GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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FREE-TRADE AGREEMENT BETWEEN CANADA AND THE UNITED STATES

Questions and Replies

Contracting parties were invited (GATT/AIR/2865) to communicate to the secretariat any questions they might wish to put concerning the Free-Trade Agreement between Canada and the United States.[1] In response to this request, a number of questions were received and were transmitted to the parties to the Agreement. The questions and the replies which have been received are set out below.

I. GENERAL

I.1. Objectives/Scope

I.1.1. What percentage of trade in each direction will be affected by the Agreement?

- **initially**
- **after 5 years?**

Answer

All trade in goods is affected by the Agreement. All tariffs will be eliminated by 1998. Under the terms of the Canada-United States Free Trade Agreement (FTA), some tariffs were reduced to zero immediately the Agreement came into effect, in five annual steps and the remainder in ten annual steps. As of 1 January 1989, 79 per cent of Canadian exports to the USA entered duty free. As much as 70 per cent of US exports to Canada were already duty free prior to the FTA.

In addition, the FTA affects goods that were previously non-dutiable. First, even previously duty-free goods are now FTA-bound. Second, the FTA prohibits the erection of new non-tariff barriers and eliminates many existing ones. Third, many other provisions of the FTA including government procurement, services, dispute settlement, investment, energy, standards, and border crossing procedures, have a trade liberalizing effect on all trade, previously duty-free or not.

[1] Copies of the text of the Agreement were sent to each contracting party with document L/6464/Add.1.

I.1.2. Following the passage of the Agreement, will Canada continue to honour its bilateral trade agreements with Australia and other countries?

Answer

Canada will continue to honour its bilateral trade agreements with Australia and other countries in a manner consistent with its international rights and obligations. Questions related to the implementation or interpretation of bilateral agreements will be addressed through any consultation mechanism set up under the relevant bilateral agreement or through bilateral discussions.

I.1.3. How does the United States expect the provisions of the Agreement to affect its bilateral trade agreements with other countries?

(a) Does the Agreement require either Party to renegotiate with third countries any bilateral commitments or commitments under arrangements consistent with Article XXIV, GATT waivers or other GATT provisions?

Answer

No.

(b) Do the preferential tariff reduction provisions of the Agreement preclude the continued operation of other agreements with third countries that provide for tariff treatment and import of certain items from a third country to be no less favourable than applied under this Agreement?

Answer

No.

I.1.4. Under Article 104.2, the provisions of the Agreement establishing the free-trade area are to prevail, in the event of any inconsistency, over those of any other agreement, except as otherwise specifically provided. Can the Parties to the Agreement indicate the scope of this provision, in particular vis-à-vis the General Agreement.

Answer

The GATT continues to apply in all respects between Canada and the USA except to the extent that the FTA accords to either Party treatment more favourable than that previously accorded under the GATT, in line with GATT Article XXIV. Article 104.2 relates only to questions at issue between the two Parties to the Agreement. It simply clarifies that, insofar as resolution of such questions is pursued under the provisions of the Agreement, the provisions of the Agreement prevail over the provisions of any other agreement.

The FTA does not alter the rights and obligations of Canada or the United States under the GATT with respect to third countries. Nor does it alter the rights and obligations of Canada and the United States with respect to each other under the GATT. The FTA provides a separate set of rights and obligations that a free-trade partner may invoke in particular cases instead of pursuing a claim under the GATT.

Should resolution of any dispute between the Parties be pursued under the GATT or any of its instruments, the issue would have to be decided in light of the provisions and obligations of the GATT or the relevant Code.

I.1.5. Article 104.2 of the Agreement stipulates that in the event of any inconsistency between it and existing bi- or multilateral obligations (which include the General Agreement, under paragraph 1 of that same article), the Agreement is to prevail. What do the Parties to the Agreement mean by "inconsistency"? What does this mean, taking into account the obligations of the United States and of Canada under the General Agreement and instruments deriving from it?

Answer

See response to question I.1.4.

Article 104.2 does not purport to modify the substantive rights and obligations of the Parties under the GATT. Rather it solely governs the rights and obligations of the Parties under the FTA.

By virtue of Article 1801, a Party may pursue its rights under the GATT or the FTA when both apply. Once a Party elects either FTA or GATT dispute settlement, however, it may not later challenge the same conduct or measure in the other forum.

The only inconsistency between the FTA and the GATT is that the FTA provides for greater trade liberalization than is called for in the GATT. In those instances when an FTA provision is "inconsistent" with a provision of the GATT, a Party is bound to apply the FTA to the extent of the inconsistency. As a practical matter, this means that a Party may not raise in an FTA dispute settlement proceeding the defence that its actions are consistent with the less trade-liberal obligations of the GATT.

I.1.6. Are we correct in understanding that, when clear rules and disciplines are established in the Uruguay Round negotiations in such areas as the following, both the Parties will intend to harmonize the relevant provisions in the Agreement with such rules and disciplines deriving from the Uruguay Round negotiations?

- **Rules of origin (including the criteria for identifying the origin)**

- **Services**

- **Trade Related Investment Measures (TRIMs)**

Answer

The rules and disciplines for rules of origin, services and the use of TRIMs which are agreed upon in the Uruguay Round and which equate with or go beyond those in the FTA would apply in relation to the GATT commitments of Canada and the US. Whether or not to incorporate these rules in the FTA will be the subject of separate consideration in light of the results of the Round, and would need to be discussed and agreed upon by the Parties to the Agreement.

I.1.7. Are we also correct in understanding that, when both the Parties create "a substitute system of rules for dealing with unfair pricing and government subsidization" as provided in Article 1907, both the Parties intend to harmonise the substitute system with a final agreement, if any, resulting from the Uruguay Round negotiations in these areas?

Answer

Pursuant to Articles 1906 and 1907 of the FTA, the two Parties have been given five to seven years (effective 1 January 1989) to develop a substitute system of rules in both countries for anti-dumping and subsidies/countervailing duties as applied to their bilateral trade. The two Parties recognize that the issues that potentially could constitute elements of bilateral negotiations are also under negotiation in the Uruguay Round. The two Parties will therefore continue to monitor progress in the Uruguay Round subsidies and anti-dumping negotiations and to take account of the results in these negotiations in their own preparations.

I.1.8. There is no provision in the Agreement for eliminating tariffs and quantitative restrictions on all agricultural products (for example, dairy products). How does this comply with the requirement under Article XXIV:8(b) that "substantially all" trade between the constituent Parties should be free?

Answer

Under the provisions of Articles 401 and 702, tariffs on agricultural products will be eliminated over ten annual steps. The FTA contains a number of liberalizing elements for trade in agricultural products. Each Party's GATT rights and obligations are retained for all agricultural trade not specifically dealt with in the Agreement. The FTA is fully consistent with Article XXIV:8(b) as substantially all trade between the Parties will be free by the end of the ten annual steps.

I.2. Trade Creation/Trade Diversion

I.2.1. In economic terms, one important intention behind the provisions of Article XXIV is that free-trade areas or customs unions should lead to trade creation, as opposed to trade diversion. Have the Parties to the Agreement estimated, first, to what extent the Agreement will create trade and, second, to what extent it will divert trade? If so, what are the results of these estimations?

Answer

We believe the FTA will result in long term trade creation, both bilaterally and multilaterally.

I.2.2. Have the Parties to the Agreement undertaken any studies on the trade-creating and trade-diverting effect of the Agreement? To what extent do the Parties expect trade diversion to occur?

Answer

If short term trade diversion were to occur, it would be completely overwhelmed by long term gains of the Agreement.

Analysis undertaken by the Canadian Government suggests that for the Canadian market, trade diversion will not occur, that is, there will not be an absolute decline in trade with third countries. Simulations on the basis of a trade model would indicate that due to a rise in economic activity in Canada resulting from the positive economic impacts of the FTA, trade with third countries will increase.

I.2.3. In connection with one of the objectives stipulated in the Agreement, i.e. "to lay the foundation for further bilateral and multilateral co-operation to expand and enhance the benefits of this Agreement", have both the Parties given consideration to the so-called "trade-diverting effect" which might adversely affect the market access for non-member contracting parties? If so, what sort of consideration has been given?

Answer

The response is provided in the previous two replies. In addition, the Canadian Government has conducted an economic assessment of the FTA. In this assessment, the Government has given consideration to the impact the FTA will have on third parties. The simulation results indicate that, over the long term, real incomes in Canada would increase by 2.5 per cent which raises the demand for imports from third countries. Therefore, higher Canadian economic output resulting from the positive impact of the FTA would result in higher, not lower, imports from third countries.

II. RULES OF ORIGIN

II.1. Article 301(3)(a) states that "combining operations" do not confer originating status. What is the definition of "combining operations"? Does it concern only the case where exclusively imported materials are combined, or also the combination of both imported and US or Canadian materials?

Answer

Combining operations are those in which components are packaged or combined by simple assembly in such a manner that the function and identity of the components is unchanged, or changed only to an insignificant degree. For example, these processes will be considered to be mere combining operations: (a) the addition of electric batteries to devices, (b) fitting together a small number of components by bonding, gluing, soldering, etc., (c) blending third country produce (such as orange juice or tobacco) with similar beneficiary country products, (d) adding substances such as anticaking agents, preservatives, colouring or wetting agents, etc., (e) repacking or packaging components together, or, (f) diluting chemicals with inert ingredients.

This definition of combining is applicable not only in cases where exclusively imported materials are combined, but also in cases involving the combination of both imported materials and materials of US or Canadian origin.

II.2. The direct transport rule set out in Article 302 requires that goods are, inter alia, shipped from the territory of one Party to the territory of the other Party without entering into the commerce of any third country. What is the definition of "entered into commerce"?

Answer

Goods are considered to have entered into the commerce of a third country if they undergo in a third country any operation other than unloading or reloading, or other operations necessary to preserve them in good condition. In addition, shipping documents must show either Canada or the United States as the final destination.

II.3. Would goods be considered as originating if they are directly transported from the territory of one Party to the territory of the other Party without being shipped through the territory of a third country and if they are sold at any stage to or by a national or a company of a country not party to the Agreement?

Answer

The rules of origin do not prevent goods from obtaining preferential treatment merely because they are bought or sold by a national or company of a third party, provided the goods otherwise meet the requirement of the rules of origin for preferential treatment.

II.4. What evidence will be required to prove that the goods shipped through the territories of a third country have only undergone the operations allowed by Article 302?

Answer

In order to prove that goods shipped through the territory of a third country have only undergone the operations allowed by Article 302, two documents may be required as supporting evidence.

The transportation document required by Article 302, the through bill of lading, shows that the goods started their continuous journey from the territory of one Party and follows the goods through to their final destination in the territory of the other Party. As well, as set forth in paragraph 1, Annex 406, in order to request the benefits of the Agreement, the importer must be in possession of a certificate of origin from the exporter, certifying that the goods in question satisfy the rules of origin in Chapter 3 (and Annex 301.2).

Although the exporter's certificate of origin for the goods in question need not be presented to Customs at the time of accounting, the importer makes a declaration of origin attesting to possession of the relevant exporter's certificate of origin. The certificate must be available upon request to Customs.

II.5. Article 304 lays down the definition of direct cost of processing or assembly which includes an enumeration of costs to be taken into account.

What, in this context, is understood by:

- **"cost of inspecting and testing the goods" as opposed to "cost of all labour". What other elements than cost of labour for the inspection and testing does it include?**

- **"cost of engineering"? How are the costs mentioned in Article 304(c) and (e) allocated to a specific product in a factory where different products are manufactured?**

To what extent is the cost of quality control by independent firms taken into account?

Answer

The "cost of all labour" include costs for production labour and the first-line production foremen. These costs are the in-factory labour costs at the premises where the relevant processing or assembling takes place. These costs are all in-territory costs.

The cost of inspecting and testing the goods is also an eligible direct cost of processing or assembling. In addition to the labour costs associated with this activity, other reasonable costs that could be allocated to this function include training, protective clothing, depreciation for equipment and office space, etc..

If inspecting and testing is provided by an independent company, then the price paid for such service by the manufacturer would be recognized as a direct cost of processing or assembling.

The cost of inspecting and testing the goods is incurred in the territory. If any inspection or testing of the goods were performed in a third country, the value of the goods would be enhanced in the third country subsequent to their processing in the territory. Accordingly, the goods would not qualify for preferential duty treatment under the Canada-US Free Trade Agreement regardless of their territorial content.

Costs for engineering could include labour, blueprints, design and adaptation of machinery and equipment to the production process.

Certain costs may have to be prorated among different products manufactured in the same plant. In these situations, reasonable prorations which can be justified and verified would be acceptable.

II.6. It is laid down in Article 304 that a number of elements are not considered to be direct costs of processing or of assembly. What is understood by:

- "cost of providing executive and financial services?"

Answer

Executive services include policy direction and/or planning by a board of directors, by general officers, by proprietors of a business enterprise, or by other employees of an enterprise. Executive services would include also the cost of outside consultants employed to give advice on policy direction. Financial services include all budgeting, accounting, tax return preparation, and capital acquisition services, whether performed by employees of a business enterprise or by outside service providers.

II.7. Is the "profit on the goods" mentioned in Article 304(m) the profit of the exporter, or if it is a different person, the profit of the producer?

Answer

Profits of both the producer of the goods and of the exporter, if a different person, are excluded from the direct cost of processing or direct cost of assembly.

II.8. In the event of subsequent sales of the same product in the same state before exportation, how has the "profit on the goods" mentioned in Article 304(m) to be determined? Are all the sellers, or the producers, obliged to declare to their customers what their profit is?

Answer

Because profit is not included in the direct cost of processing or the direct cost of assembling, determination of profit is not relevant to the rules of origin and need not be disclosed by a seller to any other party.

II.9. How, in practice, have exporters to prove the amounts of the individual costs set out in Article 304?

Answer

Accounting records of the manufacturer must substantiate that the percentage of territorial content required by the specific rule of origin has been met as certified on the Exporter's Certificate of Origin.

Where the exporter is not the manufacturer, the exporter must have obtained sufficient knowledge from the manufacturer in order to certify that the applicable rule of origin has been met for the exported goods to be entitled to the preferential rate of duty.

II.10. How are those cases dealt with where the exporter cannot submit evidence with regard to the cost, due to force majeure, bankruptcy, trade secrets or other reasons?

Answer

Preferential treatment is denied in any case in which an exporter cannot establish eligibility for preferential treatment. Goods would then be subject to whatever treatment they otherwise qualify for, in most cases m.f.n. treatment.

II.11. How does the rule which requires in some cases the change of tariff classification plus a 50 per cent added value (e.g. Section XVII) relate to the rule in Annex 301.2(4) which already, in general, confers origin in cases where a 50 per cent added value is sufficient (without the requirement of a change of tariff classification)?

Answer

The value-added only requirement in paragraph 4 of Annex 301.2 is applicable only in two specific instances, as outlined in paragraph 3, where assembly of goods in the territory of a Party fails to result in a change in tariff classification. These instances are as follows:

(a) the goods were imported into the territory of the Party in an unassembled or disassembled form and were classified a such pursuant to General Rule of Interpretation 2(a) of the Harmonized System, or

(b) the tariff subheading for the goods provides for both the goods themselves and their parts.

Paragraph 4 of Annex 301.2 must be read together with paragraph 3 of that Annex, and applies to only a fairly limited class of situations.

II.12. Chapter 3 of the Agreement deals with rules of origin. This chapter is important, not the least, for third parties. According to Article 301.3(c) a product shall not be considered to originate in the territory of a Party to the Agreement merely by virtue of having undergone "any process or work in respect of which it is established ... that the sole object was to circumvent the provisions of this Chapter". How will this provision be implemented? Which criteria will be used in order to prove that a product has undergone a process "with the sole object to circumvent" the relevant provisions?

Answer

The most obvious instances in which this provision will apply are those that involve reverse processing or reverse manufacturing. Examples include:

- the manufacture of a soft drink in one Party by the addition of carbonated water to orange juice, followed by the removal of the carbonated water and the sale of the orange juice after exportation to the other Party.

- creation of a confectioner's product by mixing sugar with other ingredients in one Party, followed by removal of the other ingredients and sale of the sugar after exportation to the other Party.

- assembly of a machine or appliance in one Party, followed by disassembly of the machine and sale of one or more of the individual components after exportation to the other country.

Many of these situations are characterized by reverse processing or disassembly of an article, followed by sale of certain components and destruction and reexportation of others. Such operations are not explainable or justifiable in normal economic terms.

II.13. With respect to the coverage of the Agreement, how will the control of third-country imports from Canada to the United States and vice versa be managed, i.e. could the Parties please clarify the procedures with respect to rules of origin?

Answer

Trade in third country goods between the United States and Canada will be handled as it has been previously. New procedures apply only to goods originating in the United States or Canada for which preferential treatment is claimed.

II.14. In what respects are the rules of origin described in Chapter 3 and Annex 301.2 of the Agreement different from those applied by each of the Parties to the Agreement vis-à-vis third countries? Are they solely designed to establish the tariff preference within the free-trade area or are they also used to administer other measures (e.g. in the area of textiles, Annex 301.2, Section XI)?

Answer

Rules of origin described in Chapter 3 and Annex 301.2 are used only to determine eligibility for preferential treatment under the Agreement. With respect to other purposes for which country of origin must be determined, rules of origin previously in use will apply.

The rules of origin for textiles and clothing (Section XI of 301.2) are designed to establish the tariff preference within the FTA area; they are not designed to administer textiles and clothing trade with other countries.

II.15. What sort of procedures may a person(s) of a non-member contracting party resort to, should that person be adversely affected by the application of rules of origin stipulated in the Agreement?

Answer

The Agreement is designed to allow each Party to extend preferential treatment to goods originating in the other Party. The rules of origin should not cause goods of a third party to be treated less favourably than they were prior to the FTA. In any case, all contracting parties maintain their rights under the GATT.

III. BORDER MEASURES

III.1. Tariffs

III.1.1. To what extent do the provisions of the Agreement in respect of tariff disarmament modify possibilities for the Parties to the Agreement to grant tariff concessions in the future on an m.f.n. basis?

Answer

The FTA has no impact on the rights of the Parties to the Agreement to grant tariff concessions in the future on an m.f.n. basis.

III.1.2. The tariff exemption relating to custom machinery and equipment "not available" in Canada, and to certain repair and replacement parts was, we believe, applied erga omnes. Will it continue to be? (Article 401.6: Tariff elimination)

Answer

The FTA does not affect the machinery programme vis-à-vis third countries. That is, products which are eligible under the programme will continue to enjoy duty free entry if it is determined that the product is not available from Canadian production.

III.1.3. Under Article 401.7, does Canada reserve the possibility of reintroducing customs duties for products mentioned in Annex 401.7 during or after implementation of the tariff dismantlement plan?

Answer

Article 401.7 of the FTA relates to the Canadian schedule of so called "end use" tariff items which carry lower rates of duty on certain products that are used in the manufacture of specific products in Canada (for example, material for use in the manufacture of tubing, parts for use in the manufacture of bicycles). Under the FTA, Canada and the US agreed that tariffs would not be increased. Articles 401.7 and 401.8 reaffirm this position in respect to end use tariff items (known as codes) while providing for exceptions for items set out in Annex 401.7. However, the rates of duty on these items cannot be restored above the FTA rate that would apply in the absence of these codes. As an aside, all such products will be duty free by 1 January 1998.

III.1.4. (a) What quantitative and/or tariff restrictions applying to both United States and Canadian trade will be eliminated under the Agreement?

(b) Over what time span will elimination be effected for each item identified above?

Answer

All tariffs on trade between the two Parties will be abolished. Tariffs are slated for elimination according to three schedules: immediately (effective 1 January 1989), over five years (by 1 January 1993), and over ten years (by 1 January 1998). The tariff elimination schedule will be accelerated for some goods as a result of bilateral consultations pursuant to Article 401.5. The Parties also agreed to eliminate quantitative restrictions as noted in the answer to question III.5.1 below.

III.1.5. The Free-Trade Agreement provides for the elimination of import tariffs between the two countries, thereby adversely affecting tariff benefits granted by Canada and the United States to developing countries. Do Canada and the United States envisage adopting any measures to remedy that situation? Would any measure adopted be of a multilateral or bilateral character?

Answer

We do not accept the premise that any third country is adversely affected by the Free Trade Agreement which liberalizes bilateral trade. Tariff benefits granted by Canada and the United States to developing countries remain in force.

III.2. Customs User Fee

III.2.1. Chapter 4 of the Agreement deals with border measures. According to Article 403.1 neither Party shall "introduce customs user fees with respect to goods originating in the territory of the other Party". The GATT conformity of this provision is not quite clear. How do the Parties to the Agreement justify Article 403.1 under their obligations as contracting parties to the GATT?

Answer

Article XXIV of the GATT does not prohibit a Party to the Free Trade Agreement from exempting other Parties to the Agreement from a customs user fee of general applicability. The only requirement is that the user fee applied to non-Agreement parties not be higher or more restrictive than the fee in place at the time of entry into force of the Free Trade Agreement. The United States has no plan to increase its customs user fee above the level in effect at the time of entry into force of the United States-Canada Free Trade Agreement.

III.2.2. If the United States customs user fee is not to apply to Canada's exports to the United States, how will the cost burden be assessed for other United States trading partners?

Answer

User fees not collected as a result of the waiver of user fees on goods exported to from Canada will simply be foregone. Their cost burden will not be transferred to other trading partners.

III.2.3. Article 403 provides that the United States shall gradually eliminate existing customs user fees on goods originating in the territory of Canada by 1 January 1994. Does this indicate that the United States considers customs user fees as import taxes (which shall be eliminated under Article XXIV)? If the United States considers the customs user fees as a cost of services rendered by the customs, how does the United States explain the elimination of the customs user fees only vis-à-vis Canada in light of most-favoured-nation treatment provided in GATT Article I?

Answer

The customs user fee is a fee for services, not an import tax. The user fee is intended to place on recipients of customs services, rather than the general public, the burden of paying for the cost of customs

services necessitated by the act of importing goods into the United States. The Government of Canada, for its own reasons, has asked for waiver of the user fee on goods imported into the United States from Canada, and has offered, in the context of the Agreement, good and sufficient compensation for the waiver. The United States Government agreed to the Canadian Government's request, and has chosen to bear the expense of customs services required by trade with Canada.

III.2.4. Under this provision, the customs user fees charged by the United States will progressively cease to apply to imports from Canada on 1 January 1994. The question of the customs user fees applied by the United States was the subject of a Panel report that was adopted by the GATT Council in February 1988. How does the United States intend to act on the Panel's recommendation to bring the customs user fees on goods into conformity with its obligations under the General Agreement?

Answer

Congressional approval of corrective legislation was secured on 20 August 1990.

III.3. Drawback

Article 404 states that goods imported into the territory of a Party and subsequently exported or incorporated into other goods exported to the territory of the other Party shall not benefit from drawback of customs duties.

Is any drawback or exemption from customs duties also excluded for products which do not fulfil the rules of origin of the Agreement or which are not covered by the preferential treatment laid down in the Agreement?

Answer

Under the provisions of the FTA, after 1 January 1994, duties paid by processors in Canada or the US on third country materials and components will not be refunded or exempted if the finished good is exported to the other Party, whether the good meets the FTA rules of origin requirements or not. The Agreement provides for a delay in the application of this provision generally or on specified products if both Parties agree. The Agreement also provides for certain exceptions to this provision. That is, imported goods subsequently exported in the condition in which they were imported, imported goods entitled to the benefits of the FTA rates of duty, imported orange or grapefruit concentrates used in the manufacture or production of exported orange or grapefruit products of heading No. 20.09, and imported fabric that is made into apparel that, when imported into the US, is subject to the m.f.n. tariff in accordance with the laws of that country.

III.3.1. What regulations exist permitting export-related duty drawbacks (a) in the United States, (b) in Canada?

Answer

(a) United States

United States drawback regulations are found in 19 Code of Federal Regulations, Part 191.

(b) Canada

The following is a list of the Canadian Department of National Revenue - Customs and Excise Memorandum which outline regulations relating to export drawbacks:

Inward Processing
D7-3-1

Motor Vehicles Exported Drawback Regulations
D7-3-2

Goods for Ships and Aircraft Drawback Regulations
D7-3-3

Canadian Manufactured Goods Exported Drawback Regulations
D7-3-4

Goods Imported and Exported Drawback Regulations
D7-3-5

Canadian Manufactured Tires and Tubes (Exported Vehicles) Drawback Regulations
D7-3-6

Canadian Textile Goods Exported Drawback Regulations
D7-3-7

Canadian Commercial Corporation Goods Exported Drawback Regulations
D-7-3-9

Joint Canada\United States Projects Drawback Regulations
D7-3-11

Drawback on Exportations to the United States on and after 1 January 1994
D7-3-13

III.3.2. What was the total value of duties reduced, refunded or eliminated in (a) the United States and (b) Canada for the three years preceding 1 January 1989?

Answer

(a) United States

Data are not available to answer this question for the United States.

(b) Canada

The value of duties reduced, refunded or eliminated in Canada in the past 3 years which are affected by Article 404 follow:

1986-87 $454 million (Cdn)

1987-88 $506 million (Cdn)

1988-89 $595 million (Cdn)

III.3.3. What portion of those totals related to (a) exports from the United States to Canada and (b) exports from Canada to the United States?

Answer

(a) United States

Data are not available to answer this question for the United States.

(b) Canada

Such a breakout is not available for Canada.

III.3.4. What portion of the totals under III.3.2 and III.3.3 related to imports from the European Communities?

Answer

(a) United States

Data are not available to answer this question for the United States.

(b) Canada

Such a breakout is not available for Canada.

III.4. Waiver of custom duties

III.4.1. Apart from those pertaining to the Auto Pact, what regulations exist permitting performance-based duty waivers (a) in the United States, (b) in Canada?

Answer

(a) United States

The United States has no duty waivers linked to performance requirements as defined in FTA Article 410.

(b) Canada

Excluding automotive goods, the products for which performance-based duty waivers (as noted in Article 405) are applicable are as follows:

- tailored collar shirts
- shirting fabrics
- blouses and shirts
- denim fabrics
- outerwear fabrics and outwear
- outerwear greige fabrics for converting
- pleasure cruisers (water borne craft)
- front-end loaders
- billiard table slate
- specified paper used as decorative laminate
- eyelets or shells
- television picture tubes
- ferro-niobium

The performance requirements for the six textile and clothing products listed above are import encouragements designed to facilitate imports of these products by manufacturers wishing to broaden and complement existing product lines. The programme is meant to facilitate domestic restructuring by allowing firms to concentrate on product lines in which they have a competitive strength.

III.4.2. What was the total value of duties waived (a) in the United States, (b) in Canada for the three years preceding 1 January 1989?

Answer

(a) United States

Does not apply.

(b) Canada

The total value of duties waived in Canada in respect to the products listed in question III.4.1 above are as follows:

1986-87 $17.9 million (Cdn)

1987-88 $29.7 million (Cdn)

1988-89 $39.4 million (Cdn)

III.4.3 What portion of the totals under III.4.2 related to imports from the European Communities?

Answer

(a) United States

Does not apply.

(b) Canada

Such statistical information is not available from Canada.

III.5. Quantitative restrictions

III.5.1. Is the list concerning elimination of quantitative restrictions (Annex 407.5) to be considered exhaustive?

Answer

No. Annex 407.5 provides for the elimination by 1993 of the US embargo on lottery materials and the elimination in 1989 of the Canadian embargo on used aircraft. Quantitative restrictions other than those listed in Annex 407.5 were also eliminated under the FTA. Article 1003 eliminates Canadian import restrictions on US used automobiles by 1994, and Annex 902.5 eliminates or liberalizes quantitative restrictions in energy products. Article 705 sets out conditions for the removal of Canadian import permits for grains.

In addition, Article 703 states: "In order to facilitate trade in agricultural goods, the Parties shall work together to improve access to each other's markets through the elimination or reduction of import barriers."

III.5.2. Article 407.4 provides for consultations in the event that restrictions are introduced on imports from third countries. What cases of "undue ... distortion of pricing, marketing and distribution arrangements" did the Parties to the Agreement have in mind? Would such consultations also take place in the event of introduction of VERs/OMAs?

Answer

Article 407.4 provides that, upon request, the US and Canada shall consult when one imposes a restriction on imports from third countries, "with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party". This provision is intended to deal with those situations when an import restriction might divert trade from the imposing Party to the FTA partner country and cause disruption to that partner country's trade interests. The terms "pricing, marketing and distribution" are not further defined, nor are limitations placed on issues which can be raised under consultations.

III.6. Other export measures

III.6.1. If one Party to the Agreement takes export measures for short supply or conservation reasons, export licences must be issued up to the share traditionally supplied to the other Party. Will this also be valid for third countries?

Answer

No. The provisions of the US-Canada Free Trade Agreement are limited to the two Parties.

III.6.2. As regards Article 409, what do the Parties to the Agreement mean by "controls on the export [of ... goods] to third countries", and what is the objective (409.2)? Is this system consistent with Article XI of the General Agreement?

Answer

Both Parties agreed to cooperate in the maintenance and development of effective controls on the exports of each other's goods (emphasis added) to third countries.

The objective of this provision is to ensure that the partner country does not provide an unintended conduit for the re-export or transhipment of one country's goods which are under control (for example COCOM), to another country when direct exports would not be permitted. This system is fully consistent with the provisions of the General Agreement, including Articles XI, XX and XXI.

IV. NATIONAL TREATMENT

IV.1. Provincial and state measures

IV.1.1. In Canada, can provincial taxes or other measures be applied on goods other than alcoholic beverages imported from other provinces and from other countries, less favourable than those applied to the products of the province in question?

Answer

All imports into Canada from foreign countries are subject to, inter alia, the relevant GATT and FTA disciplines. There are no indications of instances of differential treatment which are inconsistent with our GATT and FTA obligations.

IV.1.2. If so, what taxes and what measures?

Answer

See answer to IV.1.1.

IV.1.3. If so, can the situation now arise where United States goods are treated in a province in a more favourable way than the same goods "imported" into that province from other provinces?

Answer

Under the FTA, United States goods can be treated more favourably in a province than goods of other provinces. This result flows from FTA Article 502 that imposes on the Federal Government in respect of each province the obligation to accord to US goods the most favourable treatment it accords to any like, directly competitive or substitutable goods of the Party of which it forms a part (i.e. Canada, including the province itself).

IV.1.4. In the United States, can state taxes and other measures be applied on goods imported from other states and from other countries less favourable than those applied to the products of the state in question?

Answer

No. The US implementing law provides that the national treatment provision of the Agreement prevails over any state law or the application of state law which conflicts with the Agreement. However, it is unlikely that state law would provide for such discriminatory treatment because the Commerce Clause of the US Constitution has generally been interpreted to prohibit state regulation of commerce which impedes the free flow of foreign and interstate commerce.

IV.1.5. If so, what taxes and what measures?

Answer

N/A.

IV.1.6. If so, can a situation now arise where Canadian goods are treated in a state in a more favourable way than the same goods "imported" into that state from another state?

Answer

Again, it is unlikely that such a situation would arise because of the Commerce Clause of the US Constitution.

IV.2. Textiles rules

As apparently different interpretations exist between Canada and the United States on the content rules for apparel, could the Parties to the Agreement clarify this issue?

Answer

Canada and the United States differ on the interpretation of content rules for apparel in two areas, namely:

- definition of wool
- garments of mixed origin fabrics

1. Wool

The United States and Canada disagree on the definition of wool needed to implement a tariff-rate quota on wool apparel made in one of the Parties from third country fabric. Apparel made in one of the Parties from fabric produced in one of the Parties is entitled to a preferential rate of duty. However, apparel made in one of the Parties from third party fabric is allowed the preferential rate of duty only up to certain limits (separate limits for wool and non-wool apparel). Above those limits, the m.f.n. rate of duty applies.

2. Garments of Mixed-Origin Fabrics

The United States has agreed to employ the Harmonised System "essential character" test subject to the understanding that when the portion of the garment that imparts its essential character contains a significant foreign fibre content, the entire garment must be considered in establishing origin. The United States has also agreed to accept for the time being that a garment of mixed origin fabrics will be deemed to originate in the country of origin of the material that predominates by weight in that portion of the garment, and that gives the garment its essential character. The United States reserves the right to reconsider this issue if monitoring of imports reveals high levels of foreign fabric entering the United States in mixed-origin Canadian garments.

IV.3. Aircraft rules

Canada has agreed to eliminate its embargo on used aircraft (Annex 407.5). What is the situation with regard to import of used aircraft from other trading partners?

Answer

There is no prohibition on the importation of used civil aircraft from any country nor is there a prohibition on the importation of military aircraft imported by the Department of National Defence for military purposes.

V. TECHNICAL STANDARDS

V.1. In what areas are technical standards set by

(a) state governments?

(b) provincial governments?

Answer

(a) State governments

The scope of the standards-related activities of US state and local government bodies is enormous. There are over 30,000 state and local government bodies, each issuing numerous regulations annually. The activities of state and local governments encompass all areas concerning regulation of the domestic economy outside of those areas specifically delegated to the Federal Government. It is not feasible to compile a list of such activities. Within the Unites Sates, the states have the same regulatory powers as the Federal Government.

(b) Provincial governments

The responsibilities of Canadian provincial governments in the setting of standards vary, and are not the subject of specific definition. Information on particular standards set by provincial governments should, in the first instance, be sought through the Canadian enquiry point under the Agreement on Technical Barriers to Trade.

V.2. Should the notification of proposed standards-related measures of state and provincial authorities that may significantly affect trade take place multilaterally?

Answer

The opportunity to obtain information on provincial and state standards is available to other contracting parties through the Agreement on Technical Barriers to Trade. In practice the US was the only contracting party routinely requesting copies of all Canadian standards notified under this agreement. The FTA recognised this by providing for the direct exchange of copies of proposed standards, as far as this is feasible.

With regard to the FTA, the requirements regarding the exchange of information on state and provincial activities are prefaced "where feasible" (para 3, Article 607). In compliance with the obligations under, for example, Articles 3 and 10 of the Agreement on Technical Barriers to Trade, the US and Canadian enquiry points would be prepared to provide, upon request, information on local government activities to interested parties from countries signatories to the Agreement. This should be sufficient; to do otherwise would be economically unacceptable.

V.3. With regard to technical standards, dealt with in Chapter 6 of the Agreement, the Nordic countries have not found reasons to pose questions which are directly linked to the GATT conformity of the provisions. Nevertheless, they would appreciate information with regard to one standards issue. According to Article 604.1 each Party shall, to the greatest extent possible, "make compatible its standards-related measures and procedures for product approval with those of the other Party". What are the practical consequences envisaged? Will non-identical rules be accepted as equal?

Answer

The language in Article 604.1 is intended to be flexible to allow, for example, for the acceptance of non-identical rules which are technically equivalent. Federal agencies in the United States are to cooperate with counterpart agencies in Canada to endeavour, if appropriate, to make compatible or harmonize a specific standard, technical regulation or product approval procedure.

As GATT conformity of the provisions is not at issue this question would seem to be outside the purview of the Working Party. For the information of the Nordic countries, however, it is anticipated that although US and Canadian standards, individually, will not necessarily become identical, they should, over time, be aligned in such a way as to ensure that they do not operate as trade restrictions.

V.4. How do the Parties to the Agreement justify the decision to exempt provincial and state governments from their obligations under the Agreement on Technical Barriers to Trade (Standards Code), in view of the provision of Article 3 of the code that "Parties shall take such reasonable measures as may be available to them to ensure that local government bodies within their territories comply with the provisions of Article 2 (of the Code) ..."?

Answer

Canada: The Agreement does not exempt provincial and state governments from their obligations under the GATT Agreement on Technical Barriers to Trade. Indeed, under Article 602, both Parties have reaffirmed their rights and obligations under the GATT Agreement.

United States: The scope of Chapter 6 of the Free Trade Agreement states that the provisions "of this Chapter" shall not apply to any measure of a provincial or state government. Article 602 subsequently affirms the rights and obligations under the Agreement on Technical Barriers to Trade. Taken together this language does NOT exempt the United States from its obligations under the Agreement on Technical Barriers to Trade. Local governments are exempted ONLY from any additional obligations emanating from Chapter 6 of the Free Trade Agreement. The information submitted by the United States on its domestic implementation of the Agreement on Technical Barriers to Trade (e.g., TBT/1/Add.1) remains valid.

V.5. Article 8 of the Agreement on Technical Barriers to Trade provides that Parties shall take such reasonable measures as may be available to them to ensure that local government bodies and non-governmental bodies within their territories comply with the provision concerning the certification system operated by the central government. On the other hand, it appears that the United States-Canada Agreement excludes the technical-standard- related areas under the jurisdiction of the local governments from its application, according to Article 601. Please explain why?

Answer

Canada: Existing "best efforts" obligations under the GATT Standards Code, together with the additional information exchange provisions in Article 607, were considered appropriate to cover local government measures.

United States: Again, see answer to question V.4: local governments are exempted only from any additional obligations emanating from Chapter 6 of the Free Trade Agreement.

V.6. The Agreement on Technical Barriers to Trade equally applies to both agricultural and industrial products. On the other hand, the United States-Canada Agreement, in setting the provision relating to technical standards, makes a distinction between agricultural and industrial products. Please explain why?

Answer

Canada: The reason for the exclusion of certain goods from Chapter 6 of the FTA is that they are covered in more detail under Chapter 7. A separate mechanism was, in this instance, deemed appropriate to address certain specific concerns over standards for agricultural products, to ensure that the process of agricultural trade liberalisation could not be undermined by the application of technical requirements not generally applicable in the case of other products.

United States: As agriculture is treated separately in the Free Trade Agreement (Chapter 7), it was considered appropriate to include standards related measures in that Chapter.

V.7. How will the Parties to the Agreement ensure that technical regulations and standards applicable between them do not discriminate against other contracting parties to the GATT who are also able to meet those requirements?

Answer

Canada: The provisions in the Agreement are neither intended to, nor would in effect, discriminate against other GATT contracting parties meeting technical regulations and standards in both countries. Indeed, under Article 602 the two countries have reaffirmed their respective rights and obligations under the GATT Agreement on Technical Barriers to Trade which provides for non-discriminatory application of such measures under Article 2.1.

United States: The United States will continue to abide by its obligations under the Agreement on Technical Barriers to Trade to notify proposed technical regulations and rules for certification systems to the GATT secretariat so that other signatories to the Agreement have an advance notice of new or changing rules, and an opportunity to influence their development. It is not envisaged that rules would differentiate between Canadian and other countries' products which meet the requirements of the technical regulation or standard.

VI. AGRICULTURE

VI.1. Agricultural subsidies

VI.1.1. In the agriculture provisions of the Agreement, it was agreed that both the United States and Canada would seek to achieve on a global basis the elimination of all subsidies which distort agricultural trade. What action is being taken in this regard? What progress has been made? How does the United States justify its proposed budgetary outlays for the Export Enhancement Programme (EEP) in 1990 in the light of this undertaking? What effect will this have on Canadian agricultural returns?

Answer

The United States and Canada are working actively in the Uruguay Round negotiations for the elimination of trade distorting subsidies.

VI.1.2. Article 701.2 refers to the elimination of subsidies on agricultural products exported "indirectly" to the territory of the other Party. Is this limited to cases where the destination is clearly known as being the other Party at the time of shipment, or does it include cases where it is first exported to a third-party country and subsequently re-exported to the other Party?

Answer

Article 701.2 applies to subsidies on exports of any agricultural product from one Party to the other Party shipped indirectly through a third country, regardless of whether or not the other Party is known as

the final destination at the time of export. The determination of whether a violation has occurred pursuant to Article 701.2 of the FTA must be made on a case-by-case basis, taking into account the individual facts and circumstances involved.

VI.1.3. Under Article 701.4, each Party agrees to take into account the export interests of the other Party in the use of export subsidies on agricultural goods exported to third countries. How will they ensure that such consideration does not simply mean that the harmful effects of the subsidized goods are spread over a number of markets, prejudicing the export interests of other contracting parties to the GATT?

Answer

Canada: Canada opposes the use of export subsidies and has articulated this position internationally since the beginning of the Uruguay Round.

United States: With regard to the US export subsidy scheme, Export Enhancement Program (EEP), individual EEP initiatives will not be approved if it is determined that sales under which a proposed EEP bonus would be paid would have more than a minimal effect on non-subsidizing exporters in the market. USDA will consult with representatives of targeted countries, where practical and appropriate, to review this potential effect.

VI.2. Market access for grain and grain products

Article 705 of the Agreement provides for certain restraints on market access for grain and grain products. Is there any time period for the phasing out of these restrictions?

Answer

Article 705 refers to the import permit requirements on wheat, barley and oats, and their products, in Canada. There is no fixed time period for phasing out these import permit requirements. Under this Article, Canada is required to eliminate the import permit requirements for US-origin wheat and wheat products, oats and oat products, or barley and barley products, as the case may be, commencing at such time as the level of government support for any of the grains wheat, oats, or barley in the United States becomes equal to or less than the level of government support for that grain in Canada. Until such time, the determination of the levels of support in each country is to be carried out each year on the basis of the time schedule set out in Annex 705.4(12).

If each Party accepts the other's determinations, and if these determinations indicate that the level of government support for any of the grains in the United States is equal to or less than the level of government support for that grain in Canada, Canada would be obliged to eliminate its import permit requirements for that grain and its products.

In 1989, it was determined that the average level of support for oats for the crop years 86/87 and 87/88 in the United States was less than the level of support for oats in Canada. Canada eliminated the import permits requirement for oats and oat products on 6 June 1989.

VI.3. Market access for meat

VI.3.1. If either Party is impelled to apply quantitative restrictions on imports, inter alia, due to an increase in imports from the other Party, is the other Party nevertheless exempt from such quantitative restrictions?

Answer

Nothing in the FTA "impels" either Party to impose import restrictions. Article 704 provides that if either Party chooses to apply quantitative restrictions on imports of meat from third countries for whatever reason, the other Party is exempted from such action, with the only exception being that if the other Party does not take equivalent action, the Party taking the action may also apply quantitative restrictions on the other Party but only to the extent and only for such period of time as is sufficient to prevent frustration of the action taken by the Party.

VI.3.2. How will the United States administer its Meat Import Law (MIL) now that Canada's meat exports are no longer incorporated in the United States' import trigger level formula?

Answer

VI.3.2 and VI.3.4 (combined answer)

The Meat Import Act of 1979 continues to be administered in the same way as before the US-Canada Free Trade Agreement.

The Meat Import Act of 1979 (P.L. 96-177) established a base quantity of 1,204.6 million pounds as the starting point for determining an "adjusted base quantity" and a "trigger" level. This base quantity is a ten year average (1968 through 1977) of imports for commodities specified in the Act. This base quantity is then multiplied by a "production adjustment factor" and a "counter-cyclical factor" to arrive at an "adjusted base quantity" and a "trigger level" that is 10 per cent higher than the adjusted base quantity.

Under the US-Canada Free Trade Agreement Act of 1988 (P.L. 100-499) Canada's portion of the ten-year (1968-1977) base quantity, 57 million pounds, was removed from the 1,204.6 million pound total, bringing the new base to 1,147.6 million pounds. Although Canada has been assigned 57 million pounds of the 1,204.6 million pound base, in fact US imports

from Canada during the latter 1980s far exceeded the 57 million pound level, as follows:

**US Imports of Beef and Veal
From Canada
Under the Meat Import Act of 1979,
1983 through 1988
(million pounds)**

1983	1984	1985	1986	1987	1988
130.0	166.2	187.8	169.9	152.6	131.1

Imports from Canada had actually averaged 156.3 million pounds for the years 1983 through 1988. In effect, this means that the difference between the assigned Canadian portion of the base and actual average imports from Canada is available for redistribution to third countries (since the proportion of quotas or voluntary restraints negotiated with each country is normally calculated on the basis of recent actual trade in non-quota years). Consequently, rather than being reduced, imports from other supplying countries may actually increase due to the FTA.

VI.3.3. How will Canada administer its Meat Import Act (MIA) given that United States meat imports are included in calculating whether the Guaranteed Minimum Access Commitment level (GMAC) is being reached even though the United States is exempt from import restrictions under the Agreement?

Answer

In post-FTA consultations with third country meat suppliers such as Australia and New Zealand, Canada has informed these trading partners that the Canadian Meat Import Act (MIA) will continue to be administered as in the past. Current Canadian practice is to put the MIA into standby position in December, to be effective for the following calendar year, so as to be available to the government to protect the Canadian cattle industry from beef import surges. In addition, third country suppliers have been informed that the GMAC, the MIA and its administration will be fully reviewed in the context of the current GATT Round. Third country suppliers will be fully consulted in this review.

VI.3.4. Can the United States guarantee that access to its meat market will not be reduced for other supplying countries? If so, how?

Answer

See VI.3.2. above (combined answer)

VI.3.5. Can Canada guarantee that access to its meat market will not be reduced for other supplying countries? If so, how?

Answer

Third country market access to Canada will remain liberal to those countries which do not subsidize beef and veal exports. In light of the conclusion of the multilateral trade negotiations, Canada will assess remaining national policies, programmes and legislation with respect to bovine meat and live animals to determine the future direction of Canadian policy.

VI.3.6. Under Article 704, if one Party imposes import restraints on meat from third countries, then the other FTA Partner must follow suit or risk having import restraints placed on its own meat. This could mean, for instance, that third countries were denied access to the Canadian market simply because the US had imposed import restraints. This is more restrictive than the situation which existed prior to the formation of the Free Trade Area. How do the Parties reconcile this with their obligations under Articles XXIV:4 and XXIV:5(b) of the GATT?

Answer

Under Article 704.1, both Parties agreed to eliminate bilateral restrictions on meat imports. Under Article 702.2, either Party may reimpose restrictions on a limited basis if the Party imposing the restrictions has imposed restrictions with third countries, and the second Party to the FTA has not taken equivalent action. However, the imposition of third party restrictions by one Party to the FTA does not obligate the second Party to the FTA to do likewise. In other words, nothing in Article 704 authorizes or obligates the imposition of import restrictions by either Party with respect to meat imports from third countries. Article 704 is also consistent with the Parties' obligations under Article XXIV:5(b) of the GATT because the FTA does not authorize or obligate the imposition of import restrictions more severe than would be imposed in the absence of the FTA by either Party.

VI.4. Market access for poultry and eggs

VI.4.1. Canada has imposed import restrictions on broiler hatching eggs and chicks hatched from broiler hatching eggs for chicken production, in order to support the domestic supply management system (L/6464 refers)

- **Does the import restriction apply to United States products? If so, how long will it be before the restriction is phased out?**

- **If not, can Canada estimate the trade-diverting effects of these restrictions?**

Answer

Canada's import controls on broiler hatching eggs and chicks for broiler production were imposed on 8 May 1989. These restrictions apply to imports from the USA as well as other countries. There are currently no plans to phase out the restrictions.

VI.4.2. Is there any limitation planned for domestic chicken, turkey and egg production by the Parties, in order to bring the global import quotas provided for in Article 706 into conformity with the provisions of Article XI of the GATT?

Answer

Canada: Under The National Farm Products Marketing Agencies Act Canada maintains domestic limits on the production of chicken, turkey and eggs, in conformity with Canada's rights and obligations under GATT Article XI. The effect of FTA Article 706 is to increase the global import quotas on chicken, turkey and eggs above the level in existence when the FTA was signed. This increase applies to imports from all countries, and is not limited to imports from the USA.

United States: The United States has no plans to limit domestic production of these products, and has no reason to, as it does not have import quotas.

VI.5. Market access for sugar-containing products

VI.5.1. In accordance with which GATT provision relating to the United States' Section 22 Waiver (BISD 3S/32) does the United States justify its non-uniform application (exemption for Canada)?

Answer

There is no non-uniform application of the waiver. In practice, the United States does not now maintain Section 22 quotas or import fees on any product containing ten percent or less sugar by dry weight.

VI.5.2. How will imports of sugar into the United States from Canada be treated under the Agreement?

Answer

Imports of Canadian sugar will be subject to the appropriate FTA tariff rate.

VI.5.3. If the United States domestic sugar programme is altered as a consequence of the recent GATT panel recommendations (L/6514), how will Canadian products be treated under the Agreement?

Answer

Effective 1 October 1990, the United States Government replaced the absolute sugar quota with a tariff rate quota in response to the GATT panel finding. The GATT report did not deal with the domestic sugar programme, only with import restrictions, and therefore the domestic programme is unchanged.

VI.6. Technical regulations and standards for agricultural, food, beverage and certain related goods.

VI.6.1. With regard to the technical regulations and standards for agricultural, food and beverages and certain related goods, both Parties have agreed to harmonize their respective technical regulatory requirements and inspections procedures. What are the results of this work, and how do the United States and Canada make sure that the GATT trading partners are informed in due time?

Answer

Under the FTA, bilateral working groups were established to work towards making equivalent, or the harmonization of, our respective regulations and inspection procedures in the areas of animal and plant health, food safety, seeds and fertilizers, and packaging and labelling. Considerable harmonization between our respective regulations and cooperation at the working level already exists.

Nine technical working groups have been organized under the FTA:

- animal health
- plant health, seeds and fertilizer
- meat and poultry inspection
- fruit, vegetable, dairy and egg inspection
- veterinary drugs and feeds
- food, beverage and colour additives and unavoidable contaminants
- pesticides
- packaging and labelling of agricultural, food, beverage and cereals related goods for human consumption
- fish and fish products

A Joint Monitoring Committee was established to review the progress of the various groups. Any agreements towards harmonization reached by any of these technical groups would presumably require changes in regulations which would be published and thereby available to the public, including other GATT contracting parties.

VI.6.2. With regard to Chapter 7 on agriculture, the Nordic countries would appreciate clarification with regard to another issue concerning technical standards. According to Article 708 the Parties shall "harmonize their respective technical regulatory requirements and inspection procedures" for agricultural goods. Once harmonization has

been achieved, the Parties shall recognize each other's certificates or approvals. These provisions seem to be more far-reaching than the provisions covering other goods. What is the rationale for this difference?

Answer

It is difficult to answer this question without first knowing specifically which "other goods" the author has in mind. The purpose of Article 708 is to facilitate to the maximum extent possible, but consistent with the legitimate need of both Parties to protect human, animal and plant life, the free flow of agricultural goods between the United States and Canada. Whether or not accomplishment of the objectives of Article 708 would result in better treatment of agricultural goods relative to other, non-agricultural goods was not an issue at the time of agreement to Article 708.

VI.6.3. In Article 708 on quarantine, both the Parties have gone over to limiting the application of quarantine restrictions to contaminated areas instead of applying it to the whole of the exporting country. Since quarantine restrictions are essentially applied not from trade policy considerations but from the point of view of quarantine techniques, it would seem reasonable not to keep this practice only to the United States and Canada, but to extend this practice worldwide. What are the attitudes of both the Parties in this regard?

Answer

The United States and Canada strongly support the establishment of science-based technical standards with respect to animal and plant quarantine regulations in the current Uruguay Round. Thus, we are in fact actively seeking to establish international rules that would permit the multilateral extension of the kinds of arrangements agreed to between the United States and Canada in the FTA.

VII. WINE AND DISTILLED SPIRITS

VII.1. With reference to the permitted "audited cost of service", is the audit to be carried out by the province applying it, by the importing country or by the exporting country (Article 803)?

Answer

Cost-of-service audits are carried out by the provinces which apply a cost-of-service differential.

VII.2. Chapter 8 of the Agreement deals with wine and distilled spirits. According to this Chapter, previous discriminatory rules concerning pricing, distribution and sales of wine and spirits in one of the signatories to the Agreement will be abolished vis-à-vis the other

signatory. As far as the Nordic countries know, these rules have, to a certain extent, also been dismantled via-à-vis, at least, one third party. What is the present and future standing of other third parties under these provisions?

Answer

The provisions of Chapter 8 relating to wine and distilled spirits apply only to the two Parties to the Agreement. In the United States, alcoholic beverages from GATT signatory countries are afforded national treatment.

As has been noted, a separate agreement in this area has been negotiated by Canada with a third party, which addresses the issue of eliminating discrimination against imported wine and distilled spirit products. That agreement is being implemented on an m.f.n. basis.

VII.3. Could Canada provide an estimate of the value of the trade diversion which will result from the phased elimination of non-national treatment of wine and spirits from the United States?

Answer

No estimate is available of any potential trade diversion resulting from the phased elimination of non-national treatment of USA wine and distilled spirits products.

VII.4. To what extent will the provisions of Chapter 8 regarding wine and distilled spirits, in particular as regards pricing (Article 803), likewise apply to GATT contracting parties which are not Parties to the Agreement?

Answer

See reply to question VII.2.

VII.5. The Free-Trade Agreement abolishes the tariff charged on alcoholic beverages coming from the United States. In addition, the system of provincial liquor boards is exempt, leaving them in a privileged position vis-à-vis suppliers from other origins, including many developing countries. In this situation, created by the Free-Trade Agreement, does Canada consider that the objective of abiding by the policy followed to date, which granted advantages to less-developed trading partners, is being maintained? Will it establish any measures in favour of the latter partners?

Answer

The Agreement does not change the treatment of imports from less-developed trading partners.

VIII. ENERGY

VIII.1. Does Canada intend to extend the exemption foreseen for the United States from the uranium upgrading requirement to other GATT partners? (Annex 902.5)

Answer

Canadian uranium destined for use as enriched uranium fuel shall be upgraded to the maximum extent possible in Canada before export, as long as Canada's conversion facilities have the capacity. Exemptions to this requirement will be granted in cases where:

(a) the uranium will be converted or enriched or consumed in the United States, or

(b) the Canadian converter is not the successful bidder for conversion services as a result of purely commercial considerations.

VIII.2. How will the United States treat Canadian uranium imports vis-à-vis imports from other countries? Please elaborate and provide justification if arrangements are expected to be different.

Answer

The United States does not now restrict imports of uranium from any country for reasons of trade policy or national security. Therefore, no differences in treatment of imports from various sources would be expected as a consequence of implementation of the FTA.

VIII.3. If Canadian uranium is to be treated in the same way as United States domestic uranium in the United States market, then what recourse does the United States industry have to maintain viability? If such arrangements prove to be discriminatory against the interests of third countries, what redress will there be to provide for alternative supply?

Answer

The only provision of US law now requiring maintenance of the viability of the domestic uranium mining and milling industry is Section 161(v) of the Atomic Energy Act. This provision requires that enrichment of foreign uranium for use by US nuclear plants be restricted to the degree necessary to make the domestic uranium industry viable. A recent court case has determined that such restrictions are not required to be automatic but may depend on a finding that the restriction would actually make the industry viable. Since imports of uranium, other than from Canada, account for a very small percentage of total US uranium use, restricting enrichment of this uranium could not make the industry viable, and no action to impose such restrictions is anticipated.

IX. TRADE IN AUTOMOTIVE GOODS

IX.1. What is the significance of the chapter on automotive trade concerning the phasing out of the export-based duty remission scheme? Will this trade regulation lead to an increase of the duties paid by overseas importers of automobiles and automotive parts, insofar as they also export from Canada parts produced there locally?

Answer

Canada agreed to terminate automotive export-based remission programmes on or before 1 January 1998 as part of a commitment to phase out all performance-based duty remission programs during the ten-year transition period of the Agreement. As of 1 January 1998, companies operating in Canada and previously receiving export-based duty remissions will be obliged to pay duties on all automotive goods imported from third countries, calculated on the basis of the prevailing MFN rate.

IX.2. Under the Agreement both partners have agreed not to extend Auto Pact status to any new member. Is it correct to say that under the Agreement new overseas investors would be definitely discriminated against in comparison with the US-Canada Auto Pact competitors, even if they fulfil all local content provisions and if the cars are totally produced in North America? Does this mean that the principle of national treatment is not applied to the automotive sector?

Answer

United States: Under paragraph 1(a) of Article 1005, the FTA rules of origin govern the importation of all automotive goods imported into the United States from Canada. Thus, regardless of whether an overseas investor producing automotive products in Canada qualifies for Auto Pact status under Canadian law, its products will be given FTA tariff treatment under US law, if it qualifies under the FTA rules of origin.

Canada: Auto Pact status or membership only has meaning for Canadian-based companies because, in implementing the Auto Pact, Canada gave duty-free import privileges to Canadian members of the Auto Pact on a multilateral basis. The FTA placed a cap on new membership in the Auto Pact to those companies which could qualify by the 1989 model year. The closing to new membership in the Auto Pact is similarly applied to both Canadian and foreign-owned firms. It is also relevant to note that the Auto Pact contains no local content provisions as the term is normally understood.

IX.3. Canada has agreed to phase out import restrictions on used automobiles in five annual stages commencing in January 1989. What is the situation with regard to imports of used automobiles from other trading partners of Canada?

Answer

The prohibition on used automobiles imported from other countries remains in place.

IX.4. How do the two Parties reconcile the provisions relating to waiver of customs duties with the Article XXIV:5(b) requirement that other commercial legislation applied to imports should not be more rigorous than that applied prior to the formation of the free trade area?

Answer

These changes are merely the removal of previous benefits provided unilaterally by Canada on a completely unilateral basis. There are no changes to bound tariffs.

X. EMERGENCY ACTION

X.1. The two Parties have agreed to exempt each other from global actions under GATT Article XIX, except where imports from the other Party are important contributors to the injury (specific threshold levels are provided in this respect) caused by a surge of imports from all countries.

Is one to understand that the two Parties now concur with the interpretation of other contracting parties that are members of a free-trade area, concerning the relationship between the provisions of Articles XXIV and XIX of the General Agreement, in respect of the possibility of exempting one partner of the free-trade area from global safeguard measures taken under Article XIX? In the view of the Parties to this Agreement, could the fixing of specific thresholds regarding injury to determine exemption from a safeguard measure constitute a general criterion for application in the context of Article XIX?

Answer

There is no agreed interpretation by contracting parties of the relationship between Articles XIX and XXIV. There is, however, a practice in place under other Article XXIV arrangements that provides for the exemption of Parties to the arrangement from safeguard actions.

FTA Article 1102.1 does not establish a specific threshold for imports from the free-trade partner. Rather, it sets out a general guideline (in the range of 5 to 10 per cent or less of imports) for determining when imports from the other Party should be excluded from a global safeguards measure. This guideline applies exclusively between Canada and the United States as a result of their specific agreement in Article 1102.1. This guideline does not and should not serve as a general criterion for application of Article XIX safeguard measures to or by other contracting parties.

X.2. Will safeguard actions taken by either of the Parties against imports from third countries under Article XIX be applied on a strict m.f.n. basis?

Answer

Safeguard actions against third country imports by either Party will be taken on an m.f.n. basis to the extent required by Article XIX or by any safeguards agreement concluded in the Uruguay Round of trade negotiations.

X.3. Article 1102 in principle excludes the other Party to the Agreement from action taken by one of the Parties under GATT Article XIX. Does not this provision constitute a breach of Article XIX of the General Agreement which provides for erga omnes application of safeguard measures taken under that instrument?

Answer

See paragraph one of the answer to question X.1.

Article 1102 is part of an agreement between Canada and the United States to eliminate duties and other trade restrictions on substantially all their bilateral trade. Article 1102 limits (but does not preclude) the right of one Party to reimpose such duties on products of the territory of the other Party in future safeguard actions.

X.4. Article 1102 stipulates a selective exemption from safeguard action, by providing that a Party taking emergency action under Article XIX of GATT shall exclude the other Party from such global action for imports below a certain percentage. We are aware of the debate as to whether or not the safeguard provision of Article XIX provides an exception to the most-favoured-nation treatment. Does this provision of the Agreement represent the United States position on this matter?

Answer

See paragraph one of the answer to question X.1.

The provisions of Article 1102 do not conflict with Article XIX in the context of a free-trade agreement. The Article does not alter the US position regarding m.f.n. application of safeguard measures taken under Article XIX.

X.5. Article 1101 allows bilateral safeguard action where the reduction or elimination of a duty in the formation of a free-trade area constitutes a substantial cause of serious injury to a domestic industry of the Party concerned No such provision is found in either GATT Article XIX or XXIV. Is the idea based upon the consideration that, generally speaking, it would be in the best interests of other parties for injury resulting from the formation of a free-trade area to be limited within the area?

Answer

During the transition period, Article 1101 allows for safeguard actions exclusively with respect to products originating in the territory of the other free-trade partner and only when imports of such products surge as a result of the reduction or elimination of duties under the FTA to the extent that they are a substantial cause of serious injury. The idea of limiting safeguard actions in such cases to imports from the free-trade partner is to ensure that the temporary safeguard action applies only to those imports causing the injury as a result of trade concessions made under the FTA.

XI. EXCEPTIONS FOR TRADE IN GOODS

The Jones Act of the United States is included among the restrictions covered by the grandfather clause. Can the Parties to the Agreement comment on the fact that a number of contracting parties have disputed the consistency of that legislation with Article III of the General Agreement (notification in the GATT inventory on non-tariff measures)?

Answer

FTA Article 501 incorporates GATT Article III into the FTA with respect to bilateral trade in goods. Under Article 1202, however, those measures covered by sub-paragraph 1(b) of the GATT Protocol of Provisional Application are exempted from Article 501.

There is no specific exemption for the Jones Act in the FTA. Any exemption for the Jones Act, or any other US or Canadian measure, from Article 501 would apply only to the extent that the measure properly falls within the coverage of sub-paragraph 1(b) of the Protocol. The most recent US notification of legislation covered under the Protocol of Provisional Application included the "Jones Act".

XII. GOVERNMENT PROCUREMENT

XII.1. The Agreement makes substantial improvements upon the GATT Government Procurement Code in transparency procedures. Is it intended to apply improvements such as access to pre-information, and bid challenge procedures to all Parties to the Code?

Answer

The FTA does not apply to Government Procurement Code covered procurements but only to non-Code covered procurement (those falling within the FTA threshold limits). As a result, there is no obligation to provide Code signatories with access to any information pertaining to FTA-covered procurements. However, as a practical matter, the United States implements the transparency provisions of the FTA for all potential bidders. Canada makes available all procurement bidding information (including FTA-covered procurement) to all potential bidders.

XII.2. With regard to government procurement (Chapter 13) the Nordic countries would welcome information on the "bid challenge procedures for potential suppliers of eligible goods" provided for in Article 1305.3. Similar procedures are discussed in the negotiations on broadening of the GATT Agreement on Government Procurement. What is the experience of the bid challenge procedures under the Agreement so far? How will bidders from third countries be treated if competition for a contract leads to a dispute between the Parties to the Agreement?

Answer

The Procurement Review Board (PRB) is to consist of not more than five members, including a Chairman, appointed by Federal Cabinet order. Members will hold office for a term not exceeding five years, at which time they may be reappointed in the same or another capacity.

The Board is empowered to receive complaints, conduct investigations and determine the appropriate remedy regarding cases in which a bidder feels he has not been fairly treated. Consistent with the principles outlined in Chapter Thirteen of the FTA, the Board can also make recommendations to a governmental institution on any aspect of its procurement. It has all the powers of a superior court of record including summoning witnesses, examining documents and enforcing its orders. Under the regulations, the Board must make its determination within 90 calendar days of having received a complaint.

The experience of the bid challenge procedures under the Agreement so far is positive. During the first year of operation, seven complaints were received by the Board from potential suppliers of eligible goods. Of these, three were rejected for lack of jurisdiction, two were resolved to the satisfaction of the parties before contract award, one resulted in a determination by the Board in favour of the complainant.

As noted earlier, the PRB is open only to complaints from suppliers of eligible goods from the territories of the signatories. The rule of origin does allow for certain inputs from suppliers of third countries. These inputs, however, do not confer onto the providers of such inputs the status of potential suppliers which is a necessary requirement in order to have standing before the PRB of Canada.

XII.3. What is the reason for establishing a reviewing authority? In light of the fact that the Government Procurement Code requires the establishment of procedures for hearing and reviewing of complaints arising in connection with any phase of the government procurement procedures, is there any reason why the reviewing authority is needed for the Agreement? Is the requirement in the Government Procurement Code not sufficient?

Answer

The government procurement provisions of the FTA and the Government Procurement Code are distinguished by different thresholds and hence are mutually exclusive regarding coverage. In the US view, the dispute

settlement procedures of the Code and the FTA are more appropriate for government-to-government disagreements over the interpretation of specific provisions. On the other hand, the US believes that the bid challenge procedures are more appropriate for compliance problems.

The establishment of an enhanced reviewing authority by Canada was a requirement of the Agreement so that both signatories to the Agreement would treat one another's suppliers in a comparable manner. The Code does not provide guidance on the criteria for the establishment and operation of a reviewing authority.

XII.4. Has the reviewing authority already been established? If so, how often is it resorted to?

Answer

The Canadian reviewing authority, the Procurement Review Board of Canada, was established by the Canada-US Free Trade Implementation Act, effective 1 January 1989. As indicated previously, the Board has received seven complaints in its first full year of operation.

The primary reviewing authority in the United States, the General Accounting Office (GAO), predates the FTA and has been frequently used by foreign and US bidders.

XIII. SERVICES

Chapter 14 of the Agreement deals with services. Even if services are not covered by the GATT, the Nordic countries would like to pose a question on this section. According to Article 1406 "a Party may deny the benefits of this Chapter to persons of the other Party providing a covered service if the Party establishes that the covered service is indirectly provided by a person of a third country". Which criteria will be used in order to determine the origin of a service under this provision?

Answer

There are no formal criteria in the Agreement providing guidance to determine whether a service is being indirectly provided by a person of a third country. In the absence of international consensus in this area, individual cases will be decided, subject to consultations between the two Parties, on the basis of the evidence provided.

XIV. INVESTMENT

XIV.1. Pursuant to Article 1603.2, "Neither Party shall impose on an investor of a third country, as a term or condition of permitting an investment in its territory, or in connection with the regulation of the conduct or operation of a business enterprise located in its territory, a commitment to meet any of the requirements described in paragraph 1 where meeting such a requirement could have a significant impact on trade between the two Parties."

Could the Parties to the Agreement elaborate further on this provision, and particularly on the criteria used for defining the notion of "significant impact on trade"?

Answer

This provision prohibits a Party from imposing certain performance requirements (export requirements; import substitution requirements; and requirements that a business purchase from local suppliers, accord a preference to local products or achieve a given level of local content) on third-country investors where such requirements "could have a significant impact on trade between the two Parties." The term "could" means that the complaining Party does not have to prove actual injury in order to demonstrate that the requirement is prohibited. The United States and Canada did not establish criteria to define the phrase "significant impact on trade". Disputes arising under this provision are to be dealt with on a case-by-case basis in accordance with the Agreement's dispute settlement mechanism.

XIV.2. Paragraph 1 of Article 1603 of the Agreement provides that neither Party shall impose requirements such as mandatory export or local content on the investment of the other Party, and paragraph 2 also provides that the requirements listed in paragraph 1 shall not be imposed on an investor of a third-party country "where meeting such a requirement could have a significant impact on trade between the two Parties". Paragraph 2 leaves open the possibility of mandatory export and local content requirements being imposed on an investor of a third party country. Does this not run counter to the non-discrimination principle, which is one of the fundamental principles of the GATT?

Answer

Article 1603.2 amounts to an extension of a benefit of the FTA to third-country investors involved in trade between the US and Canada. Thus it was a further step towards trade liberalization in the field of Trade Related Investment Measures (TRIMs), in advance of the negotiations now underway in the Uruguay Round. The application of multilateral disciplines on the use of TRIMs, arising from the MTN, could, as has been mentioned previously (see question I.1.6), have implications for the provisions of Article 1603.

The United States supports the principle of non-discrimination. In addition, the US position with respect to inherently trade-distorting performance requirements, such as those listed in Article 1603.1, is that they should not be imposed on the investors of any country. Accordingly, the United States does not impose such requirements on investors from Canada or third parties.

XIV.3. In the TRIMs Negotiating Group, submissions by various countries have named a total of thirteen measures for examination as TRIMs, whereas this Agreement refers only to local content requirements (including import substitution requirements), local equity requirement, export requirement and currency transfer restrictions. Why is there no reference to any other TRIMs?

Answer

The FTA prohibits the use of those TRIMs identified in Article 1603.1. Canada and the US jointly agreed, when the FTA was negotiated, that these four TRIMs could have a significant impact on trade flows. The FTA did not attempt to address the full range of those measures which contracting parties might variously identify as TRIMs during the MTN, nor the relative importance which might be accorded to different measures. However, performance requirements other than those listed in Article 1603.1 are subject to FTA review and discipline if their imposition is contrary to other broader provisions of the Agreement (national treatment, duty waivers and broader investment provisions).

XV. DISPUTE SETTLEMENT

XV.1. The Parties to the Agreement retain the right to bring a dispute before GATT instead of bringing it before the Canada-United States Trade Commission, provided that once they have made their choice, the procedure initiated is to be used to the exclusion of the other. How do the Parties to the Agreement intend to deal with the risks of contradictory interpretation of the General Agreement (on the one hand by the Commission and on the other hand by the appropriate GATT forum), in particular in the event that the matter under dispute also concerns other contracting parties?

Answer

Chapter 18 of the FTA provides for dispute settlement procedures for most obligations of the FTA. For disputes involving provisions unique to the FTA, and not drawn from the GATT, a dispute would be brought under the FTA dispute provisions, and there would be no possibility of an interpretation which contradicts a GATT Panel. For disputes involving GATT provisions incorporated into the FTA, the complaining Party has the option of pursuing the dispute under either the GATT or FTA dispute settlement provisions. Decisions taken by FTA Panels apply only to the FTA Parties. Nothing precludes other contracting parties from bringing complaints under the GATT dispute settlement system. Conflict between the interpretation of these two agreements is hypothetical and is not anticipated.

XV.2. For each of the sectors covered by the Agreement, how will the dispute settlement provisions operate? Will these be GATT-consistent?

Answer

Dispute settlement procedures for all matters covered by the FTA, with the exception of matters falling under Chapters 17 (Financial Services) and 19 (Binational Dispute Settlement in Antidumping and Countervailing Duty Cases), are set out in FTA Chapter 18. In addition, Articles 1504 and 1608 set out particular rules for disputes regarding measures regulating the temporary entry of business persons and investments, respectively. These procedures are fully GATT-consistent.

XVI. BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTI-DUMPING AND COUNTERVAILING DUTY CASES

XVI.1. Can the Parties to the Agreement comment on the effects that the binational mechanism established in this area could have on the respective GATT Codes in regard to the risks of contradictory interpretation, in particular in the event that an anti-dumping/countervailing duty procedure also concerns exporters of other contracting parties? Furthermore, the two Parties have undertaken to elaborate a new set of rules on anti-dumping and countervailing duties for their bilateral trade; how would the elaboration of such rules be integrated with the Uruguay Round negotiations in this area?

Answer

Pursuant to Articles 1906 and 1907 of the FTA, the two Parties have five to seven years (effective 1 January 1989) to develop a substitute system of rules in both countries for anti-dumping and subsidies/countervailing duties as applied to their bilateral trade. The binational panel review mechanism has the same relationship and effects on the GATT Anti-Dumping and Subsidies Codes as decisions of the two countries' national courts. Panel decisions have no effect on other contracting parties. The two Parties recognize that the issues that potentially could constitute elements of bilateral negotiations are also under negotiation in the Uruguay Round. The two Parties will therefore continue to monitor progress in the Uruguay Round subsidies and anti-dumping negotiations and to take account of the results of these negotiations in their own preparations. It is unlikely that the elaboration of such rules would be "integrated into the Uruguay Round" because the Round will probably be completed before the bilateral talks have concluded the development or elaboration of any rules.

XVI.2. Chapter 19 contains quite novel, and very interesting, provisions with regard to dispute settlement. Article 1902 provides rules with regard to anti-dumping measures and countervailing duties, the implementation of which is of great interest also to third Parties. Have any anti-dumping or countervailing duty cases, so far, been brought to

dispute settlement under the Agreement? If so, has any panel recommendation affected the signatories' national laws and/or implementation of these laws? Will panel reports be published? If so, where? To what extent will potential changes in rules and regulations be extended to third parties?

Answer

As of 7 September 1990, thirteen (13) cases have been brought to dispute settlement under Chapter 19. Of these, two are still active and nine have been decided; one case has been terminated. Several panels have remanded decisions to the appropriate administrative body for redeterminations. No panel decisions or "recommendations" have affected U.S. national law because in the United States, a panel is bound by statute and no panel can make a ruling that requires statutory change. Panel report synopses are published in the official gazettes of the United States, the Federal Register, and of Canada, the Canada Gazette. Full panel decisions are available from the FTA Binational Secretariat, which has offices in both Ottawa and Washington. We do not anticipate potential changes in rules and regulations for Chapter 19 dispute settlement provisions, other than minor administrative matters. Such changes would apply only to binational panel review between Canada and the United States. Because decisions under Chapter 19 have not thus far prompted any changes or potential changes in regulations, it is impossible to say whether potential changes would be extended to third parties. There have been no Panels brought under Article 1902.

XVI.3. In the application of Canadian countervailing and anti-dumping actions, if cumulation is used, how will United States products be treated? If they are treated differently from other suppliers, please specify how and provide justification?

Answer

In the context of Canadian antidumping or countervailing duty actions, products of the United States are treated no differently than the products of other countries whether or not cumulation has occurred. The FTA does not affect the anti-dumping and countervailing duty laws in effect in both Canada and the United States prior to the coming into force of the FTA nor does it affect the application of those laws.

XVI.4. Article 1902 of the Agreement provides that any amendment of the anti-dumping laws of both the United States and Canada should not be inconsistent with the General Agreement and the Anti-Dumping Code. However, the current United States anti-dumping laws allow imposition of anti-dumping duties on United States assembly or finished products without anti-dumping investigations. What are the Parties' views on the consistency of this provision with the Anti-Dumping Code?

Answer

United States: It is the view of the United States that its so-called "anti-circumvention" provisions (dealing with, inter alia, US assembly of imported parts and components) are fully consistent with GATT Article VI and the Anti-Dumping Code.

Canada: Article 1902 does not apply to legislation enacted by either Party to the Agreement prior to 1 January 1989. The provision in question, along with other provisions, is currently being considered by the Anti-Dumping Practices Committee and it is Canada's position that the ADP Committee is a more appropriate forum to discuss such legislation.

XVII. TRADE IN STEEL (STEEL VRA)

XVII.1. What measures are expected to be adopted by the United States with respect to steel trade under the Agreement?

Answer

The FTA does not prohibit the conclusion of a Voluntary Restraint Arrangement. However, because of the absence of significant unfair trade practices, a VRA has not been sought.

XVII.2. If the United States negotiates a further series of VRAs on steel, how will Canada be treated vis-à-vis third-country suppliers?

Answer

A Voluntary Restraint Arrangement has not been sought with Canada at this time because of the absence of significant unfair trade cases.

XVII.3. If Canada is to be excluded from the United States steel VRAs, what do both countries anticipate the sectoral arrangements for Canadian steel will entail under the Agreement?

Answer

Canada-USA steel trade reflects the highly integrated nature of the North American steel market. As envisaged under the FTA, market integration will be strengthened as tariffs on imports into each other's market disappear. Each country's share of the other's market for steel will be determined solely by market forces.

XVII.4. If the United States does not negotiate a steel VRA with Canada, how will steel countervailing and anti-dumping actions be handled by the United States Administration?

Answer

Steel will be treated like any other manufactured product with respect to countervailing duty and antidumping laws.

XVIII. OTHER QUESTIONS

XVIII.1. How will the United States use its trade remedy laws in the case of Canada, including those of Section 301 (Unfair Trade Practices) and Section 201 (Import Relief).

Answer

The FTA did not require an amendment or a change in the operation of Section 301. The United States amended Section 201 to conform it to US commitments under FTA Chapter 11. The United States intends to use both provisions with respect to Canada in a manner that is consistent with its FTA obligations.

XVIII.2. How will Section 232 (National Security) investigations by the United States treat Canada if the recommended outcome is the provision of temporary relief for unviable United States industries?

Answer

Canada is unlikely to be treated differently than other countries in any instance in which the import relief is taken for national security reasons as defined in the FTA and the GATT.

XVIII.3. Following the passage of the Agreement, will the United States accord Israel similar treatment to that given to Canada under the United States-Israel Agreement for further trade liberalization? If so, in what areas?

Answer

The two free-trade agreements in which the United States participates are already similar in nature and the treatment accorded by the United States to Canada and to Israel is largely the same, consistent with Article XXIV of the GATT. Naturally, the US-Canada FTA addresses trade issues unique between the United States and Canada. Similarly, the US-Israel FTA addresses the unique features of the bilateral trade relationship between the United States and Israel. Thus one could expect certain relatively minor differences between the two FTAs.

The United States is always willing to discuss with Israel areas for potential further trade liberalization in a manner taking into account that bilateral relationship. Such discussions are constantly underway.

XVIII.4. Could the Parties to the Agreement explain the manner in which they intend to determine principal supplier rights under Article XXVIII of the GATT. Will these rights be determined on the basis of trade taking place under m.f.n. conditions, excluding preferential trade?

Answer

Canada and the United States have, in recent years, taken the position that preferential trade should be excluded from the determination of supplier status under Article XXVIII. During discussions of Article XXVIII in the Negotiating Group on GATT Articles, both the US and Canada have given provisional support for a draft agreement pending conclusion of the Uruguay Round. The agreement states inter alia that in the determination of contracting parties with a principal supplying interest or substantial interest, only trade in the affected products which has taken place on an m.f.n. basis shall be taken into account. However, trade in the affected product which has taken place under non-contractual preferences shall also be taken into account if the trade in question has ceased to benefit from such preferential treatment - thus becoming m.f.n. trade - at the time of the renegotiation, or will do so by its conclusion.

XVIII.5. Could Canada identify the items which will be removed from a list of products which currently have the status "not available from Canadian production"?

Answer

It is assumed that reference is being made to the list of exceptions noted in Annex 401.6 of the FTA in respect to the machinery and equipment programme. But we do not know what list is being requested.

Under the terms of the FTA (Article 401.6), Canada agreed to bind, with specified exceptions (see Annex 401.6), the duty-free entry of machinery and parts originating in the US that had been determined to be "not available" from Canadian production as at 11 March 1987.