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Trade Law in Canada

WTO, NAFTA and All That

How it Works

OJEN, August 2005

Introduction

- **The GATT and the WTO**
- **International Treaties**
- **Implemented by national laws**
- **WTO - central organ in international community**
- **Establishes norms, dispute resolution + system of sanctions**

Basic Concepts

- **Key pillars:**
 - Most Favoured Nation (“MFN”)
 - National Treatment
 - No controls on imports/exports
 - Bound Tariffs

Limited Exceptions

Emergency relief (“Safeguards”)

- Human, animal, plant life
- National security
- Public morals
- Short supply

National Laws and the International System

- National laws implement international obligations
- SIMA, CITT Act
- Private actions often drive the system – e.g., Softwood Lumber dispute
- Disputes can be resolved in domestic courts or at the WTO or the NAFTA

Tariffs and Market Access

- **Under WTO Agreement – tariffs are “bound”**
- **Market access rights limit national barriers**
- **Import barriers like quotas are prohibited**
- **Export restrictions not allowed**

Exceptional Rules

- **Trade remedies – counter unfair trading by way of dumping or subsidizing**
- **Dumping and subsidies – unfair distortions to liberal trade regime**
- **Safeguards – other exceptions by way of emergency relief**

WTO – Paramount Dispute Settlement Body

- **Governments increasingly seek recourse to the WTO**
- **WTO jurisprudence is extensive**
- **Enforcement through retaliation**
- **Problems in implementation of panel ruling**

Dumping – The Basic Elements

- **Details in WTO Anti-Dumping Agreement**
- **Normal Value compared with Export Price**
- **What is Normal Value?**
- **What is Export Price?**
- **Same or directly competitive goods**
- **Same Level of Trade**

Subsidies and Countervailing Measures

- **Unfair trade and market distortions**
- **Financial contribution by Governments**
- **“Specificity” versus “general availability”**
- **Concept of “benefit”**
- **Softwood Lumber Case:**
 - What is a “contribution?”
 - How are benefits measured?

Injury – The Basic Elements

- **“Material” Injury – the essential element, but what is it?**
- **Proof of a “Causal Link”**
- **Declines in performance as imports increase**
- **Correlation and direct evidence**

Canadian International Trade Tribunal

- **Decides material injury:**
 - Lost sales and market share
 - Declines in revenues, margins and net income
- **Causal connection:**
 - Correlation between imports and injury
 - Not all dumping is causal
 - Other factors cannot be attributed
- **Tribunal hearing – quasi-judicial**

Dispute Settlement

- **State-to-State versus private appeals**
- **The WTO process -- for governments**
- **The NAFTA process -- for citizens and governments**
- **Private appeals to the Courts – judicial review ingredients**

Appeals in Canada

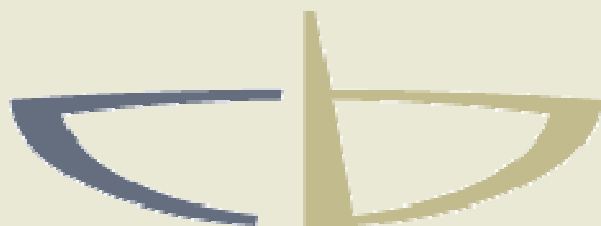
- **Judicial deference – “patently unreasonable” and all that**
- **Unreasonableness versus simple errors – does this make sense?**
- **NAFTA panels follow domestic laws**

Safeguards

- **Theoretical underpinnings – adjustment by the industry**
- **Fair versus unfair trade**
- **Emergency relief – temporary**
- **Departure from tariff bindings**
- **Special case of China**

Summary

- **WTO is key international body**
- **Normative versus adjudicative**
- **Is the new Court of Appeal**
- **Sanctions by retaliation**
- **Defects – implementation**
- **Legislative arm seems paralyzed**
- **Doha Round not making progress**

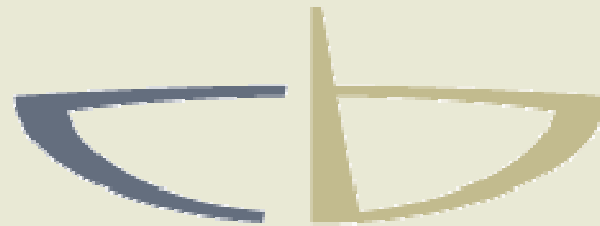


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