory of Iron and Steel Works of the United States and Canada(Washington, D.C.: 1984) Energy, Mines and Resources Canada, Mining and Mineral Processing Operations in Canada, 1980, and the American Iron and Steel Institute, Annual Statistical Report, 1984.

recent years has been the most profitable of the three, specializes completely in flat-rolled products.²⁸ The remaining companies, consisting mainly of mini-mills, produce some flat-rolled products but concentrate more on bars and structural shapes. Notable exceptions are IPSCO which makes substantial quantities of sheet, strip and plate mainly for its own pipe and tube mills, and Atlas, the largest Canadian manufacturer of specialty steel, which manufactures stainless steel sheet and strip.

It is interesting to note that, despite its much larger domestic market, the U.S. steel industry is also considered to be highly concentrated. The preponderance of U.S. domestic production is controlled by six large integrated producers, U.S. Steel, Bethlehem Steel, LTV, National, Armco and the Inland Steel Corporation. In the course of the U.S. Department of Justice's 1984 investigation into the merger between the LTV and Republic Steel companies, it was disclosed that the two companies together controlled about 50% of domestic production of stainless steel sheet and strip.²⁹

The high levels of concentration in the Canadian and U.S. steel industries have prompted a number of investigations into perceived anti-competitive abuses. In Canada, there have been public investigations into steel price increases and profits, although these have generally exonerated the industry of specific abuses.³⁰ The industry has also been the subject of a number of inquiries under the Combines Investigation Act (now the Competition Act), principally under the provisions governing price discrimination and refusal to deal.³¹ Several of these cases resulted from complaints by Canadian steel distributors or users that they were not being given access to Canadian steel at competitive prices. Such complaints

underscore the need for avoiding restrictions on Canadian steel users' access to foreign suppliers.

In the U.S., there is a long record of antitrust investigations into the steel industry. In the 1950s, the extended hearings of the Congressional Subcommittee on Antitrust and Monopoly chaired by Senator Estes Kefauver found the industry to be characterized by dominant firm price leadership, administered pricing, tacit collusion and market sharing.³² The lack of price competition in the U.S. steel industry in the 1950s and 1960s is widely considered to have contributed to a record of price and cost increases in excess of average increases in the manufacturing sector.³³ In the past decade, such concerns have largely abated in light of the increasing importance of foreign competition in the U.S. steel industry. Nevertheless, such concerns persist where non-tariff barriers limit the role of foreign competition, as was alleged to be the case in the recent LTV-Republic Steel merger case.

The 1984 LTV-Republic Steel merger case exemplified the interface between trade and competition policy in the steel industry. The companies asserted that the merger was necessary to facilitate rationalization and adjustment to foreign competition. The U.S. Department of Justice initially objected to the merger on the ground that it would create unacceptably high levels of concentration in the production of (i) carbon and alloy steel sheet and strip; and (ii) stainless steel sheet and strip. Between them the two companies controlled 22% and 48% of total U.S. production of these products, respectively. In taking its position, the Department discounted the role of import competition in some of these products on the basis that expanded imports were precluded by existing non-tariff barriers.³⁴ However, the Department's opposition to the

merger was interpreted by some observers as making expanded import protection politically inevitable.³⁵ While the Department subsequently approved a modified version of the LTV-Republic deal, the case underscores the need for harmonization of trade and competition policy in the steel industry.

(5) The Significance of Canada-U.S. Trade in Steel

The steel industry is characterized by substantial two-way trade between Canada and the U.S. in all major product groups. Table 5 presents data on bilateral trade in major product groups during the period 1983-85, with accompanying information on the importance of Canadian exports and imports to and from the U.S. as a proportion of total Canadian exports, imports, shipments and consumption of these products. The table shows that Canadian exports of primary steel mill products, wire products and pipe and tubing to the U.S. averaged \$1.23, \$.29 and \$.38 billion per annum, respectively. Canada also imports significant quantities of each product group from the United States. The balance of trade for all product groups averaged \$.83 billion per annum in Canada's favour over the 1983-85 period.

The table also shows that Canadian exports to the U.S. account for the preponderance of total Canadian exports in all product groups, including about 85% of total exports of carbon and alloy steel mill products and about 96% of all exports of steel pipe and tubing and wire products. Canadian exports to the U.S. represent a substantial proportion of total shipments in each product group, including 17% of primary steel mill product shipments, 25% of wire product shipments, and almost 30% of shipments of pipe and tubing. The magnitude of these exports in relation to total Canadian production makes them an important

Table 5

Canada-U.S. Trade in Steel, by
Product Group, Annual Average 1983-85

Product Group	Canadian Exports to U.S. (\$billions)	Canadian Imports from U.S. (\$billions)	Canada-U.S. Balance of Trade (\$billions)	Canadian Exports to U.S.		Canadian Imports from U.S.	
				As % of Total Canadian Exports (by value)	As % of Total Canadian Shipments (by value)	As % of Total Canadian Imports (by value)	As % of Total Canadian Consumption (by value)
Primary Steel Mill Products ¹	\$1.23	\$0.48	\$0.75	85.3	17.1	47.0	5.9
Pipe and Tubing	0.29	0.16	0.13	96.2	29.5	48.6	12.5
Wire Products	0.38	0.43	(.05)	96.0	25.2	74.7	20.5
Total	1.90	1.07	0.83	88.8	19.6	55.4	9.2

1. Includes specialty steel.

Sources: Department of Regional Industrial Expansion Canada, Manufacturing Trade and Measures, and Commodity Trade by Industrial Sector with the United States, 1985.

determinant of the domestic steel industry's scale of operations and capacity utilization, hence efficiency. At the same time, Canadian imports from the U.S. account for a significant proportion of total Canadian imports and consumption in each product group. U.S. primary steel mill products, steel pipe and tubing and steel wire products accounted for about 6%, 13% and 21% respectively, of Canadian demand for these products over the 1983-85 period.

The data on primary steel mill products in Table 5 reflect both Canadian (i) carbon and alloy tool steel; and (ii) specialty steel shipments including stainless and alloy tool steel shipments. However, it is worth distinguishing specialty steel from carbon and alloy steel producers because of the different nature of the two classes of products and the tendency for producers of these products to be given separate consideration in trade proceedings. While separate data on specialty steel exports are unavailable, Atlas steels, by far the largest Canadian manufacturer of specialty steel, normally exports between 10 and 15% of its output to the U.S.³⁶ Imports of specialty steel have traditionally been an important source of Canadian supply of these products, many of which are not made in Canada. The U.S. has traditionally been a major foreign source of Canadian specialty steel supply.³⁷

Table 6 presents a further breakdown of Canada-U.S. trade in individual primary steel mill products. Canadian exports to the U.S. account for a significant proportion of total shipments of all primary steel mill products, except tie plates, concrete re-inforcing bars and track material. Table 6 illustrates that Canadian shipments of flat-rolled steel, including plate, sheet and strip products, are proportionately less dependent on the U.S. market than are shipments of bars and structural shapes.

Table 6

CANADIAN EXPORTS TO THE U.S. OF PRIMARY STEEL MILL PRODUCTS, 1985

No	Primary Steel Mill Product	Direct Exports to U.S. ¹ (000's tonnes)	Total Canadian Shipments (000's tonnes)	Direct Exports to U.S. as % of total Canadian Shipments
1.	Semi-finished Shapes	52	369	14.2
2.	Wire Rods	320	1,048	30.5
3.	Rails and Heavy Structural Shapes	67	532	12.7
4.	Intermediate Structural Shapes	116	320	36.3
5.	Bar Size Structural Shapes	42	177	23.8
6.	Concrete Re-inforcing Bars	18	564	3.2
7.	Other Hot-rolled Bars	202	1,137	17.7
8.	Cold-finished Bars	29	119	24.7
9.	Plates	92	1,476	6.2
10.	Hot-rolled Sheet and Strip	314	2,740	11.4
11.	Cold-reduced Sheet and Strip	128	1,415	9.1
12.	Tin Plate and Tin-free Steel	38	503	7.6
13.	Galvanized Sheets	189	1,212	15.6
14.	Tie Plates and Track Material	0	49	0.02
	TOTAL	1,607	11,662	13.8

¹ Direct exports include only those made by manufacturers. Since exports by wholesalers, distributors or steel service centres are not included in these figures, they do not reflect the full significance of Canadian exports to the U.S.

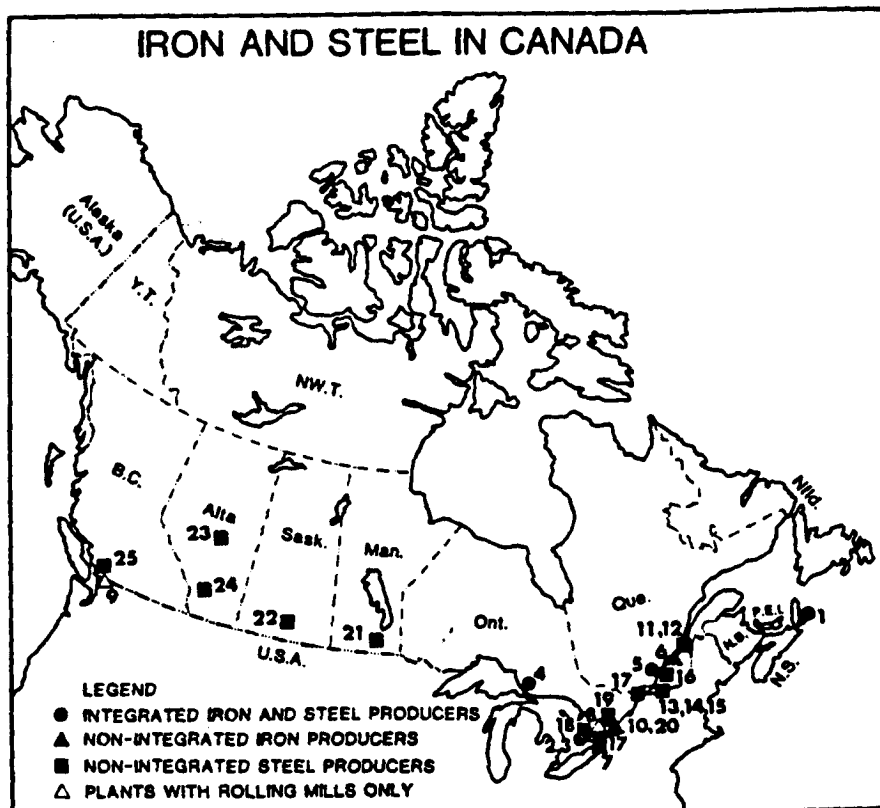
² Less than 0.05%

Source: Statistics Canada, Primary Iron and Steel, Publication No.31-402, December 1985.

The existence of extensive two-way trade between Canada and the U.S. in all major product groups is an important characteristic of the Canadian steel sector. It reflects the significance of factors such as the geographic proximity of users and producers in Canada and the U.S., and the specialization of firms to serve North American markets. The proximity of Canadian steel producers to regional markets in the U.S. is illustrated in Figure 2. The map shows that the mills of the two largest Canadian integrated producers, Dofasco and Stelco, are located on Lake Ontario, close to major U.S. markets in Michigan, New York and Ohio. The third largest Canadian producer, Algoma, is located in Sault Ste. Marie, close to users in Michigan, Wisconsin and Illinois. In addition, Canadian electric furnace mills, including Lasco, Ivaco and Atlas, are generally situated in locations with easy access to U.S. markets. This proximity to U.S. markets is a major determinant of the pattern of bilateral trade in the steel industry. For instance, Canadian exports of structural shapes to parts of New England and the Great Lakes region of the U.S. involve lower transportation costs than shipments from U.S. suppliers of these products, principally located in the South.³⁸ Consequently some U.S. users of structural shapes have developed longstanding relations with Canadian suppliers.

Access to the broader North American market permits Canadian firms to specialize their product range to a degree that would not otherwise be possible. For example, the Algoma Steel Corporation of Sault Ste-Marie manufactures steel sheet and plate in widths greater than are supplied by any other North American producers. Access to these products can be of considerable importance to U.S. secondary manufacturers. For example, the Clark Grave Co. of Ohio, a U.S. vault manufacturer, has estimated that it would lose \$6.4 million annually if it is unable to obtain its wide

Figure 2



Integrated iron and steel producers
(numbers refer to locations on map above)

1. Sydney Steel Corporation (Sydney)
2. Dofasco Inc. (Hamilton)
3. Stelco Inc. (Hamilton and Nanticoke)
4. The Algoma Steel Corporation, Limited (Sault Ste. Marie)
5. Sidbec-Dosco Incorporated (Contrecoeur)

Non-integrated iron producers

6. OIT-Fer et Titane Inc. (Sorel)
7. Canadian Furnace Division of Algoma (Port Colborne)

Plants with rolling mills only

8. Stanley Strip Steel Division of Stanley Precision, Inc. (Hamilton)
9. Pacific Continuous Steel Limited (Delta)

Non-integrated steel producers

10. Courtice Steel Limited

11. Stelco Inc. (Contrecoeur)
12. Atlas Steels a Division of Rio Algom Limited (Tracy)
13. Colt Canada Inc. (Sorel)
14. Canadian Steel Foundries Division of Hawker Siddeley Canada Inc. (Montreal)
15. Canadian Steel Wheel Limited (Montreal)
16. Sidbec-Dosco Incorporated (Montreal and Longueuil)
17. Ivaco Rolling Mills Division of Ivaco Inc. (L'Orignal)
18. Atlas Steels a Division of Rio Algom Limited (Welland)
19. Burlington Steel Division of Slater Steel Industries Limited (Hamilton)
20. Lake Ontario Steel Company Limited (Whitby)
21. Manitoba Rolling Mills (Canada) Limited (Selkirk)
22. Interprovincial Steel and Pipe Corporation Ltd. (Regina)
23. Stelco Inc. (Edmonton)
24. Western Canada Steel Limited (Calgary)
25. Western Canada Steel Limited (Vancouver)

steel sheets from Algoma.³⁹ Another example of firm specialization to fill particular niches in a joint Canada-U.S. market is that of T nails, a steel wire product. There are only two U.S. manufacturers of this product, and together they are capable of supplying less than 50% of total U.S. demand. The remainder of U.S. demand for this product, representing sales of \$6 million annually, is largely supplied by a single Canadian producer.⁴⁰

An important additional example of the mutual benefits of Canada-U.S. trade in the steel industry is the high level of bilateral trade in semi-finished steel. More than 23%, by weight, of Canadian steel exports to the U.S. in 1985 were comprised of semi-finished products such as slabs, blooms, billets, ingots and wire rods. The major purchasers of these products are U.S. steel producers, which import Canadian primary steel for further processing in their own rolling mills.⁴¹ As noted in section 4, specialization in further processing of semi-finished steel is likely to be an important aspect of adjustment in the U.S. steel industry. In this respect, Canadian steel production is complementary to U.S. production and can facilitate beneficial adjustments in the U.S. steel industry.

The pattern of specialization in the Canadian steel industry has resulted in Canadian users relying on imports as their primary source of supply for many steel products. The U.S. is a major source of such imports. This situation is illustrated by the pattern of bilateral trade in specialty steel (stainless and alloy tool steel products). Canadian producers of these products have concentrated their production in high volume grades, leaving users of relatively low volume products entirely dependent on imports (largely from the U.S.). This specialization represents an efficient Canadian response to the relatively

small domestic market which is incapable of supporting a full range of specialty steel production. The benefits provided by such specialization can be severely reduced by non-tariff barriers to trade. The impact of non-tariff barriers in this context is considered in the specialty steel safeguards case study in Chapter IV.

The complementary nature of much Canadian and U.S. steel production and trade is further illustrated by the manner in which steel is shipped between the two countries. Canadian and U.S. bilateral trade in steel usually occurs in small quantities destined for specific users. In contrast, offshore steel imports to North America often arrive in bulk on speculation, for distribution by regional steel service centres. As a result, U.S. imports from Canada are less likely than offshore imports to create excess supply and depress prices in regional markets. This point has been acknowledged by U.S. steel producers in proceedings before the U.S. International Trade Commission.⁴²

U.S. steel producers generally rely less on the Canadian market than Canadian producers rely on the U.S. demand. Nevertheless, Canada has been an important market for U.S. steel exports. As shown in Table 7, 35%, by value, of all U.S. steel exports in 1985 were shipped to Canada, making this country the largest single foreign market for U.S. steel. These exports contained relatively high proportions of alloy tool and specialty steels. Imports of these products from the U.S. are especially important to Canadian users since many such products are not manufactured domestically.

U.S. imports from Canada during 1985 represented a significant proportion of total U.S. consumption of all steel products (about 3%) and were particularly important in

the area of wire products, representing approximately 12.3% of U.S. consumption in this product group. The above-noted specialization of Canadian producers in certain products, however, means that certain U.S. users are more reliant on imports from Canada than is indicated by the aggregate figures given in Table 7. Furthermore, the effective U.S. market for many Canadian steel products is not likely to include regions of the U.S. that are distant from the Canadian border. Consequently, the ratio of U.S. imports of Canadian steel products to consumption for regions within the natural geographic markets of Canadian producers is higher than the aggregate figures suggest.

In sum, the extent and nature of Canada-U.S. trade in steel indicates that it has provided important benefits to producers and users in both countries. In Canada, this trade has given producers the ability to specialize and maintain the high capacity utilization levels that are necessary for the long run efficiency of the industry. Canada-U.S. trade has also provided Canadian users with an important source of supply for certain products that are not manufactured extensively in Canada. Canada-U.S. trade also provides U.S. users with an important, competitive source of supply for many steel products. Finally, U.S. steel producers have also benefitted from Canada-U.S. trade, which provides them with (i) their largest foreign market; and (ii) and a source of semi-finished steel for further processing. The nature of Canada-U.S. trade, as opposed to offshore trade in steel, tends to be more supportive of efficient production and less disruptive of the efficient operation of regional markets.

(6) Canada-U.S. Trade in Steel Industry Inputs

An important additional aspect of Canada-U.S. interdependence in the steel industry is bilateral trade in

TABLE 7

Canada-U.S. Trade in Steel Products in Relation to
Total U.S. Exports, Imports, Shipments and Consumption, 1985

Product Group	U.S. Exports to Canada		U.S. Imports from Canada	
	As % of Total U.S. Exports	As % of Total U.S. Shipments	As % of Total U.S. Imports	As % of Total U.S. Consumption
Primary Carbon and Alloy Steel Mill Products	35.2	0.4	11.6	2.5
Specialty Steel Products (Stain- less and Alloy Tool Steel)	30.0	1.3	3.5	0.7
Pipe and Tubing	32.5	1.6	8.0	5.1
Wire Products	43.9	1.0	25.2	12.3
Total	33.7	0.4	11.8	3.0

Source: American Iron and Steel Institute, Annual Statistical Report, 1985

the industry's inputs. The principal resource and material inputs into steel production are iron ore, coal and steel scrap. As summarized in Table 8, all three are subject to extensive bilateral trade.

Table 8 indicates that Canada has traditionally maintained a favourable balance of trade in iron ore with the U.S. Canadian exports of iron ore to the U.S., valued at \$451 million in 1985, represented about 30% of Canadian iron ore output for the year.⁴³ At the same time, Canada imports a significant quantity of iron ore from the U.S., valued at \$327 million in 1985. This represents about one third of the iron ore used by Canadian steel mills. In several cases Canadian and U.S. steel producers actually own substantial interests in iron ore facilities in the other country.⁴⁴

Table 8 also indicates that Canada has traditionally imported substantial quantities of U.S. coal, with total imports valued in excess of \$887 million in 1985. In fact, U.S. imports have traditionally represented more than 95% of the coking coal used by Stelco, Dofasco and Algoma, the three largest integrated Canadian steel mills.⁴⁵ As in the case of iron ore, Canadian steel companies have substantial interests in U.S. coal facilities.⁴⁶ Canadian exports of coal to the U.S., valued at \$18 million in 1985, are comparatively small.

The overwhelming net balance of bilateral trade in coal in favour of the U.S. is maintained despite the fact that Canada is a major world coal producer, with an overall net surplus in coal trade of \$1.1 billion in 1985.⁴⁷ The large Canadian imports of U.S. coal reflect the geographic distribution of both countries' coal deposits. Canada's major coal deposits are located in British Columbia and Alberta, at a greater distance from integrated Ontario steel

Table 8

Canada-U.S. Trade in Major Steel Industry Inputs, 1980-1985

(\$millions)

	1985	1984	1983	1982	1981	1980
	<u>A. Iron Ore</u>					
Canadian Exports to U.S.	451	591	424	432	864	666
Canadian Imports from U.S.	<u>327</u>	<u>288</u>	<u>232</u>	<u>192</u>	<u>287</u>	<u>263</u>
Balance of Trade	124	303	192	240	577	403
	<u>B. Coal</u>					
Canadian Exports to U.S.	18	8	10	4	7	1
Canadian Imports from U.S.	<u>887</u>	<u>1,094</u>	<u>841</u>	<u>932</u>	<u>835</u>	<u>811</u>
Balance of Trade	(869)	(1,086)	(831)	(928)	(828)	(810)
	<u>C. Steel Scrap</u>					
Canadian Exports to U.S.	54	53	51	32	49	48
Canadian Imports from U.S.	<u>54</u>	<u>73</u>	<u>38</u>	<u>24</u>	<u>56</u>	<u>58</u>
Balance of Trade	0	(20)	13	8	(7)	(10)

Sources: Statistics Canada, Exports: Merchandise Trade, and Imports: Merchandise Trade, Catalogue Nos. 65-202 and 65-203, 1980 to 1985.

producers than mines in Pennsylvania, Kentucky and West Virginia. Accordingly, it is efficient for Canadian steel producers to import their coking coal from the U.S., while Canadian coal is exported to Japan and other Pacific Rim countries.

Table 8 further indicates that there is a substantial two-way flow of trade in steel scrap between Canada and the U.S., largely for use in electric furnace steel production. Canadian exports of steel scrap to the U.S. were valued at \$50 million in 1985, while imports were valued at \$54 million. The balance of trade in steel scrap varies across regions of Canada, reflecting natural trade patterns. Ontario, Manitoba, Saskatchewan and Alberta, have traditionally been net importers of U.S. steel scrap. Steel scrap imports to Saskatchewan were 0.13 million tons in 1981. In the same year, IPSCO, the province's only steel producer, had a total steel output of 0.40 million tons.⁴⁸ Ontario mills rely somewhat less on U.S. steel scrap, because of the greater availability of steel scrap within the province. British Columbia, with little primary steel production, has consistently maintained a net surplus of bilateral trade in steel scrap.

The extensive two-way trade between Canada and the U.S. in steel industry inputs, including iron ore, coal and steel scrap, re-inforces the interdependence of the Canadian and U.S. steel industries. In fact, the three major Canadian steel producers (Dofasco, Stelco and Algoma) have estimated that they spend at least \$1.25 on U.S. coal, iron ore and other steel inputs for every \$1.00 of finished steel they sell in the U.S.⁴⁹ Like the trade between the two countries in finished and semi-finished steel, the trade in steel industry inputs is based on natural transborder markets and reflects the geographic proximity between Canadian and U.S. users and suppliers.

The two-way trade in steel industry inputs bears directly on the impact of contingent non-tariff barriers to bilateral trade in steel. In particular, U.S. measures that limit steel production in Canada affect directly the derived demand for U.S.-origin steel inputs, especially coal and steel scrap. Given that Canadian integrated steel producers import 95% of their coal requirements and 33% of their iron ore requirements from the U.S., 15-18% of the value of their output represents value added in the U.S. Similarly, any Canadian actions affecting U.S. steel production will affect U.S. demand for Canadian origin steel inputs, principally iron ore.

(7) Summary and Implications

This chapter has surveyed several aspects of the structure of the Canadian steel industry that are relevant to the design of trade policy in the industry. The analysis indicates that ongoing changes in the world environment of the industry have created a need for structural adjustment in Canada and even more so in the U.S. In both countries low-priced imports from the newly industrialized countries account for a growing proportion of total steel imports. However, the relatively stable level of overall imports in Canada as well as the comparative data on steel production costs in various countries suggest that Canadian producers will continue to supply important segments of the domestic and U.S. markets.

Continued technological innovation and adaptation is essential to efficiency and international competitiveness in the Canadian steel industry. Foreign competition provides an important stimulus to such adaptation. Indeed, foreign trade is essential to the maintenance of competition in an otherwise highly concentrated domestic steel industry. Non-tariff barriers that limit the role of

foreign competition can leave domestic users dependent on a small number of domestic suppliers.

Canada-U.S. trade in the steel industry manifests a number of special characteristics that differentiate it from overseas steel trade. First, there is substantial two-way trade in most primary and first tier steel products. This reflects specialization among Canadian and U.S. firms to serve natural transborder markets. For Canadian firms, such specialization and access to transborder markets is important to the attainment of economies of scale and high levels of capacity utilization. Canada-U.S. trade can facilitate structural adjustments that are required in order for the Canadian and U.S. steel industries to maintain or increase their international competitiveness.

An important additional aspect of Canada-U.S. interdependence in the steel industry is the high level of bilateral trade in semi-finished steel. More than 20%, by volume, of Canadian steel exports to the U.S. are comprised of such products, which are imported by U.S. steel producers for further processing in their own mills. Extensive interdependence between the Canadian and U.S. steel industries is also demonstrated by substantial bilateral trade in steel industry inputs, including coal, iron ore and steel scrap.

This extensive interdependence between Canada and the U.S. in the steel sector carries important implications for the design of international trade policy in the industry. It implies that non-tariff barriers to Canada-U.S. trade will impact adversely on steel producers, input suppliers and users in both countries. Thus, there is a strong case for bilateral trade liberalization in the steel industry. To the extent that the steel industry

exemplifies issues encountered in other Canadian industries, these findings strongly support the current bilateral free trade initiatives.

NOTES TO CHAPTER II

1. Organization for Economic Cooperation and Development (OECD), Costs and Benefits of Protection (1985), p.86.
2. OECD, id., p.86. More recently, Japanese steel producers have undertaken to substantially reduce their steel capacity in light of increased competition from low wage countries. See "Consensus Key to Japanese Steel Cutbacks," Globe and Mail, March 5, 1987, p.B9.
3. OECD, id., p.86
4. "The Worldwide Steel Industry: Reshaping to Survive," Business Week, August 20, 1984, pp. 150-154.
5. See Subpart B of Part 2 of Schedule 6 of the Tariff Schedules of the United States Annotated and Group VIII of Schedule A of the Canadian Customs Tariff, especially tariff items 37301-I to 40117-I.
6. See the General Preferential Tariff Order, amendment, P.C. 1987-275, printed in the Canada Gazette, Part II, Vol. 121, No. 5, March 4, 1987, pp. 647-8.
7. American Iron and Steel Institute, Annual Statistical Report, 1975, 1980 and 1985.
8. Calculated from Department of Regional Industrial Expansion, Manufacturing Trade and Measures, 1984 and Commodity Trade by Industrial Sector with the U.S., 1984. A comparable figure for 1985 using the same industry classifications is not available.
9. "Dofasco: Canada's low-cost steelmaker - an alternative to U.S. steel stocks," Paine-Webber Inc. (New York: March 7, 1986).
10. Estimate is based on average Canadian wages of about 75% of U.S. wages and similar man-hours per ton in the two countries.
11. Japanese, U.S. and West German wage rates are from World Steel Dynamics, Core Report V (New York: Paine Webber, October 1985), Chapter V-7. Canadian wages are estimated as about 75% of U.S. wages.
12. Donald F. Barnett and Louis Schorsch, Steel: Upheaval in a Basic Industry (Cambridge, Mass.: Ballinger, 1983), pp. 143-148.
13. The International Labor Organization estimates that annual steel output in the developing world increased

from 32.5 to about 70 million tons between 1975 and 1984. The Organization further estimates that an additional 20 million tons of annual capacity will be commissioned in the developing countries by 1990. See "Trials of steel sector won't soon be over," Globe and Mail, January 22, 1987, p. B10.

14. Barnett and Schorsch, supra note 12, p.221.
15. See Barnett and Schorsch, supra note 12, p.158, and William T. Hogan, World Steel in the 1980's: A Case of Survival (Lexington, Mass.: D.C. Health and Company, 1983), pp.137-141. The Canadian advantage in this regard has no doubt diminished over the past five years as much of the older less efficient U.S. capacity has been retired during this period.
16. Barnett and Schorsch, supra note 12, pp.218-20. This disadvantage, however, has been largely offset by favourable tax incentives for investment.
17. Barnett and Schorsch, supra note 12, p.191.
18. "The World Steel Industry: Reshaping to Survive," supra note 4. Apart from continuous casting, a number of other technological developments are expected to result in greater efficiency in the North American steel industry. In this regard, see U.S., Office of Technology Assessment, Technology and Steel Industry Competitiveness (Washington, D.C.: June 1980).
19. American Iron and Steel Institute, Annual Statistical Report, 1985, Table 44.
20. "The World Steel Industry Reshaping to Survive," supra note 4.
21. One problem is limitations on steel scrap as an input. Steel made from scrap, as compared to steel made from iron ore, can have greater quality control problems. Also, the cost advantages inherent in the mini-mill structure become dissipated as they increase to the size which is required to operate on efficient high volume sheet and strip mill. The efficient size of such mills is in the range of 3 to 4 million tons per year.
22. Average profits for Dofasco, Stelco and Algoma, the three largest Canadian producers, averaged about \$152, \$43 and \$(59) million per year, respectively, over the 1983 to 1986 period. See "1987 offers beleaguered steel makers little cause for hope," and "Stellar showing by Dofasco continues to outshine rivals," Globe and Mail, February 18, 1987, p. B4 and February 28, 1985, p. B1 respectively.

23. "Steel: Hold the Obits," Forbes, March 10, 1986, pp.78-86.
24. Id.
25. U.S. steel capacity for 1987 is expected to be about 111.9 million tons as compared to 127.9 million tons during 1986. U.S. output during 1986 was 80.5 million tons. See "U.S. Capability to Make Steel Down for 1987," Globe and Mail, February 26, 1987, p.B12.
26. Canadian steel capability during 1986 was 17.4 million tons as compared to 18.3 million tons for 1985 according to the Mineral Policy Division of the Canadian Department of Energy, Mines and Resources.
27. "Competition speeds the process of industrial adjustment..." Barnett and Schorsch, supra note 12, pp.286-287. See also Robert Crandall, The U.S. Steel Industry in Recurrent Crisis (Washington, D.C.: Brookings, 1981).
28. As noted, the heavier concentration of Stelco and Algoma in products other than sheet and strip is reflected in these companies' problems in adjusting to the current world steel trade situation. As compared to Dofasco, Stelco and Algoma have had much greater difficulty returning to profitability since the recession of 1982. In this regard, see "Stellar Showing by Dofasco Continues to Outshine Rivals," Globe and Mail, February 28, 1985, and "1987 offers beleaguered steel makers little cause for hope," Globe and Mail, February 18, 1987.
29. U.S. v. LTV Corp., (1984), 1984-2 CCH Trade Cases para. 66,133, at p. 66,336.
30. See, e.g., Prices and Incomes Commission, Steel and Inflation (Ottawa: 1970).
31. See the Annual Report of the Director of Investigation and Research for the years 1984, pp. 43-4; 1973, pp. 61-3; 1971, pp. 44-5; 1964, pp. 33-4; and 1960, p. 15.
32. U.S., Senate, Committee on the Judiciary, Subcommittee on Antitrust and Monopoly (Estes Kefauver, Chairman), Study of Administered Prices in the Steel Industry (Report No. 1387, 85th Cong., 2nd session, March 13, 1958).
33. Barnett and Schorsch, supra note 12, pp.30-32; for background see, e.g., Walter Adams and Joel Dirlam,

"Steel Imports and Vertical Oligopoly Power," American Economic Review, Vol.54, June 1964, pp.626-655.

34. U.S. v. LTV Corp., (1984), 1984-2 CCH Trade Cases para. 66,133, at p. 66,336. See also Ann Reilly, "Antitrust Policy after the Steel Veto," Fortune, vol. 109, no. 6, March 19, 1984, pp. 85-98.
35. See "For Steelmakers, No mergers May Mean More Bankruptcies," Business Week, March 5, 1984, pp.76-77.
36. See Rio Algom Limited, Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for 1983.
37. The importance of the U.S. as a Canadian supplier of flat-rolled stainless steel is examined in detail in Section 1 of Chapter IV of this study. See also the Canadian specialty steel imports figures in Statistics Canada, Imports: Merchandise Trade, Publication No. 65-203, under commodity codes 444 and 445 for different years.
38. Canadian Steel Industry Committee, Before the United States International Trade Commission: Carbon and Certain Alloy Steel Products, Inv. No. Ta.201-51, (Washington, D.C.: Prepared by Dow, Lohnes and Albertson, June 15, 1984), p.47.
39. "Steel Firms Seek U.S. Customer Support to Fight Curbs," Globe and Mail, July 24, 1984.
40. Canadian Steel Industry Committee, supra note 38, p.43.
41. Such inter-firm cooperation is likely to be an important aspect of adjustment in the North American steel industry. "Steel: Hold the Obits," supra note 23.
42. See the Canadian Steel Industry Committee, supra note 38, p.27.
43. Figures based on total Canadian iron ore output and exports as reported in Statistics Canada, Canada's Mineral Production, Publication No. 26-202 and Exports: Merchandise Trade, Publication No. 65-202 for the year 1985.
44. For example, the Iron Ore Company of Canada is jointly owned by a number of U.S. steel companies, including Bethlehem Steel, National Steel, Republic Steel, the Youngstown Sheet and Tube Co., Armco Inc. and the Wheeling Pittsburgh Steel Company. The Quebec Cartier Mining Co. is nearly 100% owned by the U.S. Steel

Corporation. See Statistics Canada, Publication No. 61-517 Inter-Corporate Ownership, 1984.

45. Canadian Steel Industry Committee, Steel Quotas Should Not Apply to Canada (Washington, D.C.: prepared by Dow, Lohnes and Albertson, June 1, 1984).
46. For example, Stelco owns a number of mines in West Virginia, Kentucky, Michigan and Pennsylvania as well as Ontario and Quebec. Dofasco holds an interest in the Itmann mine in West Virginia. Algoma owns the Cannelton mine in West Virginia and has interests in other U.S. coal companies. Financial Post Corporation Service, various issues.
47. The Canadian coal trade balance is based on total Canadian coal imports and exports as reported in Statistics Canada, Imports: Merchandise Trade, Publication No. 65-203 and Exports: Merchandise Trade, Publication No. 65-202, for the year 1985.
48. Interprovincial Pipe and Steel Co., Annual Report, 1981.
49. Canadian Steel Industry Committee, supra note 45.

III. The Legal and Institutional Framework for the Application of Non-tariff Barriers

The application of non-tariff trade barriers by Canada and the U.S. is based on the two countries' trade legislation and the provisions of the General Agreement on Tariffs and Trade (GATT). While the GATT provides the general legal framework for the regulation of international trade, several of its provisions are open to interpretation and specification by member states. The U.S. and Canada have exercised substantial discretion in the formulation of their national trade laws, which determine the application of specific non-tariff barriers between the two countries. An understanding of this legal and institutional framework is essential to the analysis of the implementation of specific non-tariff barriers in Chapter IV.

This chapter examines the GATT provisions and Canadian and U.S. legislation respecting the application of non-tariff barriers. The types of non-tariff barriers covered include safeguard measures and voluntary export restraints, antidumping and countervailing duties (contingency trade barriers) as well as preferential government procurement policies. For each type of barrier, the Chapter examines the rationale for such measures, the relevant GATT provisions and the corresponding provisions of Canadian and U.S. trade legislation. The discussion highlights the significance of recent legislative developments, particularly the U.S. Trade and Tariff Act of 1984 and the Canadian Special Import Measures Act. Finally, the Chapter discusses the potential implications of certain recently proposed Bills that are currently before the U.S. Congress for that country's use of the non-tariff barriers.¹

It should be noted that the scope for public interest intervention in contingency trade proceedings is not developed in detail in this chapter. In Canada, sections 42, 45, 48 and 76 of the Special Import Measures Act provide important opportunities for such intervention. Similar opportunities are available in the U.S. Effective use of these opportunities by Canadian and U.S. competition policy agencies can help to mitigate the impact of non-tariff barriers on beneficial Canada-U.S. trade. The scope for intervention under these provisions is examined in the concluding chapter of this study.

(1) Safeguard Measures

(a) Purpose and Relevant GATT Provisions

Safeguard measures are temporary quotas and duties intended to facilitate adjustment to import competition by domestic producers. Such measures are governed under Article XIX of the GATT. This provision allows contracting parties to suspend certain trade concessions made in respect of the GATT if such concessions have resulted in a product

being imported into the territory of that contracting party in such increased quantities, and under such conditions as to cause or threaten serious injury to domestic producers ... of like or directly competitive products.²

In effect, Article XIX authorizes the imposition of special import quotas or duties despite previous commitments and concessions made in GATT negotiations. It is important to note that the imports triggering such measures need not be found to be "unfairly" traded. In this regard, safeguard measures are different from other forms of contingency protection that are aimed at specific trade

practices that are viewed as unfair under the relevant trade legislation (e.g., dumping and export subsidies). The essential characteristics of the various forms of contingent protection are summarized in Figure 1, appearing at the end of this chapter.

An important feature of the GATT framework for safeguard measures is the requirement to show serious injury before imposing restrictions. Article XIX of GATT requires that the goods in question be imported "in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers ... of like or directly competitive products." The requirement to show serious injury is a higher threshold for the application of restrictions than the test of "material injury" used in antidumping and countervailing duty cases. The higher threshold is used in implementing safeguard measures because such measures can be applied to "fair" as well as "unfair" trade.

Since safeguard measures are taken in response to general injury to a domestic industry, the GATT requires that they be applied on a non-discriminatory basis. That is, safeguard measures must be applied to all countries equally, and not merely to the specific producers causing injury.³ This feature of safeguard measures is also in contrast to other contingency trade measures, which are directed at exports originating in specific countries.

Special procedures must be followed in the implementation of safeguard actions. The country contemplating a safeguard action is required to prenotify other contracting parties and undertake negotiations on potential offsetting concessions. That is, the initiator of the safeguard measure can offer offsetting trade concessions to an exporting country in return for the right to use

safeguard restrictions. If these talks do not result in an agreement, the importing country can nevertheless unilaterally withdraw the trade concessions. However, the exporting country can retaliate by suspending "substantially equivalent concessions or other obligations" made to the importing country under the GATT.⁴ This right of retaliation reflects the fact that safeguard measures under GATT are provided because such measures may be imposed against fair as well as unfair trade.

As noted, Article XIX was intended to provide only temporary protection to domestic producers, to facilitate their adjustment to import competition. In practice, however, industries often seek safeguard measures to forestall the need for adjustment rather than facilitate it.⁵

The non-discriminatory nature of Article XIX and the requirement to offer offsetting concessions have prompted many countries to adopt more flexible safeguard devices, such as "voluntary" export restraints and orderly marketing arrangements, that are outside the scope of GATT. In contrast to formal safeguard measures, voluntary export restraints are negotiated on a country by country basis and do not require a determination of serious injury.⁶ Since such measures are implemented outside of GATT, the requirement to provide offsetting concessions does not apply. As discussed in the next Chapter, voluntary export restraints and orderly marketing arrangements employed by the U.S. have played an important role in the steel industry.

b) Canadian Safeguard Legislation

In Canada, the initiation of safeguard proceedings is at the discretion of the Governor in Council. Section 48 of the Special Import Measures Act authorizes the Governor

in Council to direct the Canadian Import Tribunal to undertake broad-ranging investigations into the effects of importation of goods on a domestic industry. In particular, the Tribunal may be directed to inquire into:

any matters or thing in relation to the importation of goods ... that may cause or threaten injury to, or that may retard the establishment of the production of any goods in Canada...⁷

The Governor in Council's discretion in initiating safeguard proceedings is important as it permits greater selectivity in responding to requests for safeguard protection.

Authority for implementation of safeguard duties and quotas is contained in related provisions of the Export and Import Permits Act and the Customs Tariff Act. Such measures may be implemented where the Tribunal finds, in the course of an inquiry under section 48 of the SIMA, that:

... goods of any kind are being imported or are likely to be imported into Canada at such prices, in such quantities and under such conditions as to cause or threaten serious injury to the production in Canada of like or directly competitive goods.⁸

The element of serious injury is consistent with the above-noted GATT requirements in safeguard cases.

The implementation of duties and quotas does not follow automatically from a finding of serious injury by the Canadian Import Tribunal. Rather, the final decision to impose such restrictions is taken by the Governor in Council. This permits intergovernmental discussions on offsetting concessions, as required by the GATT. As an alternative to imposing special duties or quotas, the

Governor in Council may consider providing adjustment assistance or other support to the injured party. Negotiation of voluntary export restraints as an alternative to formal safeguards may also be considered at this stage.

(c) U.S. Safeguard Legislation

In the U.S., provision for implementation of safeguard measures is contained in sections 201 and 202 of the Trade Act of 1974. In contrast to the Canadian legislation, the U.S. Act permits U.S. producers to petition the International Trade Commission (ITC) directly for application of safeguard measures. Furthermore, the Commission is required to commence an investigation whenever it receives a petition for relief satisfying the criteria for such measures.⁹

In undertaking a safeguard investigation, the Commission is responsible for determining whether an article is:

being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.¹⁰

The test of serious injury in section 201 is as required by the GATT, Article XIX. The separate requirement to prove that imports are a "substantial cause" of serious injury is an important additional feature of U.S. safeguard law. This element requires that imports be as important as any other cause of decline in an industry (e.g., decreasing demand or poor productivity) in order for relief to be granted.¹¹

Where the Commission finds that imports have been a substantial cause of serious injury, it is required to provide recommendations to the President as to how this injury can be remedied.¹² However, the President is not bound by the International Trade Commission's recommendations. Rather, as with the safeguard authority of the Governor in Council in Canada, the President's authority in this area is permissive rather than mandatory. The President has the authority to implement alternative protective measures in replacement for those recommended by the Commission or decide against the provision of any form of protection where he views either action to be in the "national economic interest".¹³

As an alternative to formal safeguard measures, the President can seek to negotiate voluntary export restraints (VERs) from selected countries rather than formal duties or quotas. VERs originated as an extra-legislative means of providing import protection. The U.S. Trade and Tariff Act of 1984 provides, however, specific authority for negotiation and enforcement of such restraints to protect the U.S. steel industry.¹⁴ As noted above, since VERs are outside the GATT, they may be employed on a discriminatory basis. In theory, this offers a means of avoiding the unintended impact which safeguard restrictions aimed primarily at third countries can have on Canada-U.S. bilateral trade. In practice, however, once voluntary export restraints are adopted to protect a particular industry, it is difficult to avoid broadening their application to all countries producing the goods in question. This point is developed in the case study of U.S. restraints in the carbon steel industry in Chapter IV.

Finally, it should be noted that despite the President's apparent discretion in safeguard proceedings, the Congress has retained some residual control over these

measures. The Trade Act of 1974 provides that the Congress may over-rule a Presidential decision not to implement recommendations for safeguard action made by the International Trade Commission, thereby compelling implementation of the recommendations.¹⁵ This provision is important since individual members of Congress tend to be more responsive to regional interest groups than the President, who is elected by the country as a whole. The role of Congressional pressure in 'forcing the President's hand' is also examined specifically in the case study of carbon and alloy steel safeguard restrictions.

A number of trade Bills that are currently under consideration by the U.S. Congress contain proposals that could substantially alter the U.S. safeguard system. Certain proposed amendments could significantly increase the potential for the application of safeguard measures in Canada-U.S. bilateral trade. For example, a proposal sponsored by the U.S. Administration would alter the treatment of depressed market conditions in injury determinations for the purpose of making them less likely to be found to be the "substantial cause of serious injury" for U.S. industries under consideration.¹⁶ A recommendation contained in a Senate trade bill would substantially reduce the President's discretion over the implementation, amendment or rejection of safeguard measures recommended by the International Trade Commission under Section 201 of the Trade Act of 1974.¹⁷ Also of concern are proposals that would require that the President implement safeguard measures on a provisional basis in cases where "critical circumstances" are found.¹⁸

It should also be noted, however, that certain proposed amendments to the U.S. trade laws could actually reduce the threat of implementation of safeguard measures affecting Canada-U.S. bilateral trade. These amendments are

designed to promote the 'targeting' of U.S. import protection to industries which are actually capable of becoming competitive,¹⁹ and otherwise reduce the likelihood of the recurrent use of safeguards in an industry.²⁰

(2) Antidumping

(a) Purpose and Relevant GATT Provisions

Dumping is the practice of exporting goods at a price that is: (i) less than the price of the same goods in the exporting country's domestic market; and/or (ii) less than the estimated cost of production of the goods. As such, it has traditionally been viewed as a form of price discrimination, sometimes associated with predatory motives, and disruptive of stable economic development. Article VI of the GATT authorizes the taking of remedial measures against dumping where the practice "causes or threatens material injury to an established industry ... or materially retards the establishment of a domestic industry." In such cases, the importing country may impose antidumping duties equivalent to the "margin of dumping" which is the difference between the export price of the goods in question and its home market price or estimated costs of production with allowances made for transportation and related costs.²¹ The test of material injury in Article VI is generally interpreted as a lower threshold than the serious injury test used in safeguard cases.²²

The treatment of dumping under Article VI is clarified in the Antidumping Code of 1979, amended by the GATT contracting parties during the Tokyo Round Multilateral Trade Negotiations.²³ The Code is generally considered to have lowered the threshold for application of antidumping duties, by eliminating a previous requirement to show that dumping is "demonstrably the principal cause" of injury to

a domestic industry. In this respect, one commentator has suggested that the Code represents a "major step backwards" towards the protectionism that the multilateral trade negotiations were intended to prevent.²⁴

The Antidumping Code sets forth certain procedures to be followed in antidumping cases. One important feature is the provision for termination of proceedings in response to voluntary undertakings from the exporter. In particular, Article 7 of the Code provides that:

Proceedings may be suspended or terminated without the imposition of provisional measures or antidumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices.²⁵

The treatment of dumping under the GATT is questionable for a number of reasons. The evidence indicates that dumping is rarely, if ever, predatory in the sense of providing foreign suppliers with market power which they can exploit to the detriment of consumers.²⁶ In fact, dumping often represents a normal competitive response to a prevailing set of market conditions rather than being an unfair form of competition. For example, lower export as opposed to domestic prices may simply reflect competitive responses to changes in demand in the domestic or foreign market or restraints on competition in the domestic market such as domestic cartels or state monopolies.²⁷ A further reason for questioning the treatment of dumping provided for under the GATT is that dumping, by creating low price competition, can confer significant benefits on consumers or downstream producers in the importing country. Such benefits can more than offset the costs to the domestic industry injured by the dumped goods under consideration.²⁸

(b) Canadian Antidumping Legislation

In Canada, antidumping provisions were first enacted in response to concerns about alleged predatory pricing by international industrial trusts. In introducing the first antidumping legislation in 1904, the Minister of Finance, the Honourable W.S. Fielding, stated:

... the trust or combine ... sets out to obtain command of a neighbouring market, and for the purpose of obtaining control ... will put aside all reasonable considerations with regard to the cost or fair price of the good.²⁹

The Canadian legislation did not require proof of predatory intent before antidumping duties could be levied.

The current procedures followed in Canadian antidumping investigations are set down in the 1984 Special Import Measures Act. Under the Act, the Deputy Minister of the Department of National Revenue (Customs and Excise) is required to initiate an investigation in any case where he receives a valid complaint providing a reasonable indication that dumping has occurred and that such dumping has caused material injury to Canadian production of the goods under consideration.³⁰ The Deputy Minister also makes the preliminary determination as to whether dumping has occurred and the margin of such dumping within 90 days of the initiation of an inquiry. If the Deputy Minister determines that dumping has occurred, the case is referred to the Canadian Import Tribunal, which is required within a further 120 day period, to determine whether the dumping is causing or threatening material injury. Over the 90 day period starting at the same time, the Deputy Minister is required to make a final determination of the margin of dumping. During this period, provisional duties can be applied to the

allegedly dumped imports. If the Tribunal determines that material injury has occurred, final antidumping duties may be assessed on imports of the good in question in an amount equivalent to the margin of dumping determined by the Deputy Minister.³¹

The Special Import Measures Act has strengthened the Canadian antidumping system in important ways. In particular, it clarifies that antidumping duties are applicable to tenders for government and private contracts, by stipulating that material injury can in some cases be found to occur before goods are exchanged. In addition, it has incorporated into Canadian law the new test of material injury and regional industry provisions contained in the 1979 GATT Antidumping Code.³²

The Special Import Measures Act also adopts the GATT provisions respecting foreign undertakings in antidumping cases. Under these provisions, an inquiry into alleged dumping may be terminated at any time prior to a preliminary determination of dumping upon receipt of a satisfactory voluntary undertaking from the exporter to eliminate either the dumping under consideration or the injury caused by such dumping.³³

Finally, it should be noted that the Special Import Measures Act contains a new provision, section 45, which enables the Tribunal to take account of broader public interest considerations in determining whether to recommend implementation of contingency trade restrictions. This provision enables public interest advocates including the Director of Investigation and Research, under the Competition Act to appear before the Tribunal to make representations as to why the interests they represent should prevail over those of the industry seeking protection. Section 45 provides a potentially important

opportunity for competition policy authorities to intervene in trade proceedings for the purpose of mitigating the costs associated with non-tariff barriers. The scope and use of this provision are examined in detail in Chapter V.

(c) U.S. Antidumping Legislation

As in Canada, the first U.S. antidumping provisions were enacted in response to concerns about international predatory pricing. Indeed, the Antidumping Act of 1916 included an explicit requirement for proof of predatory intent before antidumping duties could be applied.³⁴ However, no such requirement was incorporated in the Antidumping Act of 1921, which formed the basis for U.S. antidumping policy until the passage of the Trade Agreements Act of 1979.

The Trade Agreements Act of 1979 established a procedure for the conduct of antidumping investigations that is similar to Canada's. In particular, the U.S. Department of Commerce is responsible for making the preliminary and final determinations of the margin of dumping. The U.S. International Trade Commission, an independent, quasi-judicial agency of the Congress, is responsible for making preliminary and final determinations of whether dumping has resulted in material injury. The Trade Agreements Act of 1979 also incorporated the provisions of the GATT Antidumping Code respecting material injury to regional industries.³⁵

The U.S. antidumping system is more rigid than Canada's in certain respects. Most importantly, there is no provision in U.S. law similar to section 45 of the Canadian Special Import Measures Act. As noted, this provision enables the Canadian Import Tribunal to recommend that the degree of protection that would otherwise be available should be limited in view of the broader public interest.

The U.S. Trade and Tariff Act of 1984 has strengthened the U.S. antidumping (and countervail) system in several ways. In particular, U.S. companies may now petition for relief through trade associations and ad hoc coalitions, thereby pooling their administrative and legal costs. The Act also provides, under certain circumstances, for continuous monitoring by the Department of Commerce of imports of goods which in the past have been found to be dumped. If such monitoring raises suspicions of renewed dumping, the Department must initiate an inquiry, saving the industry the costs of and delays associated with petitioning for relief. Furthermore, a special Trade Remedy Assistance Office has been created to assist U.S. producers in initiating a complaint. In considering these and other provisions of the Trade and Tariff Act of 1984, Patterson concludes that the legislation will both facilitate U.S. producers' access to the system and increase their chances of obtaining relief.³⁶

In addition to these enacted amendments to the U.S. antidumping legislation, a number of proposals contained in trade bills that are currently before the U.S. Congress portend a further substantial strengthening of the U.S. antidumping laws. These proposals include provisions to:

- (i) facilitate more frequent use of provisional duties prior to preliminary determinations of injury when there is a substantial increase in the level of imports of the allegedly dumped products;

- (ii) prevent exporters subject to dumping determinations from circumventing the payment of duties by

such means as dumping imports rather than finished products;

(iii) expand the list of factors which the International Trade Commission is required to consider in determining whether dumped imports have materially injured U.S. production; and

(iv) expand the definition of industry in regard to agricultural commodities thereby increasing the likelihood of injury determinations.³⁷

If implemented, these measures are likely to further substantially increase the incidence of antidumping duties in Canada-U.S. bilateral trade.

Finally, it should be noted that the treatment of dumping under Canadian and U.S. contingent trade legislation is much more restrictive than the treatment of price discrimination under the two countries' domestic competition laws. Unlike the former, price discrimination is prohibited under the latter only where it is harmful to competition as a process. Most acts of dumping that are dealt with under Canadian and U.S. contingent trade laws would be permitted under legislative provisions governing price discrimination or predatory pricing in the domestic economy.³⁸

(3) Subsidies and Countervailing Duties

(a) Purpose and Relevant GATT Provisions

Subsidies are an important and widely accepted feature of many countries' social and industrial policies. At the same time, it is generally recognized that subsidies

can distort international trade. In particular, subsidies can provide subsidized exporters with an undue advantage in non-subsidizing countries' domestic markets and/or undermine non-subsidized exporters' ability to compete in third country markets. The GATT recognizes this potential for distortion and provides injured parties with means of counteracting the effects of subsidies, principally through the use of countervailing duties.

The GATT Code on Subsidies and Countervailing Duties, approved at the Tokyo Round Multilateral Trade Negotiations, provides a more specific treatment of subsidies and countervail than the provisions of the general agreement. The Code makes an important distinction between export subsidies and general subsidies having an incidental effect on exports. Subsidies tied directly to the export of manufactured products are explicitly prohibited.³⁹ The Code provides an illustrative list of such subsidies, including direct bonuses to firms contingent on export performance, export related exemptions or rebates of direct and indirect taxes and government provided export financing at below-market rates.⁴⁰ Agricultural, forestry, basic mineral and fish export subsidies are not prohibited outright under the GATT articles or Code. However, Article XVI of the GATT requires that such subsidies not be used in a way that results in the subsidizing country "having more than a fair share of world export trade in that product".⁴¹

General or domestic subsidies are subject to more permissive treatment than export subsidies under the Code. The Code recognizes that such subsidies may be employed as a legitimate instrument of national economic policy. It explicitly sanctions the use of subsidies for purposes of aid to disadvantaged regions, decentralization of industry, encouragement of research and development and other purposes. At the same time, it places an obligation

on signatories to avoid causing adverse effects to the interests of other countries through such subsidies.⁴² Furthermore, like export subsidies, domestic subsidies affecting export sales are countervailable under the Code.

The GATT Code on Subsidies and Countervailing Duties actually provides a "two-track" procedure for dealing with the injurious effects of subsidies on other countries. First, the Code permits the application of countervailing duties to subsidized goods where it has been shown that the subsidy in question has caused material injury to producers in the importing country. As noted, the test of material injury, also used in antidumping investigations, represents a lower threshold than the test of serious injury used in safeguard cases. The Code limits the level of countervailing duties to the amount of the subsidies expressed as a proportion of the value of output. Second, as an alternative to countervailing duties, a country may file a complaint with the GATT Committee on Subsidies and Countervail seeking modification of the subsidy in question or a right to retaliate against the offending country. The latter option can be employed in response to loss of exports in a third country market, as well as injury to a country's producers in its domestic market.⁴³

The Code also specifies certain procedures that must be followed by the contracting parties in undertaking subsidy and countervailing duty investigations under their national trade legislation. For example, contracting parties must pre-notify allegedly subsidizing countries of impending countervail investigations in order that consultations may take place for the purpose of arriving at a "mutually agreed solution."⁴⁴ The contracting parties have substantial freedom to interpret the application of the Code in such areas as procedure, negotiation with other countries, calculation of the quantum of subsidies and

countervailing duties and, most important, defining the types of subsidies that are countervailable.

(b) Canadian Countervailing Duties Legislation

The Canadian law of countervailing duties was substantially revised with the coming into force of the Special Import Measures Act in 1984. The Act incorporated the requirements of the GATT Code on Subsidies and Countervailing Duties respecting the initiation of inquiries, undertakings, pre-notification, the "material injury" test, the maximum level of countervailing duties and other procedural and definitional matters. The overall effect of these amendments has been to expand and entrench Canadian producers' access to countervail protection.⁴⁵

The Special Import Measures Act defines subsidies as including:

any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods as a result of any scheme, program, practice or thing done, provided or implemented by ... the government of a country other than Canada.⁴⁶

The Act thus sets forth a broad definition of countervailable subsidies.

The Deputy Minister of National Revenue (Customs and Excise) is required to initiate an investigation when provided with a valid petition containing a reasonable indication of subsidization and injury.⁴⁷ The Deputy

Minister is then required to reach a preliminary determination within 90 days respecting the nature of the subsidized goods and like Canadian products, the identity of subsidized producers and the amount of the subsidy. A final determination on these matters must normally be completed within a further 90 days. The Canadian Import Tribunal is responsible for determining whether the subsidized imports have caused material injury under the Act. This determination must be completed during the 120 days following the Deputy Minister's preliminary injury determination.

As noted in the discussion of antidumping in section (3) above, the Special Import Measures Act has introduced a new stage in the assessment of the need for application of certain contingency trade measures. Section 45 of the Act authorizes the Tribunal to hear representations and make recommendations that the degree of protection otherwise available should be limited in view of the broader public interest. Such recommendations may be made respecting countervail as well as antidumping duties. In the absence of such recommendations, countervailing duties will normally be applied automatically following findings that subsidized imports have caused material injury to Canadian producers.

(c) U.S. Countervailing Duties Legislation

The U.S. Trade Agreements Act of 1979 established procedures for countervailing duty investigations similar to the procedure followed in antidumping investigations. The Department of Commerce is responsible for making preliminary and final determinations respecting the amount of subsidies, while the International Trade Commission is responsible for preliminary and final determinations respecting the degree of injury to domestic industry. The Act incorporated the

material injury test for application of countervailing duties into U.S. law, as required by the Tokyo Round Code on Subsidies and Countervailing Duties. The Act also incorporated the provisions of the Code stipulating that injury to a regional industry is sufficient to justify application of countervail. As in the case of antidumping, the U.S. countervail system provides minimal scope for discretion in the application of remedies to subsidized U.S. imports. That is, given the findings of subsidization and material injury, relief against subsidized imports in the form of countervailing duties is generally available to domestic producers as of right. This is in contrast to the potentially more discretionary Canadian system which contains a separate public interest provision, section 45 of the Special Import Measures Act.

The Trade and Tariff Act of 1984 strengthened the U.S. countervailing duty system in several important respects. One key change was the extension of the system to cover certain "upstream subsidies" -- i.e., subsidies of inputs used in the production of an exported good. Such application of national countervail law is not specifically provided for in the GATT Subsidies and Countervailing Duties Code.⁴⁸ In addition, as noted in the discussion of U.S. antidumping law, several provisions of the Act have improved U.S. producers' access to contingent trade remedies and thereby increased the likelihood of such restrictions being imposed. These include the provision permitting U.S. companies to petition for relief through trade associations and ad hoc coalitions, thereby pooling their legal costs.

The proposed Bills to revise U.S. contingency trade remedies law which are currently under Congressional consideration contain specific proposals to strengthen the U.S. countervail system. A basic thrust of the proposed Bills is to broaden the definition of countervailable

subsidies to encompass certain foreign government policies which until now have not been clearly covered by U.S. countervail law. This would effectively extend the application of the U.S. countervail system to cover a broad range of resource management and pricing practices of Canadian and other countries' governments unless they conform more closely to U.S. practices in this area.⁴⁹ In this respect they would confirm and extend the trend apparent in the recent Canadian Softwood Lumber Products case, in which the U.S. Department of Commerce held certain Canadian provincial government timber stumpage fee systems to be countervailable.⁵⁰

(4) Government Procurement as a Non-Tariff Barrier

(a) Purpose and Relevant GATT Provisions

The use of preferential government procurement programs as an instrument of industrial development policy is widespread among nations. These programs involve practices such as the limitation of qualified bidder lists to domestic suppliers, the allowance of cost premiums for domestic value added in evaluating tenders and direct purchasing from domestic suppliers without tender. These practices are often restrictive of international trade.⁵¹

While the GATT itself contains no provisions dealing specifically with government procurement, an international Agreement on Government Procurement was developed during the Tokyo Round of Multilateral Trade Negotiations. The Agreement provides that, subject to the exceptions noted below, all laws, regulations, procedures and practices regarding government procurement by signatory states must provide national (non-discriminatory) treatment to the goods of other signatories.⁵² The Agreement further provides that technical specifications shall not be adopted

or applied with a view to creating obstacles to international trade. Also, foreign suppliers are to be given "no less favourable" treatment than domestic suppliers in the preparation of lists of qualified bidders. In this way, the Agreement seeks to limit the scope for preferential treatment of domestic suppliers in government procurement.

Both Canada and the U.S. are signatories to the Agreement. However, the numerous exceptions to the Agreement effectively exclude substantial proportions of each country's procurement activities from its coverage. First, the Agreement applies only to federal government activities, thereby excluding all state, provincial and local government procurement. Furthermore, not all federal government procurement is covered by the Agreement. Rather, only those federal departments, agencies and government owned corporations that have been specifically designated by each signatory are governed by its provisions.⁵³ Additional exceptions to the Agreement include:

- (i) all contracts valued at less than \$150,000 SDR (about \$250,000 Canadian in December 1986);
- (ii) services other than those ancillary to the provision of goods; and
- (iii) certain goods excepted for national security or public welfare reasons.⁵⁴

The breadth of these exceptions leaves considerable scope for the operation of restrictive government procurement policies in Canada and the U.S. As illustrated in Section 4 of Chapter IV, such policies can have a significant impact on Canada-U.S. trade.

(b) Preferential Canadian Federal Government Procurement Practices

In Canada, federal government procurement activities are subject to the "Government Contracts Regulations" made under the Financial Administration Act. The regulations provide individual departments with the authority to carry out certain purchases. However, the Treasury Board is the overall supervising authority and generally must approve the awarding of large contracts. Otherwise, the Department of Supply and Services (DSS) has been designated as the common service agency for all federal departments' goods and services procurement.⁵⁵

In addition to their importance in the actual purchase of goods and services, both the Treasury Board and DSS have central roles in the development of federal procurement guidelines and policy. Two sets of guidelines are particularly important. The Treasury Board's Administrative Policy Manual and DSS's Supply Policy Manual provide extensive guidance on federal procurement procedure and policy.

Canadian obligations under the GATT Agreement on Government Procurement have been adopted by the above-mentioned manuals. However, in view of the above-noted numerous exceptions to the Agreement, only a small proportion of DSS's purchases (about 11% in 1981) has been subject to the Agreement's non-discrimination requirement.⁵⁶ The rest of the Department's procurement is subject to a wide range of practices and guidelines which can involve discrimination against foreign suppliers. Some of these practices have included:

- A Canadian Content premium of 10% applicable to on the difference in domestic content;

- A sourcing policy promoting the restriction of bid solicitation to Canadian based suppliers; and
- A "rationalization" policy whereby foreign based firms can be given the same status as domestic firms in return for additional Canadian investment or activities.⁵⁷

In sum, restrictive aspects of Canadian federal procurement policy that have been criticized by foreign countries, particularly the U.S., remain an important part of the system despite the GATT Agreement on Government Procurement.

(c) Preferential U.S. Federal Government Procurement Practices

The U.S. government's buy national policies tend to be statutory in nature. The cornerstone of U.S. buy national procurement policy is the Buy American Act of 1930. As the Act is currently applied, it provides a general federal procurement preference of 6% for U.S. manufactured products, although this premium can be as high as 12% for goods produced in labour surplus areas or by small businesses.⁵⁸ Apart from this general preference, however, there are other U.S. statutes containing buy national restrictions of less general application. For example, the U.S. Surface Transportation Assistance Act, which is examined in greater detail in Chapter IV, requires that U.S.-manufactured goods be used in the construction of federally funded highway projects unless they increase total project costs by more than 25%.⁵⁹ In addition, a number of preferential domestic procurement policies apply to the procurement activities of the U.S. Department of Defense, which accounts for a major proportion of U.S. government procurement activity.⁶⁰ Defense procurement in the U.S. is, however, also subject to the Canada-U.S. Defense Production Sharing Agreement which provides for cooperation between the two countries in some aspects of defence production.

As a signatory of the GATT Agreement on Government Procurement, the U.S., like Canada, is required to provide businesses located in other signatory countries with the same treatment as U.S. businesses in procurement activities covered by the Agreement. However, the U.S., like Canada has not unilaterally undertaken to extend such national treatment to foreign firms for contracts not covered by the Agreement. Consequently, U.S. buy national policies, such as the Buy American Act, and the buy national provisions of the Surface Transportation Assistance Act continue to apply to much U.S. federal government procurement.

(5) Summary

This chapter has outlined relevant provisions of the GATT, Canadian and U.S. trade legislation pertaining to safeguards and voluntary export restraints, antidumping duties, countervailing duties and preferential government procurement practices. Although the primary purpose of this chapter has been to provide background on the essential legal and institutional aspects of the above-mentioned non-tariff barriers, the analysis suggested several sources of concern regarding the application non-tariff barriers to Canada-U.S. bilateral trade. In the area of safeguards, for example, the requirement to apply such measures in a non-discriminatory manner may result in Canada-U.S. trade being adversely affected by non-tariff barriers aimed primarily at third countries. In regard to antidumping and countervailing duties, the discussion noted the threat of such measures being widely applied to trade which is not anti-competitive in its effects and in fact would not generally be viewed as harmful under domestic competition policy standards. These and other concerns regarding the application of safeguards, voluntary export restraints, antidumping duties, countervailing duties and preferential government procurement practices are developed more

extensively in Chapter IV in regard to actual cases of non-tariff barriers in bilateral Canada-U.S. trade in steel.

An important development noted in this chapter is the continuing trend in Canada and particularly the U.S. towards more restrictive contingency trade protection systems. Amendments contained in the Canadian Special Imports Measures Act of 1984 and the U.S. Trade and Tariff Act of 1984 have had the effect of substantially strengthening the two countries' contingent protection systems. In addition, recently proposed amendments to U.S. trade legislation portend a further substantial strengthening of that country's safeguard, antidumping and countervail systems. These developments are likely to increase the application of non-tariff barriers in bilateral Canada-U.S. trade.

FIGURE 1

CHARACTERISTICS OF CONTINGENT TRADE BARRIERS

Type of Non-Tariff Barrier	Relevant GATT Provisions	Canadian Legislative Provisions	U.S. Legislative Provisions	Type of Trade Covered	Injury Standard	Breadth of Application
1. Safeguard (duties & quotas)	Article XIX	SIMA, ¹ s.48; Export & Import Permits Act, s.5(2); Customs Tariff Act, s.8(1)	Trade Act of 1974, sections 201-203	Fair and/or unfair trade	Serious injury	Non-discriminatory (apply to all countries equally)
2. Voluntary Export Restraints (Safeguards implemented outside of GATT)	No GATT Authority	Export and Import Permits Act, s.5(1)	Trade Act of 1974, sections 201-203	Fair and/or unfair trade	No GATT injury requirement	Usually country-specific
3. Antidumping Duties	Article VI and amended Code on Anti-dumping	SIMA ¹	Trade Agreements Act of 1979, Title I as amended in 1984	Dumped goods (export price less than home market price)	Material injury	Country-specific
4. Countervailing Duties	Articles VI, XVI and XXIII and Code on Subsidies and Countervailing Duties	SIMA ¹	Trade Agreements Act of 1979, Title I as amended in 1984	Exports assisted by general or export subsidies	Material injury	Country-specific

1. Special Import Measures Act.

NOTES TO CHAPTER III

1. The bills considered include the Administration's trade bill H.R. 1155, The Trade, Employment and Productivity Act of 1987, the Senate trade bill, S.490, The Omnibus Trade Act of 1987 and the House of Representatives trade bill, H.R. 3, The Trade and Economic Policy Reform Act of 1987.
2. General Agreement on Tariffs and Trade, Article XIX.
3. This characteristic of safeguard measures results from Article I of the General Agreement on Tariffs and Trade, which states that "... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for another country shall be accorded ... to the like product originating in or destined for the territories of all other contracting parties."
4. General Agreement on Tariffs and Trade, Article XIX, subsection 3(a).
5. See Morris E. Morkre and David G. Tarr, The Effects of Restrictions on United States Imports: Five Case Studies and Theory (Washington, D.C.: Federal Trade Commission, 1980).
6. This was exemplified in the case of the voluntary export restraints on automobiles negotiated between Japan and the United States in 1981. For a discussion, see Robert C. Feenstra, "Voluntary Export Restraint in U.S. Autos, 1980-81; Quality, Employment, and Welfare Effects," in the Structure and Evolution of Recent U.S. Trade Policy, edited by Robert Baldwin and Anne Krueger, (Chicago: University of Chicago Press, 1984).
7. Special Import Measures Act, 1984, section 48.
8. See, in particular, the Export Permits Act, section 5(2) and the Customs Tariff Act, section 8(1).
9. See sections 201(a) and (b)(1) of the U.S. Trade Act of 1974 which also outline other reasons for the initiation of U.S. safeguard investigations.
10. U.S., Trade Act of 1974, section 201(b)(1).
11. U.S., Trade Act of 1974, section 201(b)(4). See also Rodney de C. Grey, United States Trade Policy Legislation: A Canadian View (Montreal: Institute for Research on Public Policy), 1983, at pp.20-21.

12. U.S. Trade Act of 1974, section 201(d).
13. See section 202(a) of the U.S. Trade Act of 1974. The President can also direct the Secretaries of Labor and Commerce to provide "expeditious consideration" to petitions for adjustment assistance under Chapters 2, 3 and 4 of Title II of the Trade Act of 1974.
14. See U.S., Trade and Tariff Act of 1984, Title VIII. In addition, general authority for the President to undertake inter-governmental negotiations respecting limitations on U.S. imports is provided in the U.S. Trade Act of 1974, section 203(a).
15. U.S., Trade Act of 1974, section 203(c).
16. Section 5006 of Title V of the proposed U.S. Trade Employment and Productivity Act of 1987 would require that the International Trade Commission consider separately the different causes of declining demand associated with a recession as well as the impact of imports over a business cycle, including a period of high demand. The recommended changes are for the purpose of increasing the probability that imports, as opposed to recessions, will be found to be the substantial cause of serious injury. See Business America, March 2, 1987, p.8.
17. See the proposed amendments to section 205 of the U.S. Trade Act of 1974 contained in S.490 the Omnibus Trade Act of 1987. Among the limitations recommended would be the requirement that the President undertake actions which are substantially equivalent to those recommended by the Commission, where the Commission unanimously determines that imports have been a substantial cause of serious injury to a U.S. industry.
18. See the proposed section 202 of the Trade Act of 1974 contained in s.201 of S.490, the proposed Omnibus Trade Act of 1987.
19. For example, see the Administration's recommended changes for subsections 201(d) and 202(c) of the U.S. Trade Act of 1974 contained in section 5006 of Title V of the proposed Trade, Employment and Productivity Act of 1987.
20. See section 201(e) in S.490, the proposed Omnibus Trade Act of 1987.
21. See Article VI, section 1 of the General Agreement on Tariffs and Trade, and Article 2 of the GATT Antidumping Code.

22. For a discussion, see Stanley D. Metzger, "The Amended Antidumping Code and the Trade Agreements Act of 1979," in J. Quinn and P. Slayton, Non-tariff Barriers after the Tokyo Round (Montreal: Institute for Research on Public Policy, 1982), pp. 153-170.
23. Formally, the Code is known as the Agreement on Interpretation and Application of Article VI of the General Agreement on Tariffs and Trade, 1979.
24. Metzger, supra note 22, p. 154. However, to some extent the Code may be seen as an advance since the U.S. and Canada had not fully acceded to previous international agreements respecting antidumping whereas both countries adhere to the current Code.
25. Agreement on Interpretation and Application of Article VI of the General Agreement on Tariffs and Trade, Article 7.
26. See Klaus Stegemann, ed., Report of the Policy Forum on Special Import Measures Legislation (Kingston: John Deutsch Institute for the Study of Economic Policy, 1984), p. 48. See also Stegemann, The Consideration of Consumer Interests in the Implementation of Antidumping Policy, presented at the OECD Symposium on Consumer Policy and International Trade in November 1984, pp. 25-28.
27. See Wares, W.A., The Theory of Dumping and American Commercial Policy, (Washington, D.C.: Heath, 1977), Richard Dale, Antidumping Law in a Liberal Trade Order, (New York: St. Martin's Press, 1980), especially pp. 22 to 27, David G. Tarr, "Cyclical Dumping: The Case of Steel Products," Journal of International Economics, Vol. 9, 1979, pp. 57-63 and M.L. Greenhut, H. Ohta and Joel Sailors "Reverse Dumping: A Form of Spatial Price Discrimination," Journal of Industrial Economics, Volume 34, No. 2, December 1985, pp. 167-81.
28. See Klaus Stegemann "The Efficiency Rationale of Antidumping Policy and Other Measures of Contingency Protection," in John Quinn and Philip Slayton (editors), Non-Tariff Barriers After the Tokyo Round (Montreal: Institute For Research on Public Policy, 1982), pp. 21-69.
29. Canada, House of Commons, Debates, Vol. III, pp. 5737-38.
30. See sections 31 to 33 of the Special Import Measures Act which also outline other causes for initiating investigations.

31. Procedures for antidumping investigations are outlined in sections 31 to 54 of the Special Import Measures Act.
32. For a discussion on the application of the special import measures legislation to tenders, see Klaus Stegemann "Special Import Measures Legislation: Detering Dumping of Capital Goods," Canadian Public Policy, 1982, Vol. 8, pp. 573-85. The new GATT regional industry provisions are adopted by Section 42(3) of the Special Import Measures Act.
33. See sections 42 to 54 of the Special Import Measures Act.
34. See Rodney de C. Grey, Trade Policy and the System of Contingent Protection in the Perspective of Competition Policy, (Ottawa: Department of Consumer and Corporate Affairs Canada, February 1986), pp. 11-12.
35. See Rodney de C. Grey, United States Trade Policy Legislation, supra note 11, pp. 47-51.
36. Eliza Patterson, "Features of the Omnibus Trade Act in the United States," The World Economy, 1985.
37. See, respectively, (i) section 311 of S.490, Omnibus Trade Act of 1987; (ii) Section 5008 of Title V of H.R. 1155, the Trade, Employment and Productivity Act of 1987, especially the proposed amendments to Section 771 of the Tariff Act of 1930 as amended by the Trade Agreements Act of 1979, Sections 312, 314 and 316 of S.490, the Omnibus Trade Act of 1987 and Section 136 of H.R. 3, the Trade and International Economic Policy Reform Act of 1987; (iii) Section 136 of H.R. 3, the Trade, Employment and Productivity Act of 1987, and Section 313 of S.490, the Omnibus Trade Act of 1987; and (iv) Section 132 of H.R. 3, the Trade and International Economic Policy Act of 1987.
38. See Klaus Stegemann, The Consideration of Consumer Interests in the Implementation of Antidumping Policy (Paper presented at the O.E.C.D. Symposium on Consumer Policy and International Trade, November 1984), pp.20-24.
39. Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, 1979, Article 9 and the General Agreement on Tariffs and Trade, Article XVI, Section B(2).

40. Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Annex I.
41. See Article XVI, subsection B(3) and Ad Article XVI, Section B of the General Agreement on Tariffs and Trade.
42. Id., Article 11(2).
43. See John J. Barcelo III, "The Two-Track Subsidies Code - Countervailing Duties and Trade Retaliation," in J. Quinn and P. Slayton, Non-tariff Barriers after the Tokyo Round, supra note 9, pp. 121-152.
44. Agreement on Interpretation of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Article 3, sections 1 and 2.
45. See Chapter 520 of the Consolidated Regulations of Canada, 1978 as compared to the countervailing duty provisions contained in the Special Import Measures Act.
46. Special Import Measures Act, Section 2(1).
47. The procedures for countervail cases are outlined in sections 31 to 54 of the Special Import Measures Act.
48. The GATT does not specifically mention upstream subsidies, but neither does it state that countervailing duties should not apply to them. See Articles VI and XVI of the General Agreement on Tariffs and Trade, and Article 11 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade as compared to section 613 of the Trade and Tariff Act of 1984.
49. See section 135 of H.R. 3, the Trade and International Economic Policy Reform Act of 1987.
50. See the Federal Register, Vol. 48, No. 49, March 11, 1983, pp. 10,395-418 and October 22, 1986, pp. 37,453-469.
51. For a discussion of the restrictive effects of preferential government procurement practices, see David Richardson "The Subsidy Aspects of a Buy American Policy in Government Procurement," in The Economics of Federal Subsidy Programs: A Compendium of Papers Submitted to the Joint Economic Committee Congress of the United States, Part 2 - International Subsidies,

(Washington, U.S. Government Printing Office, 1972), pp. 220-243.

52. Agreement on Government Procurement, Part II, 1979.
53. For a country by country list of entities subject to the GATT Agreement on Government Procurement, see Annex I of the Agreement.
54. See the Agreement on Government Procurement, 1979, Parts I and VIII.
55. See A.L.C. de Mestral, "The Impact of the GATT Agreement on Government Procurement in Canada," in J. Quinn and P. Slayton, Non-tariff Barriers after the Tokyo Round, supra note 22, pp. 171-194, at 182-185.
56. Canada, Department of Supply and Services, An Annual Procurement Plan and Strategy: 1983-84 (Background Paper), p. 7.
57. See, generally, Canada, Department of Supply and Services, Supply Policy Manual: Bid Solicitation, Volume 3, especially sections 3051 and 3052, and Directive 609, March, 1987. See also de Mestral, supra note 55.
58. 41 U.S.C. 10(d) (1976) and 41 C.F.R. 1-6, 104-4(b) (1979). For a discussion, see Kathryn Lowman and Cathryn Carlson, Buy American Legislation: An Analysis, (Washington: Congressional Research Service, The Library of Congress, August, 1983).
59. See Section 165, 23 USC 101 of the U.S. Surface Transportation Assistance Act of 1982.
60. For a general discussion of U.S. government procurement Buy American preferences, see Robert G. Lauck, Buy American Requirements Under Foreign Assistance Legislation and a Summary of Buy American-Type Laws, (Washington, D.C.: Congressional Research Service, January, 1985) and Katherine Lowman and Cathryn Carlson, supra note 58.

IV. The Impact of Specific Non-tariff Barriers to Canada-U.S. Trade in the Steel Industry

This chapter examines the implementation and economic implications of specific non-tariff barriers affecting Canada-U.S. trade in the steel industry. The chapter is organized in four sections covering examples of each of the major types of non-tariff barriers described in Chapter III. The four sections of the chapter deal specifically with:

- (1) Safeguard restrictions on U.S. specialty steel imports implemented in July 1983, and Canadian retaliatory duties implemented in January 1984;
- (2) The U.S. policy of negotiating voluntary export restraints on U.S. imports of carbon and alloy steel pursuant to the 1984 "National Policy for the Steel Industry";
- (3) Antidumping and countervailing duties imposed by both Canada and the U.S. in 1986 on imports of certain tubular steel products used in petroleum extraction; and
- (4) Preferential government procurement provisions contained in the U.S. Surface Transportation Assistance Act of 1978, as amended in 1982.

Each section of the chapter examines the implementation and economic impact of the resulting non-tariff barriers.

Emphasis is placed on: (i) legal and institutional developments illustrating features of the Canadian and U.S. trade systems which are likely to result in the implementation of trade restrictions; and (ii) the effects of the non-tariff barriers on the operation of Canada-U.S. transborder markets. The analysis of specific non-tariff barriers illustrates numerous concerns regarding Canadian and U.S. trade legislation. It also indicates several types of costs which non-tariff barriers can impose on Canadian and U.S. steel users and producers.

(1) The U.S. Safeguard Restrictions and Canadian Retaliatory Duties Affecting Bilateral Trade in Specialty Steel

This section examines the U.S. safeguard restrictions and Canadian retaliatory duties that were placed on the two countries' bilateral trade in certain specialty steel products in 1983 and 1984. Safeguard protection for the U.S. specialty steel industry was initially provided in 1976. These safeguards involved global quotas on a wide range of finished specialty steel products. The quotas were initially approved for a three year period.¹ However, the term of protection was extended to four years by the President on the basis that the removal of the quotas after three years would have had a serious adverse economic effect on the U.S. specialty steel industry.² These quotas were terminated on February 14, 1980.

The recent U.S. specialty steel safeguard measures developed from a series of investigations under section 301 of the Trade Act of 1974 into alleged unfair trade practices on the part of European stainless and alloy tool steel producers.³ These investigations were initiated in response to petitions filed by the U.S. Tool and Stainless Steel

Industry Committee and the United Steelworkers of America alleging that the European Community and certain other European countries were subsidizing the production of specialty steel in contravention of Articles 8 and 11 of the GATT Subsidies Code. The U.S. Department of Commerce and the International Trade Commission subsequently determined that several of the European countries were subsidizing their specialty steel producers in violation of the GATT Subsidies Code, and that this had injured the U.S. specialty steel industry. In particular, it was concluded that subsidies in the form of certain capital grants, loans, tax benefits and other practices had enabled imports to capture a larger share of the U.S. market depressing U.S. specialty steel producers' operating rates, employment, prices, and revenues.⁴

In response to this finding, President Reagan directed the U.S. Trade Representative to: (i) request that the International Trade Commission conduct a safeguard investigation under section 201 of the Trade Act of 1974; (ii) initiate discussions aimed at eliminating the trade practices alleged to be unfairly subsidizing U.S. imports of specialty steel; and (iii) monitor imports of the specialty steel products covered by the safeguard investigation. The President's decision to initiate safeguard proceedings was taken as an alternative to the imposition of specific restrictions on European steel imports as would have been permitted under section 301(a) of the Trade Act.

The safeguard proceedings initiated by the President were intended to permit the U.S. to undertake broader protective action than would have been possible under section 301 of the Trade Act. The President was of the opinion that taking action against the subsidies subject to the section 301 complaint would not resolve the "overall import problem" as the complaint did not cover "all

important, or potentially important, sources of specialty steel imports".⁵ He also expressed the view that the U.S.'s trading partners in specialty steel had engaged in "a wide range of trade restrictive and distortive practices" and, as a consequence, resolution of the subsidy dispute would not have had a great impact on the world specialty steel trade environment.⁶

In November 1982, the U.S. International Trade Commission, acting upon the direction of the President, initiated a safeguard investigation under section 201 of the Trade Act of 1974 to determine whether U.S. alloy producers had been seriously injured by imports of a number of stainless and alloy tool steel products, including bar, rod, sheet and strip products. In May 1983 the Commission determined that these products had been imported into the U.S. "in such increased quantities as to be a substantial cause of serious injury" to the U.S. specialty steel industry.⁷

As noted in chapter II, section 201 of the Trade Act requires that imports be at least as great a cause of injury to the domestic industry as any other factor before safeguard protection can be provided. In this regard, the International Trade Commission was required to evaluate the relative importance of two major causes of the observed decline of the U.S. specialty steel industry - namely increased imports and declining U.S. demand resulting from the 1982 recession. Based largely on the U.S. industry's ability to maintain prices and profitability during recessionary periods prior to the 1980 to 1982 recessionary period, the Commission concluded that imports had been the greater source of injury to the U.S. industry over the latter period. That is, in contrast to previous recessionary periods, the presence of substantial imports

during the 1980 to 1982 period occurring at prices below those which the U.S. industry was attempting to maintain had prevented the U.S. industry from maintaining its profitability.⁸

As required by section 201(d) of the U.S. Trade Act, the Commission made specific recommendations to the President as to how the injury suffered by the U.S. specialty steel industry could be remedied. The Commission recommended that a combination of global quotas and market share ceilings be established on all U.S. specialty steel imports, excluding imports of types of products not made in the U.S. The Commission further recommended that these restrictions should remain in place for 3 years.⁹

The President subsequently determined, under section 202 of the Trade Act of 1974, that the provision of import relief to the U.S. specialty steel industry was in the national economic interest. However, the President used his discretionary authority over U.S. safeguard proceedings to implement somewhat different relief measures than those recommended by the International Trade Commission. The President imposed: (i) temporary tariff increases, as opposed to quotas, on U.S. imports of flat-rolled stainless steel; and (ii) global quotas, similar to those recommended by the International Trade Commission, on U.S. alloy tool steel, and stainless steel bar and wire rod imports. The substitution of tariffs for the quotas recommended by the International Trade Commission for U.S. flat-rolled stainless steel imports, was made in light of the stronger competitive position of that portion of the U.S. specialty steel industry. Also, the President opted for a four year period of protection, as opposed to three, in order to provide the U.S. specialty steel industry with more time "to complete important investment projects, improve productivity and regain profitability".¹⁰

Acting on the direction of the President, the U.S. Trade Representative subsequently conducted negotiations with each major exporter of specialty steel to the U.S., including Canada, to limit these countries' shipments of alloy tool steel, and stainless steel bar and wire rod to the U.S. In October 1984, a bilateral agreement was reached concerning Canadian voluntary export restraints. The Canadian government did not seek compensation for the U.S. quotas or impose retaliatory non-tariff barriers in response to these restraints.¹¹

Bilateral negotiations between Canada and the U.S. failed, however, to resolve a dispute between the two countries over compensation for the incremental U.S. duties imposed on Canadian flat-rolled stainless steel exports. Accordingly, in December 1984, the Canadian government exercised its right, under Article XIX of the GATT, to retaliate against the U.S. safeguard duties. Beginning on January 1, 1984, import surtaxes, ranging between 4.4 and 7.7%, were imposed on Canadian imports of certain flat-rolled stainless steel products imported from the U.S.¹² The Canadian retaliatory duties remained in effect until June 14, 1984, when an agreement over U.S. compensation was reached. This compensation involved the removal of Buy American procurement restrictions limiting the use of Canadian cement in construction projects funded by the Surface Transportation Assistance Act.¹³

The implementation of the specialty steel safeguards and retaliatory duties highlights a number of concerns regarding the application of the Canadian and U.S. safeguard systems to the two countries' bilateral trade. Most importantly, the U.S. safeguard action illustrates the problem, arising from Canadian and U.S. obligations under the GATT, of bilateral Canada-U.S. trade being affected by

safeguards which are primarily directed at offshore imports. Evidence provided during the U.S. safeguard investigation suggested that Canadian exports were not a source of injury to U.S. specialty steel producers. The International Trade Commission's determination of serious injury was based primarily on U.S. specialty steel imports, prices and production for the years 1980-82. During this period, U.S. specialty steel demand and prices declined substantially while U.S. imports of stainless and alloy tool steel from the EEC and other offshore countries increased by 63% and 34%, respectively.¹⁴ As a result, U.S. producers' share of their domestic market for stainless steel declined from 90 to 80% and their share of the domestic alloy tool steel market fell from 72 to 52%.¹⁵

Canadian specialty steel exports to the U.S. did not, however, follow the same trend as those of other countries. Canadian exports of stainless and alloy tool steel to the U.S. declined by 29% and 13%, respectively, over the 1980-82 period in keeping with the decline in U.S. demand and prices.¹⁶ Also, the Canadian specialty steel industry, like the U.S. industry, encountered difficulties with offshore competition in Canadian markets over the 1980-82 period.¹⁷ Despite these considerations, the most favored nation principle contained in GATT Article I required that the U.S. safeguard quotas and duties be applied to Canadian as well as offshore specialty steel.

The events leading up to the implementation of the U.S. specialty steel safeguards suggest that there is substantial overlap between different measures of contingency trade protection. This is indicated by the President's decision to impose broader protection for the U.S. specialty steel industry by invoking safeguards rather than dealing with the specific subsidy practices which

triggered the U.S. safeguard investigation. The use of safeguards rather than protective measures targetted at specific trade practices meant that Canadian exports were affected even though the evidence indicated that these exports had not been a source of injury to the U.S. specialty steel industry.

The Canadian response to the U.S. duties on flat-rolled stainless steel also illustrates the potential, under current trade legislation, for safeguard measures adopted by one country to trigger costly retaliatory measures by the affected countries. Such retaliation is promoted by the confrontational, rather than conciliatory nature of the GATT safeguard system. Although the GATT requires that countries undertaking safeguards must first consult with other countries on the matter of offsetting concessions, no conciliatory mechanism is provided to ensure that these negotiations will avoid the retaliatory escalation of non-tariff barriers. The failure of Canadian and U.S. trade authorities to avoid such retaliation in response to the U.S. specialty steel safeguards, points to the need for developing a conciliatory mechanism to avoid the same problem in future Canada-U.S. trade disputes.¹⁸

The adoption of U.S. specialty steel safeguard restrictions in 1983, only 3 years after the first round of safeguards in the industry lapsed, raises concerns regarding the lack of restraints against the continuing use of these measures in an industry. The lack of such restraints is important as safeguards, by shielding domestic industries from import competition, eliminate the main incentive for adjustment particularly where it is widely believed within an industry that it will continue to receive protection. In this regard, it is noteworthy that the possibility of a further extension of the current U.S. specialty steel

safeguards, scheduled to end July 19, 1987, has not yet been ruled out. The Specialty Steel Industry of the United States and the United Steelworkers of America have petitioned for a three year extension of the current safeguards. Furthermore, the industry has suggested that even a three year extension of the current safeguards may not be long enough for it to adjust.¹⁹

Finally, the U.S. and Canadian safeguard and retaliatory restrictions affecting specialty steel illustrate the broad range of costs which such measures can impose on producers and users in both countries. In order to appreciate the nature of these costs it is necessary to consider in some detail the importance of Canada-U.S. trade in specialty steel. Canadian flat-rolled stainless steel exports to the U.S. have historically accounted for a relatively small share, less than 1%, of total U.S. demand. Nevertheless, the U.S. market for stainless and alloy tool steel has been a substantial source of demand for Atlas Steels, the principal Canadian producer of specialty steel products. The company normally exports between 10% and 15% of its total production to the U.S.²⁰ These exports have enabled the company to maintain higher capacity utilization rates, and provide it with the potential to efficiently supply a wider range of products than would be possible selling to the Canadian market alone. Reflecting the importance of the U.S. market to its operations, Atlas Steels has expressed support for a Canada-U.S. free trade arrangement encompassing specialty steel.²¹

The imposition of the U.S. safeguards on Canadian flat-rolled stainless steel exports, in July 1983, raised U.S. import duties on these products from 10.0-10.5% to 20.0-20.5%. Table 4.1 indicates that this increase in

duties has had a significant effect on Canadian exports of flat-rolled stainless steel to the U.S. Over the 1978-81 period, excluding 1979 when Atlas Steels' sheet and strip manufacturing facilities at Tracy Quebec were struck for 9 months, Canadian flat-rolled stainless steel exports to the U.S. were in excess of 6 thousand tons per year. Exports to the U.S. declined to 5.3 thousand tons in 1982 reflecting the large decline in U.S. demand for flat-rolled stainless steel in that year.

Between 1982 and 1984 U.S. flat-rolled stainless steel demand increased by 45%. Yet, during 1984, the first full year that the safeguard duties were in effect, Canadian exports were less than the level achieved in any of the previous 6 years, excluding 1979. Canadian exports to the U.S. continued to be low over the 1985-1986 period, as compared to previous levels. The failure for Canadian shipments to the U.S. to recover with the increase in U.S. demand suggests that the U.S. safeguard duties have had a significant effect on Canada-U.S. trade. Table 4.1 also indicates that the U.S. safeguard duties have depressed the prices received for Canadian specialty steel exports to the U.S. The average price per ton of U.S. imports of flat-rolled stainless steel over the 1984 to 1986 period remained at about 10% less than the average 1982 price.

The U.S. safeguard quotas on Canadian stainless steel bar exports to the U.S. appear to have actually benefitted the Canadian specialty steel industry during the first year that they were in effect.²² Of greater concern has been the longer run effects of the U.S. quotas on Canadian stainless steel bar exports to the U.S. Over the quota periods running from July 20, 1985 to January 19, 1986

TABLE 4.1

U.S. Stainless Steel Sheet and Strip Imports from Canada,
Apparent Consumption and Average Import Prices 1978-86

Year	U.S. Imports from Canada		U.S. Apparent Consumption (000's tons)	Average U.S. Import Price (\$000's U.S./ton)
	Quantity (000's tons)	Value (\$mil. U.S.)		
1978	8.6	9.7	830	1.43
1979 ¹	2.5	3.0	901	1.60
1980	6.9	9.3	654	1.91
1981	6.4	8.2	799	1.73
1982	5.3	6.8	645	1.63
1983	4.7	5.5	837	1.43
1984	4.4	5.9	938	1.45
1985	2.4 ²	3.0 ²	941	1.38
1986 ³	4.1	5.4	921	1.41

Sources: United States International Trade Commission, Stainless Steel and Alloy Tool Steel, (Washington: USITC Publication 1377, May 1983), pp. A96 - A109, and International Trade Administration, Agreements Compliance Division Statistics.

1. During 1979, Atlas's main sheet and strip mill at Tracy, Quebec was struck for 9 months accounting for the low level of Canadian exports in that year.
2. The low 1985 figures partially reflect a three month strike at Atlas Steels' main stainless steel sheet and strip mill located at Tracy, Quebec.
3. Preliminary Figures.

the Canadian stainless steel bar quotas were almost 100% filled but exports remained well below levels obtained prior to 1981.²³

The U.S. alloy tool steel quotas have apparently not been as restrictive of Canadian exports to the U.S. as the stainless steel bar quotas have been. Over the July 20, 1985 to January 19, 1986 period, less than 90% of the Canadian alloy tool steel quota was used.²⁴ It should be noted, however, that the Canadian alloy tool steel annual quota allocation during this period of about 1.5 thousand tons is considerably less than average annual Canadian exports to the U.S. over the 1978 to 1980 period of about 2.4 thousand tons.²⁵

In addition to their direct effect on Canadian exports, the most recent and earlier U.S. safeguards have created uncertainty concerning Canadian specialty steel producers' future access to U.S. markets. This uncertainty has important implications for the development of the Canadian industry, particularly Atlas Steels. Access to the U.S. market enables the company to operate at more efficient capacity utilization rates. It is also necessary to justify substantial expansion of Canadian specialty steel production. The Canadian specialty steel market, by itself, provides much less opportunity for expanding Canadian specialty steel production, particularly of products domestically demanded in small quantities, than does the U.S. market.²⁶ Finally, it is noteworthy that Atlas Steels of Canada completed a major upgrading of its stainless steel bar rolling facilities in 1982 only to have these products made subject to U.S. safeguard quotas in the following year.²⁷

The Canadian retaliatory duties disrupted the competitive and efficient operation of the Canadian market for flat-rolled stainless steel, imposing costs on both U.S. producers and Canadian users of stainless steel. They imposed significant direct costs, as measured by the amount of surtaxes collected, on Canadian users of flat-rolled stainless steel. Between \$500 and \$650 thousand in surtaxes were collected on about \$8 million of Canadian stainless steel imports occurring over the January 1 to June 30, 1984 period.²⁸

The direct duty costs, however, represent only one aspect of the Canadian retaliatory duties' effect on U.S. exporters and Canadian users of specialty steel. Available data on Canadian flat-rolled stainless steel imports over the 1982 to 1984 period indicate that the Canadian retaliatory duties had a significant effect on bilateral Canada-U.S. trade. Total Canadian imports of flat-rolled stainless steel followed a declining trend over the 1983-84 period reflecting increased import competition from overseas producers, and appreciation of the U.S. dollar.²⁹ During the period that the Canadian retaliatory duties were in effect, however, U.S. specialty steel producers' share of Canadian imports of products covered by the retaliatory duties declined significantly faster than U.S. producers' share of flat-rolled Canadian stainless steel imports of products not covered by the retaliatory duties. U.S. producers' share of all Canadian imports of products covered by the retaliatory duties declined from 47% in 1983 to 24% by value over the January to June 1984 period while the duties were in effect. In contrast, U.S. producers' share of total Canadian imports of other flat-rolled stainless steel declined from 38 to 34% by value.³⁰ These figures indicate that the retaliatory duties significantly impeded

U.S. producers' access to Canadian markets at a time when these producers were already encountering increasing difficulties due to problems involving offshore competition and exchange rate fluctuations.³¹

The Canadian retaliatory duties were also disruptive of the efficient operation of the domestic market for flat-rolled stainless steel. They inhibited Canadian users' ability to obtain beneficial imports from the U.S. while providing limited benefits to the Canadian specialty steel industry. The Canadian retaliatory duties actually applied to a number of products which are not made in Canada. Atlas Steels of Canada, the sole domestic producer of flat-rolled stainless steel, has concentrated its production in high volume grades of stainless steel which it can manufacture efficiently for the Canadian market. The company's product range is also restricted by limitations on its rolling equipment.³² Canadian users requiring flat-rolled stainless steel in grades, or shapes not manufactured by Atlas must import this steel. U.S. producers have been an important source of Canadian supply for certain of these products. The Canadian retaliatory duties reduced Canadian users' access to this source of supply while providing little benefit to Canadian producers.³³

A further economic impact of the Canadian retaliatory duties concerns their implications for competition in the specialty steel service centre sector. Specialty steel service centres account for a large proportion of Canadian flat-rolled stainless steel demand.³⁴ These service centres fabricate shapes for specific end-users, with on-site equipment. They also act as

distributors for primary specialty steel products. Access to low cost supplies of specialty steel is an important determinant of the competitiveness of service centres. Atlas Steels, the sole Canadian supplier of flat-rolled stainless steel products, deals exclusively with designated Canadian steel service centres. Others must rely entirely on imported specialty steel products.³⁵ The Canadian retaliatory duties reduced these service centres' access to low cost U.S. supplies, thereby increasing their competitive disadvantage vis-à-vis authorized distributors of Atlas Steels' products.

Finally, the Canadian retaliatory duties impaired the ability of domestic specialty steel users' to pursue competitive sourcing strategies. Specialty steel users including those with access to Atlas Steels' products, have traditionally followed multiple source purchasing strategies to generate competition, given Atlas Steels' dominant position in the Canadian market.³⁶ The Canadian retaliatory duties reduced Canadian users' ability to source U.S. output as a competitive source of supply.

(2) Voluntary Export Restraints: The U.S. National
Policy for the Carbon and Alloy Steel Industry

This section examines a series of ongoing U.S. government policy initiatives affecting the American market for carbon and alloy steel. In 1984 these initiatives were designated by the Congress as the National Policy for the Steel Industry. The steel policy was adopted by the Administration in response to intense pressure from Congress and U.S. steel producers to provide import relief for the U.S. carbon and alloy steel industry. Its main features

included the negotiation of voluntary export restraint agreements with most major exporters of steel to the U.S., and enhanced enforcement of U.S. unfair trade laws in regard to carbon and alloy steel imports. For reasons outlined below, Canada was initially exempted from the voluntary export restraints program. However, Canadian producers have subsequently come under pressure to informally limit their exports of carbon and alloy steel products to the U.S. or accept the negotiation of formal voluntary export restraints.

The import restraints embodied in the National Policy for the Steel Industry developed out of parallel initiatives by U.S. steel industry representatives to obtain protection from the U.S. Administration and the Congress. In January of 1984, the Bethlehem Steel Corporation, in conjunction with the United Steelworkers of America, filed a petition with the U.S. International Trade Commission under section 201 of the Trade Act of 1974 requesting safeguard relief for integrated U.S. carbon and alloy steel producers.³⁷ The petition alleged that increased imports had been a substantial cause of serious injury to the carbon and alloy steel industry over the 1977-83 period. Relief was requested against imports of primary carbon and alloy steel mill products, and certain "first tier" steel products, notably pipe and tubing, wire products, and fabricated structural units, "because of the direct impact which imports of such products have upon the basic steel industry."³⁸ The International Trade Administration found that the petition disclosed a reasonable indication of serious injury and initiated a formal safeguard investigation in February 1984.³⁹

At the same time, the U.S. steel industry also sought Congressional support for import restraints outside of the formal U.S. safeguard system. During March 1984, the steel lobby succeeded in having the Fair Trade in Steel Act of 1984 introduced in both the House of Representatives and the Senate.⁴⁰ The Bill contained proposals for quotas to be imposed on U.S. imports of primary and first tier steel products restricting them to an overall share of the domestic market of less than 15%. Introduction of the Fair Trade in Steel Bill was viewed by its proponents as a complementary action to the steel industry's attempt to obtain safeguard protection under section 201 of the Trade Act of 1974. The Bill was intended to "increase the certainty that an equitable solution to the steel import problem will be found."⁴¹

Supporters of the Bill argued that the problems being encountered by the U.S. steel industry were primarily the result of unfair foreign trade practices resulting in massive exports of dumped or subsidized imports to the U.S. The U.S. dumping and countervailing duty laws, however, were viewed as having provided insufficient protection to the U.S. steel industry. In this regard Senator Heinz (Republican from Pennsylvania) stated:

The steel industry has been plugging the holes in the dike of fair trade through our existing laws. Yet, every time we resolve one unfair trade case, another stream of steel imports shoots through another hole. It is apparent that we have run out of fingers, and need to build a new dike.⁴²

A further justification put forward for the steel quotas was that such protection was needed to allow the U.S. steel

industry to consolidate and upgrade its operations to become capable of competing in the future.⁴³

On July 24, 1984, the International Trade Commission concluded its safeguard investigation, with a 3-2 vote that imports of some, but not all of the categories of carbon and alloy steel products covered in the industry's petition for relief had seriously injured U.S. production of similar products. The Commission recommended that the President:

- (i) impose an additional 15% tariff on U.S. imports of semi-finished steel shapes in excess of 1.5 million tons;
- (ii) establish quotas on imports of carbon and alloy steel sheet, strip, plate, medium and heavy shapes, and wire; and
- (iii) impose additional duties of 12% on U.S. imports of steel wire products.⁴⁴

The Commission did not recommend the imposition of restraints on imports of carbon and alloy steel wire rod, railway products, bars, pipes and tubes as it concluded that such imports had not seriously injured U.S. carbon and alloy steel producers.

The Commission's recommendations for relief were subsequently rejected by the President, under section 202 of the Trade Act of 1974, as being inconsistent with the "national economic interest." The President stated that such restrictions would "put at risk thousands of jobs in steel fabricating and other consuming industries or in other sectors of the U.S. economy that might be affected by compensation or retaliation measures to which our trading

would be entitled."⁴⁵ As an alternative to the proposed duties and quotas, the President announced the establishment of a new government policy for the U.S. steel industry. The new policy was intended to reduce the flow of unfairly traded imports to the U.S., restore "a level playing field" in the steel industry and return import penetration to a more "normal" level of about 18.5% of the U.S. market. The President's policy for the steel industry provided for:

- (i) the negotiation of voluntary export restraints with any country whose exports to the United States had increased significantly "due to an unfair surge in imports";
- (ii) enhanced enforcement of U.S. unfair trade practices legislation in the steel sector; and
- (iii) other actions to facilitate adjustment in the U.S. steel industry, or reduce alleged unfair foreign trade practices.⁴⁶

The steel industry policy implemented by the President was a compromise between the Administration's desire to avoid formal safeguards, and Congressional desire, as evidenced by the consideration given to the Fair Trade in Steel Act of 1984, to provide substantial protection to the U.S. steel industry. In order to implement the steel policy, the U.S. Administration required additional legislative authority to negotiate and enforce voluntary export restraints and surge control arrangements. This authority was provided to the President by Congress in September 1984 with the passage of the Steel Import Stabilization Act of 1984, contained in Title VIII of the Trade and Tariff Act of 1984. The Congress did not,

however, relinquish all authority over the implementation of the policy to the Administration. Rather, it established in the Steel Import Stabilization Act a target range of 17.0-20.2% for foreign producers' share of the U.S. steel market to be achieved within a period of 5 years. In addition, Congress included in the Act a separate provision that maintains its ability to take further actions in regard to steel imports if the National Policy for the Steel Industry does not produce the desired results.⁴⁷

The Office of the U.S. Trade Representative subsequently negotiated or reaffirmed voluntary export restraints with most major exporters of carbon and alloy steel to the U.S. Canadian producers, however, were initially excluded from these restraints. This exemption was the outcome of extensive representations made by, or on behalf of the Canadian steel industry before the International Trade Commission, the Administration and Congress. These representations apparently convinced the U.S. legislators that Canadian producers had not engaged in unfair trade practices in regard to steel.⁴⁸

The implementation of the U.S. carbon and alloy steel import policy, although it has not placed direct restrictions on Canadian exports to the U.S., has nevertheless had a negative effect on these exports. In order to obtain an exemption from the U.S. voluntary export restraint program, Canadian exporters agreed to be "prudent" in exporting steel to the U.S.⁴⁹ The major Canadian steel mills have attempted to restrain Canadian steel exports to the U.S. to about 3% of total U.S. demand.⁵⁰ The efforts to restrain Canadian steel exports to the U.S. have not, however, been successful. From 1983 to 1986, Canadian exports' share of total U.S. steel consumption rose from 2.9 to 3.6%. Canadian exports of steel to the U.S. during 1986

were about 3.2 million tons, the highest ever yearly total.⁵¹

The increased Canadian share of the U.S. steel market during 1986 has renewed U.S. steel industry demands for quotas on Canadian exports to the U.S. A study released by the American and Steel Institute in February 1987 concluded that the President's voluntary export restraint program had not kept steel imports within the steel policy target range of 17 to 20.2%. In fact, imports accounted for about 23% of U.S. steel consumption in 1986. The Institute argued that a major reason for the failure of the policy to achieve the desired result was increased imports from countries not covered by the restraint program. The Institute recommended that "the Administration should now make new and vigorous efforts to bring uncovered countries into the VRA program." Canada is a major target of the steel industry's renewed demands for protection since it is by far the largest exporter to the U.S. not covered by the voluntary restraint program. Canadian producers accounted for over 60% of all 1986 U.S. steel imports not covered by the program.⁵²

The threat of U.S. restraints on Canadian exports has prompted calls by the major Canadian steel producers and the Canadian branch of the United Steelworkers for greater Canadian restraint with regard to these exports. A statement issued in September 1986 by the Canadian Steel Conference Inc., a group representing 13 major Canadian steel producers and the United Steelworkers urged:

that those companies not exercising restraints (with regard to exports to the U.S.) be identified and dealt with.⁵³

The group provided figures indicating that the major Canadian producers' share of Canadian exports to the U.S. had declined while other producers' and distributors' share had substantially increased.⁵⁴ The Canadian producers have suggested that much of the increase in Canadian steel exports to the U.S. reflects foreign producers' efforts to circumvent the U.S. voluntary export restraints by transshipping their steel through Canada, or finishing steel in Canada for export to the U.S.

In response to a request by the major Canadian steel producers, in May 1987 the government introduced amendments to the Export and Import Permits Act designed to permit more detailed monitoring of Canadian carbon and alloy steel imports and exports.⁵⁵ The legislation was passed by Parliament and received royal assent on May 28, 1987. The legislation is intended to make it possible to identify the source country of steel being exported to the U.S. and thus determine whether steel is being trans-shipped to the U.S. through Canada. In addition, the legislation will enable the government to identify steel wholesalers and distributors not exercising "restraint" in exporting Canadian steel to the U.S. It should be noted that the legislation does not provide for the control of Canadian steel exports to the U.S. However, such legislation is already supported by some Canadian steel producers.⁵⁶

A recent Bill introduced in the Congress has re-inforced the threat of quotas on Canadian carbon and alloy steel exports to the U.S. Bill S. 441, An Act to Amend the Steel Import Stabilization Act, introduced by Senator Heinz on February 3, 1987 would, if passed, provide Canada with 90 days to negotiate a voluntary restraint agreement with the U.S. or become subject to pre-established quotas.⁵⁷ These quotas would restrict Canadian exports to the U.S. to 2.5% of total U.S. demand for steel, a market

share which is well below that which the Canadian industry has had since 1982.

It is important to note that the current U.S. steel industry efforts to impose quotas on Canadian steel exports are generally not based on allegations that Canadian steel is being unfairly traded in the U.S. However, recent allegations of unfair practices regarding Canadian exports of certain tubular steel products used in petroleum extraction may have the effect of undermining the general perception of Canada as a "fair trader" in steel, thereby increasing the pressure to accept formal restraints. These allegations are examined in section 3 of this chapter.

The potential impact on Canadian carbon and alloy steel producers of restraints on their exports to the U.S. is substantial. Over the 1983-85 period, Canadian exports of primary steel products, pipe and tubing and wire products to the U.S., averaged about \$1.9 billion per year, or about 20%, by value, of the Canadian industry's total shipments of these products.⁵⁸ The three largest Canadian steel producers estimated that over 70% of their exports to the U.S. were covered by the International Trade Commission's recommendation to provide safeguard relief for the U.S. steel industry.⁵⁹ Other Canadian steel exports are of types products, such as light structurals, pipe and tubing and wire rods, that were not covered by the Commission's injury determination. Many of these products, however, are likely to be affected if Canada is compelled to accept voluntary restraints or quotas on its steel exports to the U.S.

The actual effects which the U.S. pressure for voluntary restraints has had on Canadian exports to the U.S. are difficult to assess. The efforts to restrain Canadian exports to the U.S. have, to a certain extent, been

undermined by the complexity of Canada-U.S. steel trade and the degree of integration between the Canadian and U.S. markets. Reflecting this situation, the major Canadian steel producers have argued that they are unable to control various channels through which Canadian steel exports to the U.S. occur, such as steel service centres.⁶⁰

It is apparent from the discussion in chapter II, however, that the imposition of restrictive quotas on Canadian exports to the U.S. could significantly affect the competitiveness and efficiency of the Canadian steel industry. These exports are an important determinant of the industry's ability to maintain high capacity utilization levels, which have traditionally been an important determinant of the Canadian industry's international competitiveness.⁶¹

The uncertainty which the ongoing U.S. steel lobby efforts have created concerning Canadian producers' continuing access to U.S. markets is, by itself, an impediment to the development of the Canadian steel industry. In this regard, it is noteworthy that at least two Canadian electric furnace producers of carbon and alloy steel already have substantial interests in steel mills in the U.S. Indeed, Ivaco, an Ontario-based firm has controlling interests in or owns three U.S. electric mills whereas it operates only one Canadian mill. Uncertainty over future Canadian access to U.S. markets can also affect the restructuring of Canadian steel production to make it more internationally competitive. For example, in the case of Algoma Steel, the future of the company's newly completed seamless pipe and tube mill depends not only upon an increase in demand for products manufactured in the mill, but also on continued access to the U.S. market.⁶²

The events leading to the adoption of the U.S. National Policy for the Steel Industry are illustrative of the implications which Congressional authority over U.S. trade policy can have for Canada-U.S. trade relations. Congress, more so than the President, tends to be responsive to regional or industry interests. The residual authority which Congress has over the implementation of safeguard relief measures contributed to the pressure for the President to provide some form of import relief to the U.S. steel industry. Also, as noted, despite its initial acceptance of the President's compromise policy, Congress continues to hold residual authority to alter or expand the coverage of the National Policy for the Steel Industry. Section 803 of the Trade and Tariff Act of 1984 states that Congress will consider further legislative action, "if the national policy for the steel industry does not produce satisfactory results within a reasonable period of time."⁶³ This residual authority increases the likelihood of Canada having to accept voluntary export restraints if there is any substantial increase in Canadian carbon and alloy tool steel exports to the U.S.

The initial success of the Canadian steel industry and government in obtaining an exemption from the U.S. voluntary export restraints suggests that intervention before U.S. trade authorities can provide substantial benefits. However, the costs of such intervention can be high. Canadian steel producers estimated that they expended about \$1 million in direct legal, organizational and other costs, and many hours of executive time in attempting to avoid the U.S. safeguards and restrictions under the Fair Trade in Steel Bill.⁶⁴

The division of authority over U.S. trade policy between the President, Congress and the International Trade Commission increases the costs borne by foreign producers

in order to represent their interests in U.S. safeguard proceedings. The Canadian Steel Industry Committee lobbied Congress to obtain an exemption from the Fair Trade in Steel Bill in the event that it was implemented. This lobbying was also necessary to gain Congressional support for exempting Canada from the voluntary export restraints contained in the National Policy for the Steel Industry. The Committee also intervened before the International Trade Commission's hearings into the issue of whether U.S. producers of carbon and alloy steel had been seriously injured by imports. Finally, the Committee made representations to the Administration in order to gain Presidential support against the use of formal safeguards. Presidential support was also required to gain an exemption from the U.S. voluntary export restraints for Canadian steel exports.

A further issue raised by the carbon and alloy steel import restraints is the lack of restrictions or injury requirements governing the use of voluntary export restraints. The U.S. International Trade Commission found that imports of only certain products covered by the U.S. steel industry petition, including semi-finished and flat-rolled steel, and steel wire and wire products, had caused serious injury to U.S. steel producers. The substitution of voluntary export restraints for safeguards, however, gave the President the flexibility to negotiate restraints encompassing all carbon and alloy steel products exported to the U.S.⁶⁵

The implementation of the National Policy for the Steel Industry re-inforces several of the concerns noted in the discussion of specialty steel safeguard measures in section 1 of this chapter. As with the specialty steel safeguards, bilateral Canada-U.S. carbon and alloy steel trade was threatened by non-tariff barriers that were

initially aimed at perceived unfair practices involving offshore imports. Furthermore, there was substantial overlap between the different measures of contingency protection considered by the respective trade authorities. Also, the U.S. voluntary export restraints provided U.S. producers with broader protection than country specific unfair trade actions. This broader form of protection is preferred by the U.S. steel industry since it avoids the costs and delays involved in pressing unfair trade allegations on a country by country basis.⁶⁶ Broader forms of protection, however, represent a greater threat to Canada-U.S. bilateral trade in steel as they can encompass more products and trade than antidumping and countervailing duties.

(3) Antidumping and Countervailing Duties: U.S.
and Canadian Proceedings Regarding Oil Country Tubular
Goods

This section examines the development and economic implications of recent Canadian and U.S. antidumping and countervail actions in regard to bilateral trade in oil country tubular goods. Oil country tubular goods are steel products used in petroleum extraction. In 1985, Canadian exports of these products to the U.S. were valued at \$123 million. The Canadian and U.S. actions illustrate several features of both countries' trade legislation that are detrimental to efficient bilateral trade.⁶⁷

In July 1985, the Lone Star Steel Company and the CFI Steel Corporation jointly filed two complaints with the U.S. International Trade Administration, alleging that U.S. producers of oil country tubular goods had been materially injured by unfairly traded imports. In one complaint, the companies claimed that U.S. oil country tubular goods

producers had been materially injured by dumped imports from Canada, Argentina and Taiwan. In the other complaint, the companies alleged that U.S. oil country tubular goods producers had been materially injured by unfairly subsidized imports from Canada and Taiwan. Products covered by the complaints included pipe and tubing used to drill and line oil and gas wells as well as extract oil and gas from the wells. The International Trade Administration determined that these complaints disclosed a reasonable indication of injurious dumping and subsidization, and initiated formal investigations in August of 1985.⁶⁸

Although the U.S. complaints were limited to the above mentioned goods, they were viewed by Canadian steel producers as part of an attempt to discredit the perception of the Canadian steel producers as "fair traders" in steel.⁶⁹ As noted in the preceding case study, this view was a major reason for Canada being exempted from the voluntary export program restraints negotiated as part of the 1984 U.S. National Policy for the Steel Industry.

Two days after the U.S. complaints were filed, IPSCO, the largest Canadian manufacturer of oil country tubular goods, registered a complaint with the Canadian Department of National Revenue alleging that Canadian producers of oil country tubular goods had been materially injured by dumped imports of certain grades of oil and gas well casing. The complaint included imports from the U.S., Austria, West Germany, South Korea and Argentina. Public statements by a senior IPSCO executive indicated that the inclusion of U.S. imports in the complaint was prompted by the above-mentioned U.S. complaints.⁷⁰ Products covered by the IPSCO complaint included H40, J55 and K55 grades of oil well casing, which are widely used in the major Canadian oil

and gas producing regions in Alberta and Saskatchewan.⁷¹ In response to the IPSCO complaint, National Revenue initiated a formal investigation in September of 1985.

The Canadian Department of National Revenue concluded its initial dumping investigation in December, 1985, with the preliminary finding that the U.S., and other countries cited in IPSCO's complaint, had dumped oil and gas well casing into Canada. As a result of this finding, provisional import duties, equal to the estimated margin of dumping of 14.06%, were imposed on most Canadian oil and gas well casing imports from the U.S. in the grades covered by the complaint.⁷²

The U.S. International Trade Administration also concluded its initial countervail investigation in December 1985, with the preliminary determination that IPSCO had received countervailable subsidies, estimated at .72% of the value of the company's exports of oil country tubular goods. A second Canadian exporter, Siegfried Kreiser, was also covered by the subsidy finding on the basis that the company did not respond to International Trade Administration requests for information concerning subsidies provided to the company.⁷³ The initial U.S. dumping investigation was also concluded in December 1985, with the preliminary determination that Canadian oil country tubular goods had been dumped in the U.S. at margins ranging from 0.82 to 40.88%.⁷⁴ As a result of these determinations, the U.S. imposed provisional duties, equal to the sum of their estimated margins of dumping and subsidization, on Canadian exports of oil country tubular goods to the U.S.

The preliminary Canadian dumping determination in regard to imports from the U.S. was upheld in a final determination made by the Department of National Revenue in March, 1986.⁷⁵ In April, 1986, the Canadian Import Tribunal issued a final determination that the dumping into Canada of

oil and gas well casing in grades H40, J55 and K55 made in the U.S., and the other countries examined, "has not caused, is not causing, but is likely to cause material injury to the production in Canada of like goods".⁷⁶ The Tribunal's determination was influenced by declining Canadian oil country tubular goods demand brought about by falling oil prices during 1985 and 1986. The Tribunal considered that continued dumping would materially injure Canadian oil and gas well casing producers given the likelihood of a depressed domestic market for these goods in the future. As a result of this finding, Canadian imports of H40, J55 and K55 grades of oil and gas well casing from the U.S. are now subject to antidumping duties if they are exported to Canada at less than their "normal" value as estimated by Revenue Canada, Customs and Excise.⁷⁷

The U.S. International Trade Administration issued final determinations, during April 1986, regarding the margins of dumping and subsidization on Canadian oil country tubular goods exports. With the exception of Welded Tube of Ontario's exports, the final dumping determination upheld the preliminary determination that Canadian oil country tubular goods had been dumped in the U.S.⁷⁸ The preliminary determination regarding the subsidization of Ipsco and Siegfried Kreiser's exports was unaltered by the final determinations.⁷⁹ In June 1986, the U.S. International Trade Commission, issued a 4-2 decision that U.S. oil country tubular goods producers were being materially injured by dumped and/or subsidized Canadian exports.⁸⁰ Consequently, Canadian oil country tubular goods exports to the U.S., excluding those of Welded Tube, are now subject to U.S. countervailing and/or antidumping duties.

The Canadian and U.S. antidumping and countervail proceedings involving oil country tubular goods illustrate a number of concerns regarding the application of "unfair" trade laws to Canada-U.S. trade. First, the U.S.

countervail action highlights the uncertainty that U.S. allegations of unfair Canadian subsidization create for Canadian producers' access to U.S. markets. A number of regional, industrial and social programs that are widely used by Canadian provincial and federal governments were alleged to have provided unfair subsidies to Canadian oil country tubular goods producers. The initial U.S. complaint alleged that 15 separate loan or grant programs operated by Canadian provincial and federal governments had provided countervailable subsidies to Canadian oil country tubular goods producers. Programs covered by the allegations included:

- (i) investment tax credits and grants intended to stimulate investment in new equipment or research;
- (ii) various regional economic development programs;
- (iii) industry specific development programs;
- (iv) export promotion assistance; and
- (v) other economic, social or defense programs.⁸¹

The U.S. International Trade Administration subsequently determined that 6 of the 15 programs mentioned in the complaint were actually used in regard to Canadian oil country tubular goods production over the period examined. Assistance provided to IPSCO under three of these programs was found to be countervailable. These included: (i) certain research and investment tax credits; (ii) Regional Development Incentive Program grants provided to the company to upgrade its steel production facilities in Saskatchewan; and (iii) grants provided under the General

Development Agreement between the federal government and the government of Saskatchewan, that were also used to upgrade IPSCO's steelmaking facilities in Saskatchewan. The International Trade Administration estimated that the latter two programs reduced IPSCO's costs of producing oil country tubular goods by 0.71%, while benefits provided by the investment tax credits were estimated at 0.01% of the costs of production.⁸²

The above programs were held to be countervailable despite the requirement of "specificity" in the U.S. trade legislation. Section 771(5) of the U.S. Tariff Act of 1930 provides that countervailing duties can only be applied to foreign government subsidies that are provided "to a specific enterprise or industry, or group of enterprises or industries."⁸³ Notwithstanding this requirement, the investment tax credits received by IPSCO were held to be countervailable on the basis that they were available only to regions designated as economically disadvantaged. Similarly, grants provided to IPSCO under the Regional Development Incentive Program were found to be specific as they were made available only to producers in designated economically disadvantaged, or high unemployment areas. Grants provided to IPSCO under a General Development Agreement negotiated between the federal government and IPSCO were found to be specific as they were available only to steel and related industries in the province of Saskatchewan.⁸⁴

Second, the method used by the the International Trade Administration to determine the margin of dumping on Canadian oil country tubular goods exports to the U.S. highlights the conceptual weaknesses in existing antidumping policies and the danger that they may inhibit normal market responses to changing competitive conditions. The International Trade Administration estimated the

Canadian margin of dumping as the difference between the Canadian oil country tubular goods export price and the higher of: (i) the price charged by Canadian producers for oil country tubular goods sold within Canada; or (ii) the Canadian producer's estimated costs of producing these goods.⁸⁵

The use of the Canadian market price as a means to determine the margin of dumping of Canadian exports to the U.S. is consistent with the treatment of dumping under the GATT. As noted in chapter 3, however, price discrimination often occurs under normal competitive conditions and is not necessarily indicative of predatory pricing. Such competitive conditions existed in the Canadian and U.S. oil country tubular goods markets during 1985. Significant Canadian tariff and non-tariff barriers to bilateral trade in oil country tubular goods provide substantial scope for regional price variations even within Canada-U.S. transborder markets.⁸⁶ U.S. demand for oil country tubular goods during the period examined by the International Trade Administration was weak in comparison to Canadian demand, placing upward pressure on Canadian prices relative to U.S. prices. The relatively high Canadian prices may also be expected because of the less competitive conditions of the Canadian as compared to U.S. market for oil and gas well casing.⁸⁷

The alternative method used by the International Trade Administration to calculate the margin of dumping, based on the Canadian costs of production of tubular goods, also reflects conceptual inconsistencies which promote the implementation of non-tariff barriers against normal competitive responses to market conditions. The estimated costs of Canadian production included a statutory minimum 8% allowance for normal profits, plus an allowance for capital

costs. Such costs are normally recovered only over the long-run, which includes periods of sales above and below the long-run costs of production. Over the period examined by the International Trade Administration, a more appropriate measure of normal costs would have been total variable costs.⁸⁸

During the period examined by the U.S. International Trade Administration, declining U.S. demand for oil country tubular goods led to declining U.S. prices for these goods. Additional downward pressure on U.S. prices also resulted from the existence of excess world capacity for producing oil country tubular goods, the existence of excess U.S. inventories accumulated over the 1982-83 period, and appreciation of the U.S. exchange rate.⁸⁹ In competitive markets, such conditions would normally result in short-run prices that do not cover normal profits and capital costs. However, the method used by the U.S. International Trade Administration to determine the costs of production on U.S. imports of oil country tubular goods from Canada does not account for normal periods of sales below the long-run costs of production. Therefore, as indicated by this case, antidumping duties can be used as a form of contingency protection to insulate industries against normal competition in periods of low demand. In this respect, unfair trade laws are, in practice, similar to safeguards but with a lower injury threshold.⁹⁰

A further aspect of the methodology used to estimate margins of dumping in Canada and the U.S. that tends to promote overestimation of these margins is the different treatment given to sales above as compared to below the estimated normal costs of production over the period studied. Rather than estimating the margin of dumping based on all imports over the period examined, in

both Canada and the U.S. the margin of dumping is estimated solely on the basis of sales occurring at less than the estimated normal costs. Yet, in cases where companies are exporting to Canada at about the normal price as estimated by trade officials, some fluctuation around this price might normally be expected where the exporting company employs a valid but different pricing formula than the Department of National Revenue. For example, in the Canadian oil country tubular goods proceedings, a representative of Tri-Star Steel Sales Inc., a Canadian importer, testified that the estimated margin of dumping on its imports from a German producer was due solely to a salesman's use of a different currency conversion method. The estimated margin of dumping for these imports was .67%, and only 65% of the company's exports to Canada over the period considered were found to be dumped.⁹¹

The Canadian Import Tribunal and U.S.

International Trade Commission determinations in the oil country tubular goods cases illustrate the low threshold embodied in the material injury test. The Canadian Import Tribunal determined that oil and gas well casing imported from the countries covered by the investigation had not materially injured Canadian production of these products. Over the period examined, Canadian production of these goods reached record high levels, market penetration by the countries covered by the investigation actually decreased, and Canadian producers' gross margin on sales of the casing under consideration increased substantially over previous levels.⁹² Nevertheless, the Tribunal reached an affirmative determination on the material injury issue. It reasoned that there was a likelihood of future injury because of declining world oil prices, the possibility that the U.S. voluntary export restraints program would result in the diversion of offshore casing to Canada, and the existence of excess Canadian capacity resulting from the overestimation

of future oil country tubular goods demand.⁹³ In effect, the Tribunal's finding ensures that substantial Canadian imports will not occur at prices which are less than the estimated long-run costs of production during a period of low demand and excess capacity, even though such imports would normally occur in competitive markets. ⁹⁴ This highlights an important difference between the trade and competition laws. Under the latter such normal competitive responses would not result in remedial action. Rather, action would only be taken in regard to anti-competitive pricing.

The U.S. International Trade Commission's finding that subsidized Canadian oil country tubular goods exports to the U.S. caused material injury to U.S. producers was based on the cumulative effect of all Argentinian, Taiwanese and Canadian exports of these goods, excluding those of Welded Tube of Ontario. Yet, only IPSCO and Siegfried Kreiser among all Canadian companies exporting oil country tubular goods to the U.S. received countervailable subsidies.⁹⁵ The cumulation of these companies' exports with those of other countries ensured that they would be subject to a positive injury determination. Besides resulting in a lower injury threshold, the practice of cumulation in injury determination increases the likelihood of non-tariff barriers arising in Canada-U.S. trade because of problems relating primarily to offshore trade.

In order to appreciate the impact of the Canadian and U.S. antidumping and countervailing duty cases, it is helpful to examine the operation of the North American market for oil country tubular goods more closely. Canada-U.S. trade in these products promotes the efficient operation of transborder markets, and is of a different nature than offshore trade in these products. Canada-U.S.

bilateral trade in oil country tubular goods generally occurs through normal distribution channels in truck-load quantities, and through central and western Canadian and U.S. customs ports. In contrast, offshore exports to the U.S. or Canada generally occur in large shipload quantities. In the U.S., offshore imports normally occur through southern customs ports where they compete with U.S. producers in southern more so than northern regional markets. Offshore exports to Canada normally occur in shipload quantities through the port of Vancouver. Due to their large size, and because they often occur on speculation, offshore imports tend to be more disruptive of regional markets in Canada and the U.S. than Canada-U.S. bilateral trade.⁹⁶

Access to the U.S. market provides important benefits to Canadian oil country tubular goods producers. Over the 1984-1985 period, Canadian producers exported a substantial proportion, over 20%, of their total production of oil country tubular goods to the U.S. During 1986, however, when U.S. preliminary and final antidumping and countervailing duties were in effect, exports to the U.S. declined to about 4% of total Canadian shipments of these goods.⁹⁷ U.S. markets for oil country tubular goods are particularly important for two Canadian steel producers, IPSCO and Algoma. A large proportion of IPSCO's steel output is converted into oil country tubular goods in the company's pipe and tube mills in Calgary, Red Deer, Edmonton, Regina and Port Moody, B.C. Algoma, the third largest Canadian steel producer, recently completed a \$385 million mill to produce seamless tubular goods largely for the oil and gas industry as part of the company's strategy for becoming more competitive. Access to the U.S. market for oil country tubular goods is important for the viability of this mill, as well as the future of the company's steelmaking facilities.⁹⁸

Conversely, access to the Canadian market has provided substantial benefits to U.S. producers of oil country tubular goods. During 1985, Canadian imports of all oil country tubular goods from the U.S. were equal to 5.0% by weight of total U.S. production of these goods. During the January to May 1985 period, U.S. exports of oil and gas well casing in grades H40, J55 and K55 to Canada accounted for 1.0% of total U.S. oil country tubular goods production and a higher proportion of U.S. production of oil and gas well casing.⁹⁹

Bilateral Canada-U.S. trade is an important source of supply for oil country tubular goods users in both countries. Canadian exports accounted for 5.0%, by weight, of U.S. total demand for all oil country tubular goods during 1985, and a higher proportion of demand in U.S. regional markets where Canadian exports are concentrated.¹⁰⁰ The benefits provided to U.S. oil country tubular goods users by Canadian exports are augmented by the distinct nature of this trade in comparison to overseas trade. It has provided U.S. users with alternative sources of supply capable of competing against U.S. producers in terms of price, service, and quality.¹⁰¹ U.S. oil and gas well casing exports to Canada have accounted for a substantial proportion of Canadian demand for the types of oil and gas well casing covered by the Canadian antidumping investigation. During 1985, imports from the U.S. were equal to 3.6% of total Canadian demand for these goods. Over the three previous years these imports accounted for more than 5% of the Canadian market, reaching a high of 12.2% in 1983.¹⁰²

Beyond their significance in relation to total domestic demand, imports of oil and gas well casing from the U.S. have provided an important source of competition in the Canadian market. For various reasons, including producer

specialization, pricing policies and producer location, the supply of the Western Canada market from Canadian producers of H40, J55 and K55 casing is highly concentrated. There is only one major Canadian supplier of K55 casing. There are only two major domestic suppliers, IPSCO and Prudential, of welded oil and gas well casing in grades H40 and J55 to the Western Canada market.

Evidence provided during the Canadian Import Tribunal's injury investigation pointed to a lack of effective competition between these producers. IPSCO is the recognized price leader in the Western Canada market. In general, Prudential has simply adopted IPSCO's price lists using identical basing points, transportation costs, dealer prices and suggested dealer mark-ups.¹⁰³

Increased non-tariff barriers, arising from the use of antidumping duties, will enhance the market power of domestic H40 and J55 oil and gas well casing producers in the Canadian market. In 1985, Canadian prices were already significantly higher than world prices and, as noted, Canadian producers were already receiving high profit margins on their domestic sales.¹⁰⁴ Over the longer run, these non-tariff barriers can also disrupt the efficient adoption of technological developments by shielding domestic producers from effective import competition. Similar problems are likely to occur in the Canadian market for K55 oil and gas well casing given the dominant position of the sole major domestic producer supplier of these products.¹⁰⁵

Since 1981, the U.S. has been an important foreign source of competition in the Canadian oil and gas well casing market, particularly in regard to welded H40 and J55 grade casing. During 1985, the U.S. accounted for 14% of total Canadian imports of H40, J55 and K55 oil and gas well casing. Over the three previous years, more than 20% of all Canadian imports of these goods originated in the U.S.

Imports from the U.S., however, are concentrated in welded oil and gas well casing. The U.S. accounted for over 25% of 1985 Canadian imports, and over 60% of 1983 Canadian imports of these goods.¹⁰⁶ Furthermore, the nature of Canada-U.S. trade in these products provides competition which is distinct from competition from offshore producers. In contrast to offshore imports, Canadian imports from the U.S. are available in small quantities with a short lead time, and better level of service.

The Canadian antidumping duties on imported oil country tubular goods also have important implications for competition in the distribution of these products. Many distributors must rely on imports of oil and gas well casing as they are not authorized to carry domestic producers' output.¹⁰⁷ The erection of additional non-tariff barriers on oil and gas well casing in the form of antidumping duties, has placed these distributors at a competitive disadvantage vis-à-vis the authorized distributors of the major Canadian producers.

The Canadian and U.S. oil country tubular goods cases illustrate two additional concerns regarding the application of antidumping and countervailing duties legislation to Canada-U.S. bilateral trade. The cases indicated that the costs of participating in such proceedings can themselves result in non-tariff barriers to trade. Canadian oil country tubular goods producers absorbed substantial legal, executive time, administrative and other costs in order to represent their interests during the U.S. International Trade Administration and International Trade Commission dumping and countervail investigations. The costs involved in representing their interests during National Revenue and the Canadian Import Tribunal investigations apparently deterred most U.S. producers and exporters from participating in the oil and

gas well casing proceedings.¹⁰⁸ Yet, as indicated above, U.S. producers have exported significant quantities of their oil and gas well casing to Canada. Canadian and U.S. producers which did not participate in the two countries' relevant investigations were, nevertheless, subject to these investigations' dumping, subsidy and injury determinations. For example, all U.S. exporters of oil country tubular goods to Canada were covered by the Canadian dumping duties even though National Revenue examined exports from only one U.S. producer, the Maverick Tube Corporation. Also, the estimated margin of dumping on non-participating U.S. producers' exports to Canada was set at the highest estimated margin of dumping on any of Maverick Tube's shipments to Canada. Siegfried Kreiser of Canada was covered by the U.S. countervail duties even though subsidies provided to the company were not examined by the International Trade Administration.¹⁰⁹

The Canadian and U.S. dumping and countervail proceedings on oil country tubular goods also demonstrate that antidumping and countervailing duty laws, like safeguards, can be used in a retaliatory manner. As noted, the allegation that U.S. oil and gas well casing was being dumped into Canada, was prompted by the earlier U.S. allegations of unfair Canadian trade practices. IPSCO officials had initially excluded U.S. imports from its complaints concerning dumping of oil country tubular goods, "because of the delicate nature of the overall steel trade situation".¹¹⁰ However, the company extended its complaint to include U.S. products when the U.S. allegations of unfair Canadian oil country tubular goods exports were registered with International Trade Administration. The result has been an escalation of the bilateral confrontation over Canada-U.S. trade in oil country tubular goods.

Finally, the oil country tubular goods proceedings provide further evidence of the substantial interdependence and overlap between different measures of contingent protection used in the steel industry. Vigorous enforcement of U.S. dumping and countervail legislation in regard to steel imports, is consistent with the National Policy for the Steel Industry, as outlined in the previous carbon and alloy steel case study.

In addition, the allegations of unfair trade against Canadian producers in the oil country tubular goods case may have implications for the use of other non-tariff barriers in bilateral steel trade. As noted in the case study on carbon and alloy steel, the perception that Canadian steel producers have traded fairly in steel gave the President justification for excluding them from the U.S. voluntary restraint program. Findings of unfair Canadian trade practices in bilateral steel trade are likely to alter the perception of Canadian exports, and increase pressure on for the Canadian steel industry to accept voluntary export restraints.¹¹¹

(4) Preferential Government Procurement Practices:
The Buy American Provisions of the U.S. Surface
Transportation Assistance Act

Procurement policies favoring domestic suppliers continue to be an important aspect of national industrial policy in both Canada and the U.S. The Buy American provisions in the U.S. Surface Transportation Assistance Act are indicative of the continuing importance of these policies. The Act provides federal assistance for state administered mass transit, highway and bridge construction projects. The Buy American provisions contained in the Act restrict the use of imported steel, cement and manufactured products in these projects.

The U.S. government first adopted sourcing legislation favouring domestic producers with the passage of the Buy American Act of 1930.¹¹² Prior to 1979, this legislation required that U.S. government departments and agencies purchase only U.S. manufactured goods and services unless they increased costs by at least 6%. An additional 6% premium was allowed in regard to materials produced in regions of the U.S. designated as labor surplus areas and small businesses competing for federal procurement contracts.¹¹³

In November 1977, substantial amendments to the Buy American Act were proposed in the House of Representatives and the Senate. The major amendments proposed included:

- (i) increased cost preferences for domestic materials purchased with federal funds; and
- (ii) the extension of federal Buy American requirements to cover state, or local public procurement financed to a significant extent by federal funds.¹¹⁴

These amendments were strongly supported by the U.S. steel caucus, integrated U.S. steel producers and the United Steelworkers.

At the same time as the proposals to strengthen Federal Buy American legislation were under consideration in the House and Senate, the U.S., Canada and other GATT signatories were conducting negotiations on a multilateral agreement to restrict domestic preferences in government procurement. The proposed Buy American Act amendments were not passed partly because of the implications they may have had for these negotiations. U.S. trade officials were of

the opinion that adoption of the stronger U.S. buy national provisions, while the multilateral trade negotiations were in progress, would reduce the chances of these negotiations resulting in an agreement.¹¹⁵

In an action related to the Buy American Act amendments, however, the steel industry lobby succeeded in obtaining the Buy American preferences in the Surface Transportation Assistance Act of 1978. This Act substantially increased the amount of federal assistance available for state administered highway, bridge and urban mass transit system construction. The Buy American provisions contained in the Act made the receipt of federal assistance, if this assistance accounted for at least 50% of the costs of construction, contingent upon the state using only materials manufactured entirely in the U.S. The 1978 Act permitted the use of foreign manufactured materials only where:

- (i) substitutable U.S. manufactured materials are were not available; or
- (ii) the use of foreign materials would have reduced total project costs by at least 10%.¹¹⁶

The reference to project costs is significant as it ensured the U.S. steel fabricators a level of protection well in excess of the 10% premium. For example, in regard to projects for which 50% of costs were due to the costs of acquiring materials, the actual premium on domestic output of 10% on total project costs was in effect a 20% premium on the materials component.

The Buy American provisions of the Surface Transportation Assistance Act were not affected by the conclusion of the GATT Agreement on Government Procurement in 1979 which does not cover the U.S. Department of Transportation.¹¹⁷ This allowed the U.S. government to further strengthen the Buy American restrictions in the Surface Transportation Assistance Act in 1982, when the allowable premium on U.S. construction materials was raised to 25% of total project costs.¹¹⁸

The Buy American provisions in the Surface Transportation Assistance Act are not the only restrictions against the use of imported steel in U.S. public sector construction. A number of states have also developed restrictions against the procurement of imported steel with state funds. For example, Michigan, Pennsylvania and New Jersey maintain outright bans against the procurement of imported steel with state funds. New York instituted a ban against the purchase of any foreign steel with state funds in 1982 despite Canadian attempts to obtain an exemption from this ban.¹¹⁹

The previous discussion of safeguards and voluntary export restraints suggested that there is a significant degree of overlap between the purposes and effects of different measures of contingent protection. The development of the Buy American provisions of the Surface Transportation Assistance Act suggests that this overlap also extends to less formal measures of protection, such as government procurement preferences. The Buy American provisions were obtained by the U.S. industry lobby as part of its ongoing efforts to restrain U.S. steel imports by all available means.¹²⁰ These restrictions provide additional protection for the U.S. carbon and alloy steel industry beyond the protection provided by the National Policy for the Steel Industry, and U.S. antidumping and countervail

duties on specific products. The Buy American and formal contingent protection measures overlap in regard to steel that would normally be imported for use in federal and state public highway and bridge construction.

The implementation of the Buy American provisions of the Surface Transportation Assistance Act illustrates a further concern regarding the use of less formal means of contingent protection in Canada-U.S. trade. This is the lack of regulations or threshold tests to prevent excessive use of such non-tariff barriers. The Buy American provisions of the Surface Transportation Assistance Act were implemented without a formal investigation of the impact which the use of imported steel in U.S. highway and bridge construction has had on the U.S. steel industry. In contrast, formal contingent protection measures, such as safeguards can be used only after the appropriate injury and casualty tests have been satisfied.¹²¹

Construction covered by the Surface Transportation Assistance Act accounts for a significant portion of U.S. steel demand. During 1985, U.S. federal government highway construction and state highway construction on the U.S. Federal-Aid highways accounted for about 1.7% of total U.S. steel demand.¹²² This demand is of considerably greater importance for certain steel products. For example, U.S. federal government and state administered Federal-Aid highway system construction absorbed about 8.2% of total U.S. production or 6.0% of total U.S. consumption of structural shapes, piling and plates of steel.¹²³ Most of this demand is subject to the above-noted federal and state Buy American restrictions and thus cannot generally be supplied by Canadian producers.

The proliferation of Buy American provisions in regard to public highway construction in the U.S. suggests that a broader basis for estimating the effects of such

provisions may be more appropriate. When all U.S. county, township and municipality highway construction (much of which is actually state supported) as well as federal and state highway construction is considered, highway construction accounted for about 3.2% of total U.S. production or about 2.4% of total U.S. steel demand in 1985. During the same year, highway construction by these levels of government accounted for about 11.7% and 8.5%, respectively, total U.S. production and demand for steel structural shapes, piling and plates.¹²⁴

To the extent that Buy American provisions contained the U.S. Surface Transportation Assistance Act and corresponding state legislation have prevented the use of Canadian steel in U.S. federal government and state administered construction on the Federal-Aid highway system, up to 50 thousand tons per year of Canadian steel exports to the U.S. are being affected.¹²⁵ When all state, municipality, township and county highway construction is considered, as much as 70 thousand tons of annual Canadian steel exports to the U.S. may be affected, including more than 5.5% of total Canadian exports of steel structural shapes, piling and plates, whether or not these products were specifically designed for use in construction.¹²⁶

An important example of the effects of Buy American restrictions, particularly those contained in the Surface Transportation Assistance Act is provided by the structural steel fabrication industry. U.S. demand for fabricated structural steel for use in bridges has in the past been a significant source of exports for this industry. The Canadian Institute of Steel Construction estimates that its members had \$25 million in sales, covering about 25,000 tons of steel, for use in U.S. bridge projects during 1978.¹²⁷ These sales occurred before the implementation of the U.S. Highway Bridge Rehabilitation and

Repair Program of the Surface Transportation Assistance Act. This program involves a long-term plan to speed up the improvement or replacement of deficient U.S. bridges. As of the end of 1985, over 240,000 U.S. bridges had been qualified as being in need of repair with total project costs estimated at about \$51 billion.¹²⁸

Implementation of the Buy American provisions of the Surface Transportation Assistance Act has virtually eliminated Canadian steel fabricators from the U.S. market for fabricated structural steel used in bridges.¹²⁹ This prompted at least one major Canadian steel fabricator to expand into the U.S. The Harris Steel Group Inc. of Canada undertook to expand its U.S. operations as part of a strategy to guarantee the company's access to U.S. steel markets. A major consideration in the decision to expand in the U.S. was the proliferation of U.S. Buy American legislation such as that contained in the Surface Transportation Assistance Act particularly in regard to bridges.¹³⁰ The potential movement of Canadian structural steel fabrication to the U.S. is an important concern for Canadian steel mills. Canadian structural steel fabricators, absorb a substantial proportion, more than 5%, of the Canadian steel industry's total domestic shipments, including more than 30% of their entire domestic shipments of structural shapes.¹³¹

(5) Summary

This chapter has examined the implementation and effects of a number of specific non-tariff barriers to Canada-U.S. bilateral trade in steel. The case studies illustrate a number of features of Canadian and U.S. trade legislation that are of interest from the standpoint of the bilateral free trade negotiations and re-inforce several observations made in Chapters II and III. First, the case

studies show that in practice there is substantial overlap between the different types of contingency protection examined. In the case of specialty steel, this resulted in the imposition of additional barriers to Canada-U.S. trade through the substitution of one type of non-tariff barrier, safeguards, for another, countervailing duties. In the case of steel covered by the U.S. Surface Transportation Assistance Act, this overlap has led to the use of successive levels of non-tariff barriers to Canada-U.S. steel trade. Aspects of the Canadian and U.S. trade systems have promoted use of non-tariff barriers in the two countries' steel trade primarily as a result of problems in their steel trade with other countries. This issue is most often raised in connection with safeguards because of the GATT requirement to apply such measures on a non-discriminatory basis. The implementation of non-tariff barriers in the steel sector, however, indicates that the same issue can arise in regard to the use of voluntary export restraints, antidumping duties and countervailing duties.

An additional concern illustrated by the implementation of non-tariff barriers in bilateral Canada-U.S. steel trade is the potential for non-tariff barriers in one country to trigger the adoption of costly retaliatory measures by the affected countries. The retaliation issue has also been particularly relevant to the use of safeguards in the steel industry because of the specific provision for retaliatory measures in Canadian and U.S. safeguard legislation and article XIX of the GATT. The study of Canadian and U.S. antidumping and countervail actions affecting oil country tubular goods demonstrates, however, that in practice this concern also arises in relation to other types of contingency measures.

In regard to safeguard measures and voluntary export restraints, the case studies also show that the residual authority over these measures held by Congress is a major source of pressure for the imposition of restrictive measures. This reflects the generally more protectionist nature of Congress as compared to the Administration. The case studies illustrate that, contrary to appearances, the use of voluntary export restraints has not provided adequate assurance against Canada-U.S. steel trade being affected by contingency protection targetted at offshore producers. Also, the lack of injury requirements for voluntary export restraints was found to be a source of concern regarding use of these measures. A further issue raised in the specialty steel safeguards study is the lack of restrictions against the recurrent use of such measures.

The case study of antidumping and countervailing duties on oil country tubular goods illustrates important conceptual flaws in the Canada and U.S. antidumping systems which have encouraged the adoption of costly non-tariff barriers. In regard to dumping, these problems, involve the improper treatment of normal economic responses, particularly during recessionary periods, when determining whether dumping has actually occurred, and certain aspects of the Canadian and U.S. methodologies for calculating margins of dumping. In the steel sector, these aspects of the antidumping system have made it similar in effect to the safeguards system but with a lower injury threshold. The oil country tubular goods case study illustrates the uncertainty that U.S. allegations of unfair Canadian subsidization create for Canadian producers' access to U.S. markets. Such allegations can relate to a wide range of frequently used Canadian industrial assistance programs. The discussion of the Canadian and U.S. antidumping and countervail material injury determinations in regard to oil

country tubular goods pointed to aspects of these determinations, such as the practice of cumulating imports from different sources and findings of a likelihood of material injury, which can facilitate findings of material injury in questionable circumstances.

The case study of Buy American restrictions in the U.S. Surface Transportation Assistance Act of 1978, illustrated that buy domestic policies continue to be an important source of non-tariff barriers to bilateral Canada-U.S. trade despite the negotiation of the GATT Agreement a Government Procurement in 1979. A further concern regarding these non-tariff barriers is the lack of restrictions, such as threshold injury tests, to prevent their use.

Finally, the case studies illustrate the difficulties involved in representing Canadian interests in U.S. contingency trade proceedings. The nature of U.S. trade legislation and particularly the overlapping Administration and Congressional authority for certain types of trade measures has imposed substantial costs on Canadian steel producers in attempting to represent their interests in the U.S.

The non-tariff barriers studied here imposed substantial and diverse costs on steel users and producers in both Canada and the U.S. These costs reflect the restrictive effects which non-tariff barriers have had on bilateral Canada-U.S. trade in steel and the efficient operation of natural Canada-U.S. transborder markets. The nature of the costs which the non-tariff barriers examined have imposed reflects the unique relationship between the two countries' steel markets. For producers, these non-tariff barriers have not only directly affected export opportunities, but have also reduced Canadian and U.S. steel firms' scope and incentive for efficient specialization,

restructuring and development to better serve North American steel markets. Non-tariff barriers are particularly important for Canadian steel producers because of their greater reliance on Canada-U.S. trade to achieve efficiency. Uncertainty regarding their continued access to U.S. markets is an important concern for the development of the Canadian steel industry.

For Canadian steel users, besides their direct effect on the cost of steel, these non-tariff barriers have inhibited beneficial competition in Canadian steel product markets which are frequently characterized by a few or only one domestic supplier. In the case of specialty steel, non-tariff barriers were actually placed on some products that are not made in Canada. The case studies illustrated that it is important to examine the secondary effects of non-tariff barriers in markets related to those directly subject to these measures. That is, the imposition of not-tariff barrier on bilateral Canada-U.S. trade in steel has had important adverse effects on competition and efficiency in related markets where steel is an important input to production. To the extent that such costs arise in regard to non-tariff barriers in other sectors, the case studies on non-tariff barriers in the steel sector strongly support efforts to establish a more liberal Canada-U.S. bilateral trade framework.

NOTES TO CHAPTER IV

1. Products covered by the earlier safeguards included certain stainless and alloy tool steel bars, wire rods, plates, sheet and strip. Semi-finished products were not covered by these safeguards. See United States International Trade Commission, Stainless Steel and Alloy Tool Steel, Report to the President on Investigation No. TA-201-48, USITC Publication 1377, May 1983, pp. A-3 to A-5.
 2. Id. at p. A-4
 3. Section 301(a)(1) of the Trade Act of 1974, under which this action was initiated, allows the President to withdraw trade concessions or impose import barriers in order to eliminate foreign trade practices deemed to be:

... unjustifiable or unreasonable tariff or other import restrictions which impair the value of trade commitments made to the United States or which burden, restrict or discriminate against United States commerce.
- See the Trade Act of 1974, section 301(a)(1), 19 USC 2411.
4. Federal Register, Vol. 47, No. 222, Nov. 17, 1982, pp. 51717-8. The investigation concluded that these effects were in addition to injury suffered by the U.S. steel industry as the result of a recession which occurred during the 1980-82 period.
 5. Id. at p. 51718.
 6. Id. at p. 51718.
 7. United States International Trade Commission, Stainless Steel and Alloy Tool Steel, supra note 1, p. 1. Also see pp. A23-A36. Over the 1980 to 1982 period, U.S. producers' shipments of stainless steel declined from 1,005 to 809 thousand short tons, while their alloy tool steel shipments declined from 79 to 45 thousand short tons. The Commission also found that the U.S. industry had suffered declining prices, profitability, employment and hours worked.
 8. Id. at pp. 22-30. The issue as to whether the U.S. industry's policy of maintaining prices during recessionary periods led to increased imports, rather

than imports being merely a source of injury to the U.S. industry, was not considered by the Commission in its finding.

9. Id. at pp. 39-61.
10. Federal Register, July 7, 1983, Vol.48, No. 131, pp. 31177-8.
11. Department of External Affairs, Communiqué, January 4, 1984.
12. Products covered by the surtaxes included all grades of hot-rolled stainless steel sheet and strip, and certain grades of cold-rolled stainless steel sheet and strip. See the Canada Gazette, Part II, Vol. 118, No. 1, pp. 237-9. The GATT safeguard provisions are outlined in pp. 55 to 57 of Chapter III.
13. Canada Gazette, Part II, Vol. 118, No. 13, p. 2762. The affect of these restrictions on Canada-U.S. steel trade are considered in detail in Section 4 of this Chapter.
14. U.S. apparent consumption of stainless steel declined from 996 to 934 thousand tons during the 1980-82 period. U.S. apparent consumption of stainless steel was almost 1.3 million tons in 1979. Over the 1980 to 1982 period, U.S. apparent consumption of alloy tool steel fell from 106 to 83 thousand tons. See United States International Trade Commission Stainless Steel and Alloy Tool Steel, supra note 1, pp. A-88 to A-94. Declining U.S. prices for most stainless and alloy tool steel products are indicated by the tables contained in pp. A-126 to A-133 of the same publication. Total U.S. stainless steel imports were 99.9 thousand tons in 1980 as opposed to 162.5 thousand tons in 1982. Total U.S. alloy tool imports, over the same period, rose from 29.9 to 40.1 thousand tons. United States International Trade Commission, Stainless Steel and Alloy Tool Steel, supra note 1, pp. A-98, A-99, A-108 and A-109.
15. United States International Trade Commission, Stainless Steel and Alloy Tool Steel, supra note 1, pp. A89 and A94.
16. Canadian stainless steel exports to the U.S. declined from 8.7 to 6.2 thousand tons over the 1980 to 1982 period. Canadian alloy tool steel exports declined from 1.6 to 1.4 thousand tons over the same period, and were only 0.6 thousand tons in 1981. See United States

International Trade Commission, Stainless Steel and Alloy Tool Steel, supra note 1, at pp. A-98 to A-109.

17. A series of dumping allegations made by the Canadian specialty steel industry during 1982 resulted in four separate findings that specialty steel had been dumped in Canada resulting in material injury to the Canadian industry. These findings encompassed imports from a number of countries excluding the U.S. See the findings of the Canadian Antidumping Tribunal in investigations ADT-18-82, ADT-19-82, ADT-1-83 and ADT-2-83.
18. A Canada-U.S. agreement to cooperate in the area of safeguards to avoid this problem was concluded in February 1984, following the implementation of the U.S. specialty steel safeguards. This has not significantly changed the situation. While the agreement promotes prenotification and negotiations in this area, it contains no obligations concerning conciliation, or specific mechanism to promote conciliation besides advanced notification.
19. The specialty steel industry is of the opinion that a further 3 year period of protection may not be long enough as the "fundamental causes of the import problem -- world over-capacity and trade distorting practices... probably will not be resolved in the short-term." However, it is this type of trade restriction which tends to perpetuate such problems by reducing incentives for adjustment. See the Pre-hearing brief of the Federal Trade Commission, Before the United States International Trade Commission: Stainless Steel and Alloy Tool Steel, No. TA-203-16, (Washington: March 27, 1987), pp. 1-2.
20. See Rio Algom Limited, United States Securities and Exchange Commission 10-K Report, for the years 1980 to 1984.
21. Rio Algom, Annual Report, 1984.
22. During 1984, the first full year that the U.S. quotas were in effect, Canadian stainless steel bar exports to the U.S. were 1.1 thousand tons as compared to only .4 thousand tons in 1982. The increase in Canadian exports to the U.S. was possible since the U.S. quotas were determined on a historical basis going back several years and Canadian exports to the U.S. in 1982 were well below historical levels. Also, the average value per ton of U.S. stainless bar imports during 1984 was \$2,100 as compared to \$1,800 in 1982. Although U.S. apparent consumption of stainless steel bars increased by 11%

between 1982 and 1984, these figures suggest that the quotas initially benefitted Canadian exports to the U.S. by suppressing competition from other countries. The above figures are based upon data supplied by the Agreements Compliance Division of the U.S. International Trade Administration.

23. According to the Office of the United States Trade Representative, 99.3% of the Canadian stainless steel bar quota was used over the July 20, 1985 to July 19, 1986 period. Over the July 20, 1986 to January 19, 1987 period, 97.7% of the quota was used. Over the 1978 to 1980 period, U.S. stainless steel bar imports from Canada averaged 1.5 thousand tons per year. By comparison, Canadian exports to the U.S. averaged only 1 thousand tons per year during 1985 and 1986. These figures are based on statistics provided by the Agreements Compliance Division of the United States International Trade Administration. The 1986 statistics are preliminary.
24. According to the Office of the United States Trade Representative, 89.9% of the Canadian alloy tool steel quota was used over the July 20, 1985 to July 19, 1986 period while 70.8% of the quota was used over the July 20, 1986 to January 17, 1987 period. It should be noted, however, that this does not necessarily imply that the quotas will not be used as they can be carried over to successive periods.
25. Based on statistics provided by the Agreements Compliance Division of the United States International Trade Administration. The 1986 figures are preliminary.
26. This is apparent from descriptions of the domestic market for and production of stainless steel contained in the Antidumping Tribunal's statements of reasons for their investigations ADT-17-82, 18-82, 19-82 and 3-85. Reflecting the importance of U.S. market access to Atlas Steels, the company supports more open Canada-U.S. bilateral trade. In its annual report for 1984, the Company stated:

Despite the expectation of market improvement in 1985, there remains a need in the long term for wide market access, and we are working with governments to develop a more open trading environment in stainless and specialty steels with the United States. (p. 2)

27. In 1980, Atlas Steels announced plans for a \$100 million upgrading of its existing facilities. Upgrading of the company's bar facilities was to be the first step. These plans were suspended in 1982 because of poor market conditions. See Rio Algom, 10K Report to the Securities and Exchange Commission for 1982. The safeguard quotas reduced the scope for Atlas Steels to take advantage of additional U.S. market opportunities that would have accompanied this upgrading.
28. The estimate based on average Canadian surtaxes of between 6 and 7% on imports covered by the retaliatory duties. The duties imposed on flat-rolled stainless steel were 4.4% on certain flat-rolled sheet, strip and skelp but only when used in the production of pipes or tubes, and either 6.2 or 7.7% for all other imports covered by the surtax order. Most imports occurred under the higher rates. See Canada Gazette, Part II, Vol. 118, No. 1, pp. 237-9 and Imports by Canadian International Trade Classification, (seven digit level) available from the International Trade Division of Statistics Canada.
29. From 1982 to 1984, the U.S. dollar appreciated more than 25% against the U.K. and French currencies, about 15% against the Swiss and German Francs, and 5% against the Canadian dollar.
30. Over the June-December 1984 period, following the removal of the retaliatory duties, the U.S. share of total Canadian imports of flat-rolled stainless steel previously covered by the duties remained at 24%. The U.S. share of total flat-rolled stainless steel imports not covered by the duties, however, declined from 34% to 26%. Specific stainless steel product categories covered by the duties included hot-rolled sheet and strip in all grades, and widths and cold-rolled sheet and strip in 300 series grades in all widths. The value of these imports and the U.S. imports share were calculated from data provided by the International Trade Division of Statistics Canada, including Imports by Canadian International Trade Classification, (seven digit level) for 1983 and 1984.
31. It has not been possible to provide a detailed estimate of the extent to which the rapid decline in imports covered by the Canadian retaliatory duties was actually triggered by these duties and other possible explanations for the occurrence.
32. Atlas has concentrated its production in high volume 300 series grades accounting for most of the stainless steel sold in Canada. Low volume 300 series and 400

series grades of stainless steel which have not been produced by Atlas, nevertheless, account for a substantial amount of Canadian demand. For example, 400 series strip accounts for about 20% of the total Canadian stainless steel strip market. Also, Atlas is incapable of providing cold-rolled strip in widths in excess of 49.22 inches and hot-rolled sheet in widths in excess of 60 inches. For a description of Atlas's output limitations, see the Antidumping Tribunal's statements of reasons for their findings in Investigations ADT-17-82, pp.4-5 and 7-14, ADT-18-82, p. 4, and ADT-19-82, pp. 4-5 and 8-13.

33. Data limitations did not permit estimation of the proportion of Canadian imports subject to the retaliatory duties but not made in Canada.
34. See Canadian Antidumping Tribunal, Statements of Reasons for the Decisions in Investigation No. ADT-17-82, p. 5, and Investigation No. ADT-19-82, p. 5.
35. See Canadian Antidumping Tribunal, Statements of Reasons for the Decision in Investigation Nos., ADT-17-82, and ADT-18-82 for a description of the marketing of flat-rolled stainless steel in Canada.
36. Specialty steel users' competitive sourcing strategies are considered in Canadian Antidumping Tribunal, Statement of Reasons for the Decision in Investigation No. ADT-19-82, pp. 8-9.
37. The petition was made on behalf of U.S. producers which produce steel using primarily the open hearth and basic oxygen furnace processes. U.S. electric furnace steel producers have generally not encountered the same difficulties from offshore competition. See United Steelworkers of America, AFL - CIO/CLC and Bethlehem Steel Corporation, Petition Under Section 201 of the Trade Act of 1974, January 1984, p. 6.
38. Id. at Précis page C.
39. Federal Register, Vol. 49, No. 32, February 15, 1984, pp. 5838 to 5840.
40. Bill S.2380, Fair Trade in Steel Act of 1984, introduced by Mr. Heinz, March 1, 1984.
41. Congressional Record, March 1, 1984, at S2158.
42. Id. at p. S2157
43. Id. at pp. S2157-8

44. Federal Register, Vol. 49, No. 149, August 1, 1984, pp. 30807 to 30809.
45. Federal Register, Vol. 49, No. 184, September 20, 1984, pp. 36813 -14.
46. Id.
47. See the Trade and Tariff Act of 1984, (sections 801-808), "Title VIII - Enforcement Authority for the National Policy for the Steel Industry," pp. 95 to 99.
48. For example, see the comments of Senator Heinz upon introduction of the Fair Trade in Steel Bill to Congress, Congressional Record - Senate, March 1, 1984 at p. 52158, and the comments of a representative for Bethlehem Steel, one of the co-sponsors of the carbon and alloy steel safeguard petition reported in the Globe and Mail, June 22, 1984 at p. B1. This view is also evident from the President's decision not to establish voluntary export restraints with Canada as such restraints were intended only in regard to any "unfair surge in imports". (Federal Register, Vol. 49, No. 184, September 1984, at p. 36813.)
49. See "U.S. Steel Import Stand Proof Bilateral Treaty Needed," Globe and Mail, June 25, 1985, p. B2, "U.S. Seeking Steel Export Cuts," Globe and Mail, June 11, 1985, p. B3, "U.S. Planning Closer Monitoring of Canadian Steel Export Share," Globe and Mail, May 3, 1985, p. B1, "Steel Makes a Stand," Report on Business Magazine, May 1985, pp. 52-8, and "Canadian, U.S. officials gather to discuss problems of steel trade," Globe and Mail, January 29, 1987, p. 86.
50. See the references cited in note 13, id.
51. Figures provided by the American Iron and Steel Institute. The 1986 Canadian market share figure is preliminary. It should be noted, however, that the high Canadian export figures for 1986 may largely reflect a six-month labor dispute at U.S. Steel (now USX) that ended in February 1987. See "U.S. steel industry targets sales by Canadian firms," Globe and Mail, February 4, 1987, p. B10.
52. "U.S. steel industry targets sales by Canadian firms," Id. Overall, countries not covered by the restraint program increased their U.S. market share from 4.1% in 1985 to 5.35% in 1986.
53. See the news release of the Canadian Steel Trade Conference issued September 10, 1986.

54. Id. The Conference, based on recent U.S. trade figures, concluded that the 13 largest Canadian producers' share of all Canadian steel exports to the U.S. had declined from 75.1% in 1979, to 70.8% in 1985, to about 44% over the first part of 1986.
55. An Act to Amend the Export and Import Permits Act, Bill C-57, introduced in Parliament on May 8, 1987.
56. For example, see "IPSCO worries Stelco move may be final straw in U.S.," Globe and Mail, April 29, 1987, p. B3 and "Differing steel figures signal U.S. reporting delays," Globe and Mail, March 4, 1987, p. B4.
57. Bill S. 441, Bill to Amend the Steel Import Stabilization Act, introduced by Senator John Heinz, February 3, 1987. Since 1983, the Canadian market share has been in the 2.9 to 3.6% range according to American Iron and Steel Institute figures.
58. See Table 5 in Chapter II, p. 19.
59. "ITC Recommends Steel Import Barriers," Globe and Mail, July 12, 1984, pp. B1 and B6.
60. See "Canadian, U.S. officials gather to discuss problems of steel trade," Globe and Mail, January 29, 1987, p. B6.
61. See Chapter II, especially pp. 9-10.
62. See "USW study says Algoma survival plan part of the problem," Globe and Mail, February 6, 1987, p. B4. This conclusion is based upon a study conducted for the United Steelworkers concerning the state of the third largest Canadian steel producer.
63. See the Trade and Tariff Act of 1984, Title VIII, "Enforcement Authority for the National Policy for the Steel Industry," Section 803.
64. See "Steel Makes a Stand," Report on Business Magazine, May 1985, pp. 52-8.
65. For example, see "Brock Announces Successful Steel Negotiations," Office of the United States Trade Representative, Press Release, December 19, 1984.
66. United Steelworkers of America, supra note 37, Précis page C.

67. In addition to the proceedings examined in this section, it should be noted that Canadian access to another major sector of the U.S. market for steel-based products used by the oil and gas sector was recently threatened by U.S. dumping allegations. Representatives of U.S. pipe and tubing manufacturers filed a complaint with the U.S. Department of Commerce and International Trade Commission alleging that they had been seriously injured by dumped Canadian steel pipe and tubing used in pipeline construction. On March 30, 1987, however, the Commission arrived at a preliminary finding that there was no reasonable indication that the Canadian exports had materially injured U.S. production of the goods under consideration. See the BNA International Trade Reporter, April 4, 1987, pp.483-4.
68. Federal Register, Vol. 50, No. 160, August 19, 1986, pp. 33383-88, and No. 176, September 11, 1986, p. 37066.
69. "Ipsco files dumping charge over imports of U.S. casings," Globe and Mail, July 25, 1985, p. B2.
70. "Canada's OCTG Charge is Response to U.S. Ipsco executive says," American Metal Market, August 15, 1985, p. 6.
71. The grades of oil and gas well casing covered by the Canadian investigation are used in shallow wells which are prevalent in oil producing regions of Saskatchewan and Alberta. See, Canadian Import Tribunal, Pre-hearing Staff Report: Inquiry No. CIT-15-85, (Ottawa: February 19, 1986) pp. 8-15.
72. Canada, Department of National Revenue Customs and Excise, Special Import Measures Act Information Document: Preliminary Determination of Dumping Respecting Certain Oil and Gas Well Casing Originating In or Exported From Argentina, Austria, the Federal Republic of Germany, the Republic of Korea, and the United States of America, (Ottawa: September 1986).
73. Federal Register, Vol. 50, No. 250, December 30, 1985, pp. 53172-76.
74. Federal Register, Vol. 51, No. 4, January 7, 1986, pp. 660-663.
75. Canada Gazette, Part 1, April 5, 1986, pp. 1746-7.
76. Canadian Import Tribunal, Statement of Reasons Regarding the Finding in Inquiry No. CIT-15-85 (Ottawa: May 2, 1986).

77. In practice, duties are normally not paid as exporters price their Canadian shipments at, or above their estimated normal value. Normal value estimates are based on procedures outlined in Revenue Canada, Customs and Excise, Memorandum p. 14-1-1, February 20, 1985, and sections 15 to 23 of the Special Import Measures Act.
78. The International Trade Administration found that Welded Tube of Ontario had not dumped oil country tubular goods in the U.S. The estimated margins of dumping on other Canadian producers' exports to the U.S. were either raised or lowered. See the Federal Register, Vol. 51, No. 77, April 22, 1986, pp. 15029-37.
79. Federal Register, Vol. 51, No. 77, April 22, 1986, pp. 15037-45. Algoma Steel of Ontario also received countervailable subsidies but was not included in the final determination as the net amount of the subsidy was less than the U.S. de minimis level permitting countervail duties of 0.5%.
80. United States International Trade Commission, Oil Country Tubular Goods From Canada and Taiwan, USITC Publication 1865, (Washington D.C.: June 1986), pp. 1-41.
81. Federal Register, Vol. 51, No. 77, April 22, 1986, pp. 15029-37.
82. Id.
83. U.S. Tariff Act of 1930, Section 771(5), 19 USC 1303 as amended by section 101 of the U.S. Trade Agreements Act of 1979.
84. Federal Register, Vol. 51, No. 77, April 22, 1986, pp. 15037-45.
85. Id.
86. The Canadian tariff rate on unfinished oil and gas well casing imports, during 1985, was 7.9% as compared to 0.5% in the U.S. Further scope for divergence between Canadian and U.S. oil country tubular goods prices results from delays in the accumulation of inventories of imported goods. During the Canadian Import Tribunal investigations, an official of the Prudential Steel gas well casing, indicated that Canadian prices for goods manufactured by the company were significantly higher than U.S. prices. See the public record for the Canadian Import Tribunal, Hearing on Inquiry CIT-15-85,

March 18, 1986. It should also be noted that U.S. producers have themselves engaged in dumping in regional U.S. markets. See Dow, Lohnes and Albertson, Before the United States International Trade Commission, In the Matter of: Oil Country Tubular Goods from Canada: Inv.Nos. 701-TA-255 (Preliminary) and 731-TA-276 (Preliminary), (Washington: August 13, 1985), p. 13.

87. During 1985, U.S. consumption of oil country tubular goods, estimated on the basis of oil and gas well footage drilled, increased by about 1% over the previous year. Canadian demand, estimated on the same basis, increased by about 25%. Prior to the large decline in oil prices in late 1985 and early 1986, a further 5% increase in estimated Canadian oil country tubular goods consumption was predicted. U.S. consumption on the other hand was expected to decline by about 9%. See McCarslin, John C., "Drilling Recovery Stalls in Last Half of 1984," Oil and Gas Journal, January 28, 1984, pp. 107-13, and "U.S. Drilling Activity to Record Fourth Dip in 5 years During 1986," Oil and Gas Journal, January 27, 1986, pp. 92-102. The state of competition in the Canadian oil country tubular goods market is examined in greater detail below.
88. For a discussion of dumping legislation and pricing over a cycle see, Kiyoshi Kawahito, "Steel and the U.S. Antidumping Statutes," Journal of World Trade Law, March-April, 1982, pp. 152-64. U.S. legislation also provides that a statutory minimum for general expenses, equal to 10% of the costs of production and materials, be applied when calculating foreign producers' costs of production. See the U.S. Trade Agreements Act of 1979, Section 773, 19 USC 1673b. Both the Canadian and U.S. methods used to determine margins of dumping would normally find that dumping has occurred even if prices and costs of production were examined over a long-run period. In determining the margin of dumping, both countries consider only sales at less than the constructed costs of production or home market price. Exports occurring at prices in excess of the costs of production or home market price, therefore, are not used to offset sales at depressed prices reflecting periods of weak demand.
89. See United States International Trade Commission, Oil Country Tubular Goods From Canada and Taiwan, supra note 80, pp. A-12 to A-16.
90. This issue has been considered in regard to EEC Trade legislation in Christopher Norall, "New Trends in Antidumping Practice in Brussels," The World Economy, Vol. 9, No. 1, March 1986, pp. 97-110.

91. See the transcript of the March 21, 1986 public hearings for Canadian Import Tribunal, Inquiry No. CIT-15-85, pp. 514-17, and Department of National Revenue Customs and Excise, Statement of Reasons for the Decisions Respecting Certain Oil and Gas Well Casing (Ottawa: March, 1986), p. 6.
92. Canadian Import Tribunal, Statement of Reasons Regarding the Finding in Inquiry No. CIT-15-85 (Ottawa: May 2, 1986).
93. Id.
94. Both the Canadian and U.S. antidumping laws permit the respective enforcement authorities to use the cost of goods sold rather than foreign market price to calculate the margin of dumping. This option is available when in their opinion foreign market sales form "part of a series of sales of goods at prices that do not provide for recovery in the normal course of and within a reasonable period of time of the cost of production of the goods, the administration and selling costs with respect to the goods and an amount for profit." See section 16(2)(b) of the Canadian Special Import Measures Act and section 773(b) of the U.S. Trade Agreements Act of 1979. Global enforcement of such laws can, in effect, amount to public enforcement of administered prices. This would tend to exacerbate rather than relieve market recessions. For a discussion of the implications of administered prices during cycles, see Gardiner C. Means, "Price Inflexibility and the Requirement of a Stabilizing Monetary Policy," Journal of the American Statistical Association, 1935, pp. 401-13.
95. Federal Register, Vol. 51, No. 77, April 27, 1986, pp. 15029.
96. The nature of bilateral Canada-U.S. trade in oil, country tubular goods, as compared to trade in these goods with third countries, is discussed in Canada, Department of National Revenue, Customs and Excise, Special Import Measures Act Information Document, supra note 72, pp. 8-9, United States International Trade Commission, Oil Country Tubular Goods From Argentina, Canada, and Taiwan, USITC Publication 1747 (Washington, D.C.: September 1985), pp. A-11, and A34-A46, and the Canadian Import Tribunal, Public Hearings on Inquiry CIT-15-85, March 20 and 21, 1986.

97. Total direct exports represented about 23% and 28%, respectively, of total shipments of Canadian made oil country tubular goods during 1984 and 1985. Most of these exports, including all exports of H40, J55 and K55 casing, were destined for the U.S. See Statistics Canada, Production and Shipments of Steel Pipe, Tubing and Fittings, Cat. No. 41-011, December 1984, December 1985 and December 1986, and Canadian Import Tribunal, Pre-Hearing Staff Report, supra note, p. 71. It should be noted that other reasons besides the implementation of U.S. non-tariff barriers in this sector may have contributed to the decline in Canadian exports to the U.S. in 1986.
98. During 1984, IPSCO's Calgary Works alone produced about 100,000 tonnes of oil country tubular goods. The company's total steel ingot production for the year was 546,000 tonnes. The importance of oil country tubular goods further increased in 1985 as Ipsco total ingot production fell to 430,000 tonnes while the market for oil country tubular goods increased by almost 50%. See IPSCO Incorporated, Annual Report for 1984, pp. 4-5, and 1985, pp. 1 and 4. As noted in Chapter 2, among the 3 Canadian integrated producers, Algoma has had to undergo the greatest amount of restructuring. The company has not returned to profitability since 1982. Prior to that year, more than 50% of the companies' profits came from pipe and tube shipments to the oil and gas industry. See "Algoma's failure to return to black sparks fear it will end as state ward," Globe and Mail, February 20, 1986, p. B1, and "USW study says Algoma survival plan part of the problem," Globe and Mail, February 6, 1987. U.S. market access is also highly important for Sonco Steel Tube Ltd. of Ontario which converts sheet, strip, plate and skelp into pipe and tubing. The company's major market area for these products is the Northeast U.S. region.
99. In 1983, U.S. exports to Canada of these oil country tubular goods were equal to about 3% of the entire U.S. production of oil country tubular goods. For Canadian imports of H40, J55 and K55 grades of casing, see the Canadian Import Tribunal, Pre-hearing Staff Report, supra note 71, Schedules I to XVI. Total Canadian imports of oil country tubular goods were estimated based upon Canadian imports by the seven digit Canadian International Trade Classification code supplied by the International Trade Division of Statistics Canada. U.S. oil country tubular goods production figures were taken from the United States International Trade Commission, Oil Country Tubular Goods From Canada and Taiwan, supra note 80, p. A-13.

100. See the United States International Trade Commission, Oil Country Tubular Goods From Canada and Taiwan, supra note 80 p. A-13.
101. During its investigations, the U.S. International Trade Commission found that U.S. producers had lost sales to Canadian producers because of higher transportation costs from the U.S. producers, or better service provided by Canadian suppliers. See the United States International Trade Commission, Oil Country Tubular Goods From Argentina, Canada and Taiwan, supra note 96, pp. A42-46.
102. See the Canadian Import Tribunal's Pre-hearing Staff Report, supra note 71, Schedules I to XVI.
103. Canadian Import Tribunal, Public Hearings on Inquiry CIT-15-85, March 18, 1986.
104. See the Canadian Import Tribunal, Statement of Reasons Regarding the Finding in Inquiry CIT-15-85, supra note 76, p. 10.
105. IPSCO has started to produce welded K55 casing but, as of the end of the proceedings under consideration, its product had not yet been widely accepted within Canada.
106. Canadian Import Tribunal, Pre-Hearing Staff Report, supra note 71, Schedules I to XVI.
107. Canadian Import Tribunal, Public Hearings on Inquiry CIT-15-85, March 24, 1986.
108. Only one U.S. exporter complied with the National Revenue's request for information concerning their sales and costs of production, among 39 companies identified by the Department of National Revenue as having exported, H40, J55 and K55 oil and gas well casing to Canada during the January to August 1985 period. See Canadian Department of National Revenue, Customs and Excise, Special Import Measures Act, supra note 72. Bilateral Canada-U.S. trade in oil and gas well casing is carried out at different levels of trade, in small truck-load quantities and between a large number of users and suppliers. This probably distorted U.S. producers' perception of the importance of the Canadian market. For example, total U.S. exports for all oil country tubular goods was reported at 7.3 thousand tons for the year 1984, by the U.S. International Trade Commission. This figure is well below that indicated by the Canadian Import Tribunal investigation and Canadian import statistics. For example, estimated Canadian imports of H40, J55 and K55 grades of U.S. oil well casing alone were estimated at 14.7 thousand tons 1984. See Canadian Import Tribunal,

Pre-Hearing Staff Report, supra, note 71, p. 36, and United States International Trade Commission, Oil Country Tubular Goods From Argentina, Canada, and Taiwan, supra note 96, p. A-18. The complex nature of Canada-U.S. trade would also have increased the organizational difficulties and costs involved in representing U.S. interests before the Canadian Import Tribunal.

109. Federal Register, Vol. 51, No. 77, April 27, 1986, pp. 15037-45.
110. "Canada's OCTG Charge is Response to U.S. Suit Ipsco Executive Says," American Metal Market, August 15, 1985, p. 6.
111. "IPSCO files dumping charge over imports of U.S. casing," Globe and Mail, July 2, 1985, p. B2.
112. For a history of the development of the U.S. Buy American provisions see Deborah Peterson, "The Trade Agreements Act of 1979: The Agreement on Government Procurement," Journal of International Law and Economics, Vol. 14(2), 1980, pp. 326-29.
113. Id.
114. Bill S.2318, The Buy American Act Amendments of 1977, 95th Congress, 1st Session, November 1, 1977, introduced by Mr. Bayh.
115. See the testimony of William Barraclough and Gary C. Hufbauer in The Buy American Act Amendments, Hearings before the Subcommittee on Federal Spending Practises and Open Government on S.2318, March 17 and 23, and April 5, 1978, at pp. 132-58.
116. The Surface Transportation Assistance Act of 1978, section 401, 49 U.S.C. 1602.
117. See Deborah J. Peterson, "Trade Agreements Act of 1979: The Agreement on Government Procurement," supra note 112, pp. 321-48.
118. The Surface Transportation Assistance Act of 1982, section 165, 23 USC 101.
119. See Rodney de C. Grey, Trade Policy in the 1980's: An Agenda for Canadian U.S. Relations (Montreal: C.D. Howe Institute, September 1981), pp. 21-27, and Mario Brossi Foreign Investment in the U.S. (McGraw Hill, 1984), "State Restrictions on Public Procurement," pp. 194-221.

120. Congressional Record, House of Representatives, March 13, 1984, p. H1553.
121. For an outline of the restrictions against the use of formal contingent protection measures and preferential procurement practices, see Chapter II.
122. This ratio is based upon average highway construction steel usage figures, federal highway construction, state capital outlays on the U.S. Federal-Aid highway system and the ratio of state construction expenditures to capital outlays on state administered highways as reported on pp. 59, 55, 68 and 74, respectively of U.S. Department of Transportation, Federal Highway Administration, Highway Statistics 1985, (annual), (Washington: U.S., Government Printing Office), and U.S. steel import, export and shipment figures contained in the American Iron and Steel Institute, Annual Statistical Report, 1985, pp. 54, 44 and 31, respectively.
123. See the sources cited in note 122 id.
124. Figures based on material referred to in note 122, plus township, county and municipality highway construction figures contained in U.S. Department of Transportation, Federal Highway Administration, supra note 122, pp. 96 and 98 (1984 figures).
125. Based on estimated U.S. steel usage for this construction calculated using the references contained in note 120, and a Canadian producers' share of U.S. steel demand of about 3%.
126. Based on estimated steel usage for highway construction calculated using material referred to in note 124, a normal Canadian share of the relevant U.S. demand of about 3%, and Canadian export figures in American Iron and Steel Institute, Annual Statistical Report, 1985, p. 95. The actual trade restrictive effects on Canadian exports may be greater or less than the figures indicated. For example, they may be greater as U.S. steel service centres will have less incentive to carry any Canadian inventory which would not be usable on protected highway projects. The effects on Canadian exports may be overestimated, however, as some of the U.S. shipments affected by the Surface Transportation Assistance Act may simply be put to other uses.
127. Figure provided by the Canadian Institute of Steel Construction Statistics.

128. Federal Highway Administration, U.S. Department of Transportation Seventh Annual Report to Congress: Highway Bridge Replacement and Rehabilitation Program, October 1986, pp. 8-12.
129. This point was affirmed by Hugh Krentz, President of the Canadian Institute of Steel Construction, over the telephone in January, 1987.
130. "Harris Steel hedges, but hopes for U.S. free trade," Globe and Mail, June 26, 1985, p. B9. It should be noted that Harris Steel's plans were altered considerably subsequent to its purchase of a Canadian mini-mill in early 1986. In order to concentrate its activities in products made by the mill, in March 1987, the company announced its intention to divest its structural steel division including the company's related U.S. facilities. It is interesting to note, however, that while the company is currently not interested in further U.S. expansion, their position in this regard could "change considerably" if a free trade agreement is concluded. See the Globe and Mail, "Harris puts its structural steel division on the sales block in strategy change," March 11, 1987, p. 86.
131. Figures based on Statistics Canada, Primary Iron and Steel and Fabricated Structural Metal, Boiler and Plate Works, Publication Nos. 41-001 and 41-232, respectively, for the years 1981 and 1983. Expansion into the U.S. to gain access to U.S. government supported demand for fabricated structural steel in bridges can actually impact on other Canadian steel fabrication. Because of the production technology involved, and the nature of demand for fabricated structurals, fabricating plants are designed to supply a range of products. As a result, the expansion of U.S. operations can affect domestic demand for Canadian steel used in different types of public and private construction projects.

V. Conclusions

The issue of non-tariff barriers is central to ongoing Canadian efforts to secure and enhance access to export markets and reduce the threat of global protectionism. This study provides an in-depth analysis of the impact of specific non-tariff barriers in a major industry of high importance to the Canadian and U.S. economies. The analysis in this study supports and helps to document the case for key elements of the Canadian position in the continuing Canada-U.S. trade negotiations. Most importantly, the study supports Canadian efforts to establish a separate new framework to govern bilateral trade practices in place of existing contingency trade remedies. The analysis also suggests some interim measures that could be taken to mitigate the adverse effects of non-tariff barriers.

This chapter presents the conclusions of the study. Section (1) provides a synopsis of the findings of Chapters II to IV. Section (2) considers the implications of these findings in relation to Canadian objectives in the ongoing trade negotiations with the U.S. Section (3) comments on the role of competition authorities in proceedings relating to the implementation of non-tariff barriers particularly in Canada-U.S. trade.

(1) Synopsis of Findings

Chapter II of the study examined the structure of the Canadian steel industry and nature of Canada-U.S. trade in steel and related products. The chapter indicated that the North American steel industry is encountering increasing import competition particularly from low wage producers in newly industrialized countries. Overall, the Canadian steel industry

has adapted more successfully to the changing world environment than has the U.S. steel industry. However, further restructuring of both Canadian and U.S. steel production is required for it to remain, or become more internationally competitive. Improved Canadian access to the U.S. market for steel is important to facilitate this restructuring and the future development of the Canadian steel industry. U.S. exports are necessary for the Canadian industry to specialize and operate at high levels of capacity utilization, both factors being important determinants of steel production efficiency.

Chapter II showed that there is extensive interdependence between the steel industries in Canada and the U.S. providing substantial benefits to steel users as well as producers in both countries. This interdependence reflects the efficient operation of natural trans-border markets not only for steel, but also for steel inputs such as coal, iron ore and steel scrap. Bilateral trade and interdependence has been particularly beneficial as a source of supply and competition in Canadian steel product markets which often have no domestic supplier or are characterized by a small number of domestic suppliers. Offshore trade, however, is also an important source of supply and competition in the steel sector, and is necessary as an incentive for the efficient restructuring of Canadian and U.S. steel production.

Chapter III of the study examined the legal and institutional framework governing the use of safeguards, antidumping duties, countervailing duties and preferential government procurement practices in Canada-U.S. trade. The chapter outlined the major elements of GATT, U.S. and Canadian trade legislation pertaining to these four major types of non-tariff barriers and the institutions responsible for the enforcement of this legislation. It also noted several recent amendments to Canadian and U.S. trade legislation, contained in the Canadian Special Import Measures Act of 1984, the U.S. Trade

and Tariff Act of 1984 and the U.S. Surface Transportation Assistance Act of 1978, that have substantially increased the level of import protection provided to Canadian and U.S. producers by their countries' trade laws. In the U.S., a trend towards an even more restrictive contingency protection system is indicated by trade legislation discussed in Chapter III which has recently been introduced in the U.S. Congress. These developments are likely to substantially increase the incidence of non-tariff barriers in Canada-U.S. bilateral trade.

Chapter IV of the paper examined four examples of the implementation and effects of specific non-tariff barriers in steel trade between Canada-U.S. The non-tariff barriers examined include: (i) Safeguards imposed by the U.S. on bilateral trade in specialty steel and related Canadian retaliatory duties; (ii) Informal restraints on bilateral trade in carbon and alloy steel in connection with the U.S. National Policy for the Steel Industry; (iii) Antidumping and countervailing duties imposed by Canada and the U.S. on their bilateral trade in oil country tubular goods; and (iv) Buy American government procurement restrictions contained in the U.S. Surface Transportation Assistance Act of 1978.

The case studies contained in Chapter IV illustrated a number of concerns regarding the development of non-tariff barriers in Canada-U.S. trade. They provided several examples of overlap between different types of non-tariff barriers. In the steel sector, this overlap has led to substitution between different measures of contingency protection and successive levels of non-tariff barriers tending to increase the overall level of import barriers to Canada-U.S. trade. In addition, aspects of the contingency protection systems studied have encouraged the adoption of retaliatory non-tariff barriers, thereby escalating these measures' adverse effects on Canada and the U.S. Other issues raised in regard to the Canadian and U.S. contingency protection systems include the threat of non-tariff

barriers arising in Canada-U.S. trade primarily as a result of problems in the two countries' offshore trade in steel, and the high costs imposed on exporters and importers in order to represent their interests in trade proceedings. The latter two issues are of particular concern for the use of safeguards and voluntary export restraints but have also applied to some extent to antidumping and countervailing duties in the steel industry.

Chapter IV illustrated a number of concerns regarding the use of specific types of non-tariff barriers. In regard to U.S. safeguards and voluntary export restraints, residual Congressional authority over these measures has increased the threat of direct restrictions on Canadian steel exports to the U.S. Voluntary export restraints, while initially appearing to do so, have not prevented the use of protective measures directed primarily at offshore trade from substantially affecting Canada-U.S. trade. A further concern raised in regard to these measures is the lack of restrictions against their continued use over extended periods of time.

Chapter IV also showed that conceptual flaws in the Canadian and U.S. antidumping systems can trigger the use of non-tariff barriers against normal competitive responses to changing demand conditions thereby impeding pro-competitive and efficient bilateral trade. The market conditions that recently led to the imposition of antidumping duties on Canada-U.S. bilateral trade in steel would have been less likely to result in remedial action if the situation had instead been dealt with under either country's competition laws. Aspects of the method used by Canadian and U.S. trade authorities to determine margins of dumping make the antidumping system similar, in effect, to the safeguard system, but with a lower injury threshold. In regard to countervailing duties, Chapter IV provided an example of the uncertainty which U.S. allegations of subsidization can create for Canadian access to the U.S. market. The Chapter also

demonstrated the continuing importance of preferential government procurement policies as a source of non-tariff barriers despite the negotiation of the GATT Agreement on Government Procurement in 1978.

Finally, each of the non-tariff barriers examined in Chapter IV disrupted the efficient operation of natural transborder markets, imposing costs on users and producers in both Canada and the U.S. For producers, particularly in Canada, these non-tariff barriers have restricted access to important sources of demand and created uncertainty concerning future bilateral market access. These effects have impeded the development and restructuring of the Canadian steel industry. For steel users, the non-tariff barriers studied have impeded access to competitive sources of supply. The competitive effects of non-tariff barriers are particularly important for Canadian steel markets which are often characterized by highly concentrated domestic supply.

(2) Policy Implications

The findings of chapters II to IV provide analytical support for a number of possible Canadian objectives in the ongoing bilateral trade negotiations with the U.S. Most importantly, the experience of the steel sector strongly supports Canadian efforts to establish a separate new framework to govern trade practices in Canada-U.S. bilateral trade as an alternative to the use of existing contingency trade remedies. Such a separate framework could go a long way to facilitate the efficient operation of transborder markets, such as those characterizing the steel industry, providing important benefits to users and producers in both countries.

As a central feature of the proposed separate framework for Canada-U.S. trade, this study supports current proposals for the replacement of existing antidumping policies with reliance on relevant provisions of the two countries' antitrust laws

dealing with price discrimination and predatory pricing.¹ Reliance on competition laws in place of the antidumping laws would address a number of concerns raised in the study concerning the current antidumping system. In particular, it would avoid the threat, inherent in the existing system, of restrictions being placed on normal competitive responses to market conditions. By reducing the threat of costly antidumping duties being imposed, reliance on the Canadian and U.S. antitrust laws would facilitate the efficient operation of natural transborder markets. This approach would also help to avoid the problem of Canada-U.S. trade being adversely affected by problems involving trade with other countries.

It should be noted that reliance on the competition laws in replacement of the antidumping laws is consistent with the findings of a number of other studies that have examined the treatment of international price discrimination under Canadian and U.S. trade laws.² The European Economic Community has adopted such an approach in regard to trade between member states. Rather than prohibiting injurious dumping between member states, Articles 85 and 86 of the Treaty of Rome prohibit discriminatory pricing between member states if it is predatory, constitutes an abuse of a dominant position or involves collusive practices.³

As an additional feature of the new framework for bilateral trade, this study supports a mutual exemption for Canada and the U.S. from the two countries' respective safeguard laws. The analysis in Chapter IV supported the concern that Canadian firms can be adversely affected by restrictive U.S. trade measures aimed at third countries. Furthermore, given the high degree of interdependence between Canada and the U.S. manifested in the steel industry, and the provision for retaliatory measures in the two countries' trade laws, application of safeguard measures is likely to be harmful to users and producers in both countries.

To avoid the problem of Canada-U.S. trade being adversely affected by safeguards aimed at offshore countries, any Canada-U.S. arrangement relating to similar types of trade measures could be based solely on the two countries' bilateral trade. Restrictions against the recurrent use of safeguards would be beneficial in light of concerns regarding the potential for safeguards to persist over long periods.

In the area of subsidies, the study supports the need for development of an alternative to the existing system of countervailing duty laws. This could involve the adoption of mutually agreed-upon disciplines on the use of subsidies in return for the non-application of countervail laws as between Canada and the U.S. Remedies for non-compliance with the disciplines could be confined to negotiated settlements or binding arbitration. This is essential to reduce the uncertainty that U.S. allegations of unfair Canadian subsidization create concerning Canadian producers' access to U.S markets. It would also reduce the high costs associated with contesting countervailing duty proceedings under the existing trade laws.

In regard to government procurement non-tariff barriers, the study supports Canadian efforts to obtain an exemption from U.S. buy domestic legislation. As demonstrated by the study, such non-tariff barriers continue to have an important adverse influence on Canada-U.S. trade.

The demonstrated high degree of substitutability among different types of non-tariff barriers indicates that it is important for a Canada-U.S. agreement to encompass all major sources of non-tariff barriers. Relaxation of the use of all major types of non-tariff barriers is necessary to prevent the reduction of some non-tariff barriers in Canada-U.S. trade from leading to increased use of other non-tariff barriers.

(3) The Potential Role of Competition Policy Authorities

Finally, this study supports the inclusion in a Canada-U.S. trade agreement of provisions giving Canadian and U.S. competition authorities a role in any proceedings relating to the settlement of disputes affecting Canada-U.S. trade. As demonstrated in the study, non-tariff barriers have important implications for competition, not only in regard to the protected industries, but also for related downstream industries.

Competition authorities would be provided with a central role in regard to dumping cases with the substitution of Canadian and U.S. competition laws for both countries' current trade laws in this area. In regard to other matters, for example the settlement of disputes related to safeguards and subsidies, however, it may be necessary to develop separate provisions giving competition officials the authority to intervene in relevant trade proceedings. Such provisions should provide competition authorities with the right to intervene in regard to both the technical aspects (i.e. injury tests and margins of subsidization) and public interest aspects of any remedial measures.

The present Canadian and U.S. trade laws provide limited scope for interventions by competition authorities. The Director of Research and Investigation, Competition Act, has the authority to make representations in regard to some but not all technical aspects of Canadian countervail, dumping and safeguard investigations.⁴ The Director also has the authority to make public interest representations in regard to dumping and countervail investigations. As noted in Chapter III, section 45 of the Special Import Measures Act entitles the Director to make interventions that the degree of countervail or dumping protection otherwise available should be limited in respect of the public interest. The Canadian safeguard system, on the other hand, contains no provisions relating to the public interest although the issue can be examined if this is consistent with the

terms of reference for related investigations.⁵ U.S. antitrust authorities have broad authority to make interventions in regard to the technical aspects of contingency protection investigations.⁶ However, while the current U.S. safeguard system contains public interest provisions, the U.S. antidumping and countervailing duties systems do not.⁷ Therefore, it is necessary to develop additional approaches or provisions beyond those in the current trade law in order to provide competition authorities in Canada and the U.S. with the ability to intervene in regard to all major aspects of proceedings on contingency protection measures.

Pending the outcome of the Canada-U.S. trade discussions, Canadian competition authorities could employ the means currently available to under the domestic trade laws to intervene in trade proceedings where such interventions are warranted to mitigate the effects of non-tariff barriers. In Canada, this role would entail public interest interventions under section 45 of the Special Import Measures Act. It would also entail interventions under sections 42 and 76 of the Special Import Measures Act dealing with investigations and reviews of investigations into injury caused by dumped or subsidized imports. In regard to safeguards, Canadian competition authorities could make representations in regard to both technical and public interest matters where provided the authority to do so under the terms of reference for a safeguard investigation.⁸

The ability of Canadian and U.S. competition authorities to intervene effectively in their countries' trade proceedings could be enhanced through increased coordination of their efforts in this area. This could entail coordinated interventions by Canadian and U.S. antitrust agencies to deal with bilateral trade policy issues. Also, in any matter involving contingency trade proceedings relating to bilateral trade, either country's antitrust authorities could request the other's to intervene. The potential benefits to coordinating

competition authority intervention in trade proceedings in both countries include better use of relevant information available to competition agencies in both countries and reduced costs for competition authority interventions. In matters, such as the oil country tubular goods proceedings, where producers in both countries initiate parallel actions, coordination of Canadian and U.S. competition authority efforts would facilitate parallel interventions in their respective jurisdictions. Such an approach would provide greater benefits, however, if Canadian and U.S. competition authorities were ensured of expanded authority to make interventions in regard to both the technical and public interest aspects of non-tariff barriers.

The Canada-U.S. Memorandum of Understanding on the application of antitrust laws, which came into effect in 1984, provides a framework for improved and expanded cooperation between the two countries in a broad range of antitrust-related matters. While the Memorandum of Understanding does not refer to mutual assistance and coordination in regard to trade policy interventions, it provides a basis upon which a coordinated approach to these interventions could be established.⁹

The case studies in Chapter IV point to another possible means for competition authorities to reduce the adverse effects of non-tariff barriers. They showed that non-tariff barriers at one level of production can lead to anti-competitive abuses at other levels. Competition authorities may be able to use their ability to initiate investigations under the Competition Act to reduce these anti-competitive effects. Canadian and U.S. competition agencies could initiate programs to monitor the behaviour of firms protected by contingency trade barriers as one means to focus enforcement of the Competition Act.

Minor amendments to Canadian competition legislation could also help to reduce the adverse effects of non-tariff barriers on competition. At present, section 28 of the Competition Act permits the Governor in Council to reduce or abolish a tariff

where it appears that the tariff has facilitated a combination, merger or monopoly which unduly promotes the advantage of manufacturers or dealers at the expense of the public. The effectiveness of this provision would be substantially increased if it could be amended to cover non-tariff barriers as well as tariffs.

In sum, the study of non-tariff barriers in the steel industry strongly supports Canadian efforts to achieve a reduction of the use of non-tariff barriers in Canada-U.S. trade through the negotiation of a bilateral trade agreement. These efforts should be undertaken not only to enhance and secure Canadian producers' access to U.S. markets, but also for the purpose of improving Canadian users' and consumers' access to U.S. manufactured products. The case studies of non-tariff barriers in the steel industry support a number of possible Canadian objectives in the trade negotiations with the U.S. These include: (i) the replacement of antidumping laws in Canada-U.S. trade with reliance on relevant provisions of the Canadian and U.S. competition laws; (ii) the development of a framework to replace or limit the application of countervailing duty laws in the two countries' bilateral trade; (iii) measures to limit the application of safeguard restrictions including a possible mutual exemption for Canada and the U.S. from each other's existing safeguard laws; and (iv) the attainment of an exemption for Canada from U.S. buy domestic legislation. Finally, the study provides support for competition authorities in Canada and the U.S. to undertake an important role in proceedings relating to the implementation of non-tariff barriers.

NOTES TO CHAPTER V

1. For elaboration of this proposal, see Calvin S. Goldman, Competition, Antidumping and the Canada-U.S. Trade Negotiations (Notes for an Address to the Canada-United States Law Institute, Cleveland, Ohio, April 3, 1987.)
2. For example, see Klaus Stegemann, The Consideration of Consumer Interests in the Implementation of Antidumping Policy (Ottawa: Consumer and Corporate Affairs Canada, 1984), John J. Barcello, III, "The Antidumping Law: Repeal It or Revise It," Antidumping Law: Policy and Implementation, Michigan Yearbook of International Legal Studies, Volume I (Ann Arbor: The University of Michigan Press, 1979), pp. 53-93 and Stanley D. Metzger, Lowering Non-Tariff Barriers, (Washington, D.C.: The Brookings Institute, 1974).
3. Klaus Stegemann, supra note 2, pp. 29-33 and Richard Dale, Antidumping Law in a Liberal Trade Order, (New York: St. Martin's Press, 1980), pp. 48-51.
4. Determinations of margins of dumping and subsidization are carried out internally by the Canadian Department of National Revenue without public hearings. The ability of the Director of Investigation and Research to intervene in related injury proceedings under sections 42 and 76 of the Special Import Measures Act has not yet been fully developed. It appears that the Director will at least have the authority to make representations that injury incurred by domestic producers seeking protection was actually caused by these producers' trade restrictive or anti-competitive practices. This follows from the Director's authority under section 97 of the Competition Act to make interventions before regulatory boards in respect of competition, and articles 3(d) and 4(4) of the GATT Antidumping Code and Code and Subsidies and Countervailing Duties, respectively, which require that trade restrictive practices and competition between foreign and domestic firms be examined as an alternative explanation for injury suffered by a domestic industry.
5. See sections 45 and 48 of the Special Import Measures Act. Also, see the terms of reference for the Antidumping Tribunal's safeguard investigations in regard to preserved mushrooms and footwear for the years 1973 and 1977, respectively, as compared to the terms of reference for the 1984 safeguard investigation in regard to footwear.

6. See Carol Crawford, "The Consideration of Consumer Interests in the Formulation and Implementation of Trade Policy," Symposium on Consumer Policy and International Trade, (Paris: The Organization for Economic Cooperation and Development, 1984).
7. See section 202 of the U.S. Trade Act of 1974 dealing with U.S. safeguards, as compared to Title I of the U.S. Trade Agreements Act of 1979 dealing with U.S. antidumping and countervailing duties.
8. The Director made such an intervention in the 1984-85 safeguard investigation in regard to imported footwear. See In the Matter of An Inquiry Under Section 16.1 of the Antidumping Act Respecting: The Importation Into Canada of Footwear and Skates, Submission of the Director of Investigation and Research, Combines Investigation Act, (Ottawa: Consumer and Corporate Affairs Canada, January, 1985).
9. See Appendix IX of the Annual Report of the Director of Investigation and Research, Combines Investigation Act, for the year ending March 31, 1984, pp. 155-59.

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