

## Chapter 19

# Import Relief to Domestic Industry

The U.S. trade policy is based on combating unfairly traded imports. There are regulations in place to provide relief to domestic producers that are adversely affected by imports that benefit from government subsidies in home countries or are dumped at low prices in the U.S. market.

### ***ANTIDUMPING AND COUNTERVAILING DUTIES***

U.S. antidumping and countervailing duty laws have been subject to several changes over the years; the most recent amendments were to implement the Uruguay Round Agreements of the GATT. An important effect of the agreement is that it has reduced the discretion previously available to the administering authorities by imposing strict statutory time limits. In the case of an antidumping or countervailing duty petition, for example, domestic authorities are required to make an initial determination within twenty days after the petition is filed. Similar time limits are imposed on the determination of injury. The U.S. Court of International Trade has taken the position that the WTO panel rulings do not have a binding effect (merely persuasive) on U.S. court decisions on such matters (Folsom, Gordon, and Spinogle, 2005).

Antidumping or countervailing duties are statutory remedy that cannot be vetoed by the president except by negotiation of an international trade agreement. Such an agreement may, for example, take the form of voluntary export restraints to restrain the flow of the offending goods to the U.S. market.

It is important to describe the terms that are often used in the analysis of unfair trade practices, that is, dumping, subsidies, and material injury. Dumping is defined as selling a product in the United States at a price that is lower than the price for which it is sold in the home market in the ordinary course of trade (certain adjustments are made for differences in the mer-

chandise, quantity purchased, or circumstances of sale). In the absence of sales or sufficient sales of the like product in the domestic market of the exporting country, dumping may be measured by comparison (1) with a comparable price of a like product sold in a third country, or (2) with the cost of production in the country of origin plus a reasonable amount for administrative, selling, and other costs and for profits (constructed value). Selection of a third country is often based on the similarity of merchandise to the one exported in the United States, volume of sales (country with largest volume of sales), and similarity of market in terms of organization and development to that of the United States. In calculating constructed value, transactions with related parties that do not fairly reflect the usual market price, as well as sales that are made at less than the cost of production, are disregarded. In cases in which the economy of the home market is state-controlled and does not reflect the market value of the product, foreign market value can be determined based on, in order of preference, (1) the price at which such or similar merchandise produced in a non-state-controlled economy is sold either for consumption in that country or another country, including the United States, or (2) the constructed value of such and similar merchandise in a non-state-controlled economy country. Where the price comparison requires a conversion of currencies, such conversion is made using the rate of exchange on the date of sale.

A major problem with the application of such methods is that the surrogate market economy country selected for comparison may be inappropriate (in terms of its level of economic development) or that its producers may not be willing to furnish the information necessary to determine constructed value (Czako, Human, and Miranda, 2003).

There is no agreed-upon definition of subsidies anywhere in the GATT or domestic law. However, it is reasonable to infer from the list of practices that are considered as subsidies that a subsidy is a preferential benefit given by the government to domestic producers. The benefit could be in the form of income or price support of any direct or indirect financial contributions (e.g., grants, loans, tax credits, loan guarantees, etc.; see International Perspective 19.1).

Export subsidies are benefits intended to increase exports; domestic subsidies are granted on a product regardless of whether it is exported or consumed at home. Governments provide domestic subsidies to achieve certain socioeconomic goals, such as optimum employment or location of industries in depressed regions, which could not be attained by the sole efforts of the private sector. Although domestic subsidies may increase the subsidizing country's trade flow, they do not attract international condemnation as export subsidies.

## **INTERNATIONAL PERSPECTIVE 19.1. Antidumping Duties and Fair Trade**

Antidumping duties are generally intended to prevent predatory pricing by foreign firms. By setting low prices in export markets, they drive domestic producers out of business. Once these firms have gained a controlling interest of the export market, they increase their price to recover their losses. Such economic theory behind antidumping rules is questionable because:

- Such actions are unlikely to escape the attention of governments in importing countries.
- Any subsequent increases in prices are likely to invite other exporters to enter the market thus nullifying the firm's potential gains from market power. Thus, if firms are not certain about future gains from market power, they are not likely to take losses on their export sales.
- Setting different prices in different markets is not inconsistent with normal business practice, especially in imperfect competitive markets.

Existing regulations to establish dumping often lead to unfair and arbitrary outcomes since the standard set to evaluate import price and injury are difficult to meet due to variations in accounting methods, difficulty in collecting price information, lack of transparency in decision-making process, etc. Furthermore, the low burden of proof to establish material harm to domestic producers often leads to acceptance of bogus claims. In the United States, for example, only 17 percent of dumping claims were rejected by the authorities between 1980 and 1997.

For domestic industries which have the support of unions and politicians, even threatening to bring cases often leads foreign exporters to agree to a settlement rather than risk broader trade tension. Many exporters agree to voluntary export restraints. Such agreements, if conducted with consultations of domestic industry, would amount to antitrust violation in many countries.

A study by the ITC indicates that the removal of outstanding antidumping (AD) and countervailing duty (CVD) orders results in a welfare gain. While domestic companies and their workers receiving AD/CVD protection earned \$658 million more profits and wages, terminating this protection would have increased overall American business profits and wages by \$1.85 billion in industries that were not receiving such protection (USITC, 1995). The economic effects of AD/CVD orders are ranked third behind the Multifiber Arrangement restrictions and the Jones Act maritime restrictions in their net costs to the economy.

It is important to review the rules with respect to permitted or actionable subsidies. If an actionable subsidy is found in a country that is a signatory to the GATT Subsidies Code and that subsidy causes injury to a domestic industry, a countervailing duty is imposed on the subsidized imported product. Proof of injury is not required if the subsidized import comes from a country that is not party to the Subsidies Code or similar agreement. A countervailing duty is imposed to offset the subsidy, that is, equal to the net amount of the subsidy (Trebilcock and Howse, 2005).

### *Actionable Subsidies*

These are subsidies conferred upon a producer to encourage exports (export subsidy) or to promote the use of domestic goods (import-substitution subsidies). They are considered to be industry specific, as opposed to non-countervailable (nonactionable) subsidies that are broadly available and widely used throughout the economy. National programs of subsidies that are designed to specifically assist selected national regions are now considered actionable and subject to retaliation. In all these cases, the benefits obtained are not countervailable if they cannot be calculated in monetary terms. Actionable subsidies include domestic subsidies bestowed on input products used in the production of an imported item (upstream subsidies). However, the input subsidy must be provided in the country of manufacture of the imported product for the application of trade remedy. Countervailable subsidies that are small (*de minimis* subsidies), that is, less than 0.5 percent or 2 to 3 percent for developing nations, are disregarded. The Department of Commerce does not make an affirmative countervailing duty determination in such cases.

### *Nonactionable Subsidies*

#### *Nonspecific Subsidies*

The determination of whether a subsidy is specific is based on a number of factors, such as the number or proportion of particular industries using the subsidy program as well as the manner in which authorities exercise discretion in providing the subsidy.

#### *Subsidies for Industrial/Research and Competitive Development*

These include assistance for research activities conducted by firms or by higher education establishments if such subsidies cover (1) not more than

75 percent of the costs of industrial research or (2) not more than 50 percent of the costs of precompetitive development activity (e.g., translation of industrial research findings into a blueprint or plan for new or improved products or processes).

### *Subsidies to Entities in Disadvantaged Regions*

These subsidies should be part of a general framework of regional development and they are not provided specifically to an enterprise or industry.

### *Environmental Subsidies*

An environmental subsidy is a nonrecurring subsidy for the adaptation of existing facilities (up to 20 percent of the cost) to new environmental requirements.

*Example 1.* An Italian firm sells a pair of leather shoes manufactured in Milan for \$250 in Italy. The same pair of shoes when exported is sold for \$150 in the U.S. market. There is no evidence that the firm obtained any financial help from the Italian government. This is a case of dumping.

*Example 2.* A Colombian firm obtained a low interest loan from a government-owned bank to buy chemical imports that are used for the production of textiles that are exported to the United States. The price of linen textiles (1 foot) is \$20 in Colombia, whereas the same type of textile is sold at \$12 a foot in New York. This involves upstream subsidies and dumping.

### *Proof of Injury and Remedies*

In both antidumping and countervailing duty investigations, it is important to establish causation: material injury, threat of material injury, or retardation of a U.S. industry producing similar products because of the importation of subsidized and dumped products. Imports do not have to be the sole or even major cause of injury. "Like products" are defined as products which are the same or in the absence of such, "most similar in characteristics and uses" to the foreign product under investigation. In one case, for example, the U.S. International Trade Commission (ITC) defined the U.S. industry as canned mushrooms (not similar to fresh mushrooms). This narrow definition gives the exporter a much larger U.S. market share thus supporting a preliminary injury determination (USITC, 1996a).

Typically, the USITC considers the collective impact of all imports of a product from a given country in arriving at its injury determination. However, in countervailing duty investigations, there is no injury determination

for imports from countries that are not signatories of the Subsidies Code or an equivalent arrangement with the United States, unless the goods are entered duty free.

In determining whether there is injury to a U.S. industry, the ITC will consider import volumes, price effects, and impact on domestic producers of like products, as well as all other relevant economic factors that have a bearing on the domestic industry. Domestic industry impact analysis considers the effect of allegedly dumped imports on the development and production of efforts of the domestic industry, employment, and utilization of plant capacity in the relevant industry. For example, threat of material injury can be found if lost sales indicate a threat to future sales, production, and profit. Price undercutting is not a per se basis for a finding of injury if the demand for the product is not price sensitive. Lost sales to the domestic industry have traditionally served as an important element of injury (Czako, Human, and Miranda, 2003). Injury may be shown even in cases involving an improvement in the condition of the industry or a decrease in import volume. Determination of threat of material injury by ITC is made on the basis of evidence that the threat is real and the actual injury imminent, and not based on "mere conjectures and suppositions" (19 U.S. Code 1677).

Once it is established that foreign merchandise is being sold in the United States at less than fair market value and injury to domestic industry is established, an antidumping duty is imposed on the product, that is, an amount by which the foreign market value exceeds the United States price of the merchandise. The causation factor can be satisfied if the dumped or subsidized imports contribute even minimally to injury of domestic industry. A correlation between dumped/subsidized imports and alleged injury is not required for an affirmative injury determination.

The cumulation doctrine is also allowed in determining material injury in dumping or subsidy cases. This means that the effect of dumped and/or subsidized imports from two or more countries of like products (that compete with each other and with domestic products) can be assessed to determine injury to domestic industry. This encourages petitioners to name as many countries as possible. Similarly, if a subsidy is shown to exist and material injury or threat thereof to U.S. industry is found, then a duty equal to the subsidy (countervailing duty) is imposed. In the case of agricultural products, injury could still be established even though the prevailing market price is at or above the minimum support price. This is intended to ensure that injury analysis is not distorted by the beneficial effects of government assistance programs (Trebilcock and Howse, 2005).

**ANTIDUMPING AND COUNTERVAILING  
DUTY PROCEEDINGS**

Antidumping (AD) and countervailing duty (CVD) investigations are conducted either on the basis of a petition filed with the Department of Commerce (Commerce) through the International Trade Administration (ITA) and the International Trade Commission (ITC) on behalf of a domestic industry or by Commerce upon its own initiative. In the latter case, Commerce must notify the ITC. In a countervailing duty investigation, the ITC plays an active role only when the foreign government conferring the subsidies has entered a trade agreement such as the Subsidies Code or a similar arrangement with the United States (USITC, 1996a). The procedural steps of a typical investigation are as follows (see Table 19.1):

***Initiation of Investigation by Commerce***

Once a petition is filed or an investigation started at the initiative of Commerce, ITC begins to investigate material injury, or threat of material injury, etc. to the domestic industry. In the case of a petition, Commerce determines within twenty days whether to initiate or terminate the investigation based on whether the petition adequately alleges material injury or threat thereof with

TABLE 19.1. Antidumping and Countervailing Duty Investigations

| <b>Day</b> | <b>Event</b>   |
|------------|--|
| 0          | Petition filed                                       |
| 20         | Decision on initiation                               |
| 45         | Preliminary injury determination by ITC <sup>a</sup> |
| AD: 160    | Preliminary determination by ITA                     |
| CVD: 85    | Preliminary determination by ITA                     |
| AD: 235    | Final determination by ITA <sup>a</sup>              |
| CVD: 160   | Final determination by ITA <sup>a</sup>              |
| AD: 280    | Final injury determination by ITC                    |
| CVD: 205   | Final injury determination by ITC <sup>a</sup>       |
| AD: 287    | Publication of order                                 |
| CVD: 211   | Publication of order                                 |

Note: AD = Antidumping duty; CVD = Countervailing duty.

<sup>a</sup>If the determination is negative, the investigation is terminated.

sufficient information supporting the allegations, and whether the petition has been filed by or on behalf of the industry (domestic producers or workers supporting the petition must account for at least 25 percent of total production and more than 50 percent of production of those supporting or opposing the petition). In the event that the 50 percent requirement is not met, Commerce must poll the industry or rely on other information to determine if the required level of support for the petition exists. In order to establish a standing to file a petition on behalf of an industry, it is common practice for various producers to file as copetitioners or as copetitioners with unions or trade associations, or for petitioners to secure letters or support from nonpetitioning members of the domestic industry, unions, or trade associations.

If Commerce determines to initiate an investigation, it will begin to establish whether there is a subsidy or dumping in the U.S. market and the commission continues its investigation on injury to domestic industry.

### *Preliminary Phase of ITC's Investigation*

Within forty-five days after a petition is filed or an investigation is begun by Commerce, the ITC makes its preliminary determination, that is, whether there is a reasonable indication of injury to domestic industry. If the determination is negative, or the imports subject to the investigation are negligible, the proceedings terminate.

### *Preliminary Phase of Commerce's Investigation*

If the ITC's determination is affirmative, Commerce makes its preliminary determination based on the information available at the time whether there is a reasonable basis to believe or suspect that a countervailable subsidy or sales at less than fair market value exists.

If Commerce finds a reasonable basis, it estimates the dumping or subsidy margin within 140 and 65 days, respectively, of initiating an investigation. However, such deadlines can be extended if the petitioner requests or the case is extraordinarily complicated.

If Commerce's preliminary determination is affirmative, Commerce (1) suspends liquidation of the investigated merchandise subsequently entered into the United States or withdrawn from warehouse, (2) requires bonds or cash deposits to be posted for each entry of the merchandise in an amount equal to the estimated net subsidy or dumping margin, and (3) continues the investigation. In addition, the ITC institutes a final investigation concerning injury, threat, or retardation. If Commerce's preliminary determination is negative, Commerce's investigation simply continues (USITC, 1996b).

### ***Final Phase of Commerce's Investigation***

Within seventy-five days after its preliminary determination, Commerce makes a final determination as to whether a subsidy is being provided or sales at less than fair value are being made. If the final determination is negative, the proceedings end and any suspension of liquidation is terminated, bonds or other security are released, and deposits are refunded. Any party to the proceedings can request for a hearing before final determination by Commerce. If the final determination by Commerce is affirmative, the ITC will then make its determination on injury.

### ***Final Phase of ITC's Investigation***

The ITC makes its final determination with respect to material injury, threat thereof, or retardation of domestic industry because of sales at less than market value or subsidies. The investigations must be completed within 120 days after Commerce's affirmative preliminary determination (if Commerce's preliminary determination is affirmative) or within seventy-five days after Commerce's affirmative final determination (if Commerce's preliminary determination is negative).

### ***Issuance of an Order***

If the final determination of the ITC is affirmative, Commerce issues an antidumping or countervailing duty order, usually within a week of ITC's determination. The order requires the deposit of estimated antidumping (AD) or countervailing duties (CVD) at the same time as other estimated customs duties pending calculation of the final AD or CVD. If the final determination by the ITC is negative, no AD or CVD is imposed, and any suspension of liquidation is terminated, bonds released, and deposits are refunded (USITC, 1996a). If the petitioner alleges in an investigation the existence of critical circumstance, that is, massive entry of subsidized imports or imports sold at less than fair value in a relatively short period, Commerce's final determination, if affirmative, will include a retroactive suspension of liquidation for all unliquidated entries of merchandise entered into the United States, including those withdrawn from warehouse.

### ***Suspension of Investigation***

An investigation can be suspended prior to a final determination by Commerce if the parties (exporting or subsidizing government) involved agree

to cease exports or eliminate the dumping margin or subsidy within a few months after suspension of the investigation. At the same time as it suspends a proceeding, Commerce must issue an affirmative preliminary determination. Suspensions are reviewed by the ITC to ensure the injurious effect of imports is eliminated by the agreement. If the ITC determines that the injurious effect is not eliminated, the investigation, if not yet completed, will resume.

### *Appeal of Determinations*

Any interested party adversely affected by a determination by Commerce or ITC may appeal to the U.S. Court of International Trade. In the case of NAFTA members, an interested party may appeal for a review by a binational panel set up under the agreement (see Tables 19.2 and 19.3).

## **OTHER TRADE REMEDIES**

### *Unfair Trade Practices in Import Trade*

The ITC is authorized, upon the filing of a complaint or on its own initiative, to investigate alleged violations of section 337 and to determine whether such violations exist. Section 337 of the Tariff Act of 1930 prohibits (1) the

TABLE 19.2. Disposition of U.S. AD and CVD Investigations, 1998-2004

|  | <b>Antidumping<br/>Duty (%)</b> | <b>Countervailing<br/>Duty (%)</b> |
|--|---------------------------------|------------------------------------|
| Terminated before preliminary<br>commission (ITC) determination                                  | 60 (5)                          | 54 (12)                            |
| <i>Preliminary ITC determinations</i>  |                                 |                                    |
| Affirmative  | 836 (82)                        | 261 (75)                           |
| Negative   | 188 (18)                        | 89 (25)                            |
| Terminated after affirmative preliminary<br>determination by ITC (before final<br>determination) | 153 (14)                        | 88 (19)                            |
| <i>Final ITC determinations</i>  |                                 |                                    |
| Affirmative  | 461 (67)                        | 118 (52)                           |
| Negative   | 230 (33)                        | 108 (48)                           |

Source: International Trade Commission, 2005.

TABLE 19.3. Top Ten Countries Cited, 1980-2004

| <b>Antidumping Cases (%)</b> |      | <b>Countervailing Duty Cases (%)</b> |      |
|------------------------------|------|--------------------------------------|------|
| U.K.                         | 3.4  | India                                | 3.8  |
| France                       | 3.7  | Belgium                              | 4.6  |
| Italy                        | 4.3  | U.K.                                 | 4.9  |
| Brazil                       | 4.5  | Spain                                | 5.1  |
| Canada                       | 4.6  | Korea                                | 5.8  |
| Taiwan                       | 5.6  | Germany                              | 6.0  |
| Germany                      | 6.0  | Canada                               | 6.9  |
| Korea                        | 6.2  | Italy                                | 8.2  |
| China                        | 9.5  | France                               | 8.2  |
| Japan                        | 10.2 | Brazil                               | 10.6 |
| Others                       | 41.9 | Others                               | 36.1 |

Source: International Trade Commission, 2005.

importation of articles that violate a valid and enforceable U.S. patent, trademark, copyright, and so on, for which an industry exists or is in the process of being established in the United States and (2) unfair methods of competition by the importer or consignee that could adversely affect a U.S. industry (19 U.S. Code S.1337). International Trade Commission’s investigations also include gray-market imports (i.e., products manufactured abroad by the owner or under license that are imported by unauthorized sources into the United States). The strict definition of gray-market goods is: products that are authorized by the owner of production rights to be made and sold in one market are diverted and sold in another, often unauthorized, market. The problem with such goods in import trade is that they are often purchased at discounted prices abroad and imported into the United States, taking away the market from authorized dealers.

A large percentage of Section 337 cases involve patent infringement; others pertain to violation of other forms of intellectual property. Such actions can also be raised with the U.S. Patent and Trademark Office. The remedies for such violations include the following:

1. A general or limited exclusion order that directs customs to deny entry of certain goods
2. A cease and desist order that enjoins a person from further violation of Section 337

These remedies may be ordered by the ITC in the case of imports infringing upon U.S. intellectual property rights without finding injury. Determinations by ITC may be appealed to the U.S. Court of Appeal for the Federal Circuit (see International Perspective 19.2).

### *Market Disruption by Imports from Communist Nations*

The ITC conducts investigations to establish whether imports of products made in a communist country are causing market disruption to a domestically produced article (19 U.S. Code S.2436). "Market disruption" is defined as a rapid increase in imports that causes material injury or threat thereof to a domestic industry producing a product similar to, or in direct competition with, the imported article. Such investigations may be requested by the president, the U.S. Trade Representative (USTR), Congress, or any interested party. The president may order remedial action in the form of imposition of duties, quotas, and so forth, after receiving the recommendation of the ITC.

### *Unjustified Foreign Trade Practices*

Section 301 of the Trade Act of 1974 was introduced in order to seek open access to U.S. exports in foreign markets. It is directed at foreign government practices that restrict U.S. exports or artificially direct goods or services to the United States. It is applicable to the export of goods and services, investment practices, and intellectual property rights. Under Super 301 Clause of the 1988 Trade Act (renewed in 1994), the U.S. Trade Representative (USTR) is required to examine annually unreasonable or discriminatory restrictions on U.S. exports and then prepare a list of foreign trade practices of foreign countries. If the offending practice remains in place one year after unsuccessful negotiation, punitive tariffs can be imposed equal to the estimated value of lost sales by U.S. firms. Super 301 negotiations have been conducted with many countries, including China and Japan.

Special 301 is another version of Super 301 applicable to intellectual property rights. Priority countries (countries that do not provide adequate protection for intellectual property rights) are identified for bilateral negotiations. A Special 301 investigation is similar to an investigation initiated in response to an industry Section 301 petition. Trade sanctions for noncompliance could be imposed in the event that the country declines bilateral consultations or fails to implement an agreement to open its market or provide adequate protection for U.S. intellectual property rights.

## **INTERNATIONAL PERSPECTIVE 19.2. The Semiconductor Industry**

The semiconductor industry has been a target of industrial policy in many countries. In the United States, the government paid a large share of R & D expenditures since the 1950s. In Japan, the industry was protected by high tariffs, restrictive quotas, and approval of licensing arrangements. Even after the abolition of formal barriers in the 1970s, the Japanese government provided R & D support, preferential procurement policies etc. In Europe, stiff tariff rates on imports were used to protect domestic firms.

**The Semiconductor Accord:** The first agreement (1986) between the United States and Japan focused on improving market share, access to the Japanese market, and on terminating unfair trade practices such as dumping by Japanese companies. The Reagan administration applied some \$165 million in retaliatory duties on Japanese imports in 1987. The Japanese were compelled to raise prices for their semiconductors sold in the United States in order to avoid the imposition of special tariffs and duties resulting from U.S. antidumping investigations.

The agreement resulted in a rise in U.S. foreign market share (U.S. market share in Japan had grown from 9 to 14 percent in 1991). The price of Japanese chips sold in the United States increased by over 30 percent. The agreement was extended in 1991 endorsing the desirability of increasing the foreign market share in Japan by more than 20 percent by the end of 1992. It also paved the way for U.S. and Japanese firms to enter into joint ventures.

As the 1991 agreement expired in 1996, the two governments announced new industry and government agreements on semiconductors. The key provisions of the new agreement include the continuation of existing cooperative activities between users and suppliers as well as new cooperative activities among suppliers from the two countries. These activities include international standards, designs and environmental data (imports, exports, market size, market growth, openness of market etc.). U.S. and Japanese industries will collect and submit data to their respective governments for review in bilateral consultations. The semiconductor industry in Japan has reached the same profit level as that of the United States, as both are focused on capital expenditures.

**Problems with Managed Trade:** The major shortcomings with such arrangements are that it is arbitrary and once established, becomes institutionalized and perpetuated. It may also distort competition in the semiconductor industry with adverse effects on users such as the computer industry.

*Example 1*

Between 1980 and 2004, the U.S. government has placed several sanctions on Chinese imports due to dumping practices. Although China claims to place stringent laws to prevent such practices in view of its membership in the WTO, the country has yet to enforce such regulations. The Department of Commerce recently placed over 90 percent antidumping tariff on a range of products from China. Currently, continuous negotiations are taking place between the United States and China to correct its dumping practices.

*Example 2*

In 2005, the following countries were identified for their trade policies and practices that have the greatest adverse effect on U.S. products:

1. *China*: Piracy of U.S. intellectual property rights, export of infringing goods (illegal production and export of CD, video, CD-ROM, etc., priority foreign country).
2. *Argentina, Brazil, Egypt, India, Indonesia, Israel, Lebanon, Pakistan, Philippines, Russia, Turkey, and Venezuela*: Lack of adequate and effective protection of intellectual property rights and market access (countries under a priority watch list).
3. *Bahamas, European Union, Poland, Taiwan, and Korea*: Monitored to ensure the implementation of agreements on intellectual property and market access (countries under a watch list) (USTR, 2004, 2005; U.S. Department of State, 2005).

***Import Interference with Agricultural Programs***

The ITC conducts investigations at the direction of the president to determine whether imports interfere with or render ineffective any program of the Department of Agriculture. The ITC makes its findings and recommendations to the president, who may take appropriate remedial action, including the imposition of a fee or quota on the imports in question. However, fees or quotas may not be imposed on imports from nations that are members of the WTO (USITC, 1997).

***Trade Adjustment Assistance***

For companies and workers adversely affected by fairly traded imports, trade adjustment assistance is provided in the form of retraining or relocation

assistance for workers or certain forms of technical and financial assistance to companies. The Department of Labor (adjustment assistance for workers) or Commerce (adjustment assistance for firms) makes an affirmative determination insofar as imports constitute an important contributing factor to declines in production and sales as well as loss of jobs in the affected industries. Such assistance could be pursued before or in tandem with escape clause proceedings.

### ***The Escape Clause***

Under Section 201 of the U.S. Trade Act, 1974, the ITC assesses whether U.S. industries are being seriously injured by fairly traded imports and can recommend to the president that relief be provided to those industries to facilitate positive adjustment to import competition. Relief could take the form of increased tariffs or quotas on imports and/or adjustment assistance for the domestic industry. Such relief is temporary and may be provided for up to five years, with one possible extension of not more than three years. Such actions can be appealed to the U.S. Court of International Trade, then to the Court of Appeals for the Federal Circuit, and from there to the U.S. Supreme Court.

### ***Import Relief Based on National Security***

The Tariff Act (19 U.S. Code S.1862) gives the president discretion to restrict imports that threaten national security. The Department of Commerce makes findings and recommendations to the president who may order the imposition of a quota, fee, tariff, or other remedies. Although such remedies are rarely invoked, they could conceivably be used by companies in some strategic sectors. Such remedies are available only if it is established that a strategically important industry is adversely affected by imports and that supplies may not be available during a crisis either from domestic or foreign sources.

## ***CHAPTER SUMMARY***

### ***Dumping and Subsidies***

Dumping is the selling of a product in a foreign market at a price that is lower than the price for which it is sold in the home market.

Subsidies are any benefit given by the government to domestic producers.

Domestic subsidies are provided to achieve certain socioeconomic goals, such as optimum employment.

Export subsidies are intended to promote exports.

### *Proof of Injury and Remedies*

In both cases, remedies are subject to proof of injury of subsidized or dumped imports. Injury is generally established by considering import volumes, lost sales, and impact on domestic producers of similar products.

### *Antidumping and Countervailing Duty Proceedings*

1. Initiation of investigation by Commerce
2. Preliminary phase of ITC investigation
3. Preliminary phase of Commerce investigation
4. Final phase of investigation by Commerce
5. Final phase of investigation by ITC

### *Other Categories of Trade Remedies*

1. Unfair trade practices, S. 337
2. Market disruption by imports from communist countries
3. Unjustified foreign trade practice, S. 301
4. Import interference with agricultural programs
5. Trade adjustment assistance
6. The escape clause

## **REVIEW QUESTIONS**

1. What is the difference between dumping and subsidies?
2. State the types of nonactionable subsidies.
3. What is to be established in every subsidy and dumping investigation?
4. Briefly describe the preliminary phase of an ITC investigation.
5. Describe the procedural steps in a typical antidumping or countervailing duty investigation.
6. What is market disruption?
7. Explain the escape clause. Can it be applied at any time to protect domestic industry?
8. Describe Special 301. Is it the same as Super 301 of the U.S. Trade Act?

**CASE 19.1. SIMILAR PRODUCTS AND DUMPING**

A Chilean salmon exporter was accused of dumping salmon in the U.S. market at less than fair value. An antidumping petition was filed in 1997 by the Coalition for Fair Atlantic Salmon Trade. The U.S. Department of Commerce (ITA) initiated an antidumping duty investigation to determine whether Chilean exporters of Atlantic, fresh, farmed salmon were selling in the United States at less than fair market value to the detriment of U.S. industry. The purpose of the investigation was to determine whether dumping duties should be imposed on the subject merchandise when imported into the United States.

ITA conducted an investigation in order to compare the price of the salmon sold in the United States with its “normal value” in Chile (home market). Since the product is not sold in the home market, ITA based normal value on the price of the salmon sold in Japan. The exporter sold “premium” grade salmon in the United States while it sold “premium” and “super premium” grades in Japan. ITA found that (1) salmon industries do not recognize any grade higher than premium grade and all salmon in this range are graded equally; (2) salmon graded as “super premium” are in fact premium grade and comparable in the market place. ITA recognized that the exporter reported higher prices for sales of super-premium grade salmon to Japan (sales of premium salmon to Japan covered a few months and involved relatively small quantities, thus insufficient to evaluate price differences). The practical consequences of ITA’s decision to classify the two grades of salmon (super-premium and premium) as identical in physical characteristics was to impose a dumping margin of 2.23 percent on the Chilean exports of premium salmon in the United States.

***Questions***

1. Are the products sold in Japan and the United States identical for duty analysis?
2. Based on the information, do you think dumping has occurred in the United States?

