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Western Hemispheric Free Trade and U.S. Trade Laws: The Role of Section 301

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1. Introduction

The formation of a Western Hemispheric Free Trade Area (WHFTA) poses many challenges to its negotiators. Chief among these will be whether and how the negotiators will choose to handle existing U.S trade laws that will remain in place and could affect trade relations between the United States and the other WHFTA countries even after an agreement is reached. One such law is Section 301 of the Trade Act of 1974. Section 301 is that portion of U.S. trade law that provides authority to the US Trade Representative (USTR) to negotiate, under threat of U.S. trade retaliation, the reduction of foreign government imposed impediments to trade. The use of this law, which has been dubbed "aggressive unilateralism" by some trade policy experts, has increased in the past decade, spurred on by the U.S. Congress where support is strong for strengthening various elements of the statute. Latin American countries have had considerable experience with Section 301. Indeed, Guatemala was the target of the first Section 301 case filed in 1975. Since that time, nine more cases have been initiated against countries from the region, with several currently ongoing. In addition, in the first year of a supplementary 301 provision, known as Super 301, the government of Brazil was branded as one of only three priority countries for market access negotiations, and an additional 301 case was self-initiated by the USTR.

The increased use of Section 301 has been a source of conflict and controversy in the international community. From the point of view of other countries, actions taken under this law are often perceived as an unreasonable intrusion into the their policies.[1] One of the chief goals of the Canadians

[1]See Moreira (1990) for an example of the Brazilian view of Section 301.

during the Canada-U.S. Free Trade Area (CUSTA) talks was to gain special exclusion from certain trade laws, including Section 301. What the Canadians achieved in these talks was the creation of a dispute settlement mechanism designed to achieve expeditious and fair solutions to disagreements that might arise between the two countries. This mechanism offers several approaches to dispute settlement including consultations, mediation, binding arbitration, and recourse to outside experts and panels. A similar format has been agreed to by the negotiators of the North American Free Trade Area (NAFTA).

The existence of the CUSTA dispute settlement mechanism, however, in no way supersedes the authority granted to the USTR. Indeed, there have already been two 301 cases filed against the government of Canada since the signing of the trade agreement between the two countries, with one resulting in trade retaliation. A third case was resolved using the newly created dispute mechanism. Section 301 has been discussed in other fora. Most recently, the European Community (EC) has called for the elimination of Section 301 as a target for negotiation in the Uruguay Round.[2] This was met by opposition from U.S. negotiators, who warned that Congress would likely refuse to ratify any agreement that included such a provision.

There are a variety of scenarios where it is conceivable that, absent any agreements to the contrary within a WHFTA pact, the use of Section 301 may increase vis à vis WHFTA countries. First, if the WHFTA is successful then trade will rise, and U.S. direct foreign investment will almost certainly expand into the WHFTA countries. As this happens, U.S. firms will undoubtedly experience problems with local statutes, governmental practices, and the like that may cause

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[2]See Julie Wolf, "EC Seeks Removal of U.S. Trade Law as Part of Accord," The Wall Street Journal, November 5, 1991, pg. A14, column 3.

them to seek remedies available under Section 301. The greater the amount of trade that is stake, the more likely is the U.S. government to feel political pressure to pursue the case. Moreover, if the agreement is successful in expanding Latin American exports to the United States, then U.S. trade negotiators will enjoy increased leverage in any future negotiations over bilateral disputes. With greater leverage, comes the likelihood of additional complaints. Finally, given the likelihood that the current Uruguay Round will fail to produce an agreement on lowering various nontariff barriers, there will be even more pressure by Congress and various U.S. exporter groups to seek to lower barriers within the context of regional trade agreements. If unsuccessful in such talks, then the only recourse may be the unilateral use of Section 301. Thus, there are good reasons for the WHFTA countries to consider what impact the completion of a WHFTA pact might have on the use of Section 301.

The purpose of this paper is to examine the role that Section 301 plays in the ongoing trade relations between the other countries of the WHFTA and the United States and to discuss and analyze the various options available to these other countries with respect to this law. The paper will review the history of Section 301 with special reference to disputes between the United States and other WHFTA countries, study the Canada-U.S. approach to dispute settlement, and propose some options for WHFTA.

2. Section 301 as an Instrument of U.S. Trade Policy

2.1 Definition of the Statute and Administrative Procedures

Section 301 of the Trade Act of 1974, as amended by the Trade Agreements Act of 1979 and again by the Omnibus Trade and Competitiveness Act of 1988, provides broad authority to the United States Trade Representative (USTR) to negotiate the elimination of any act, policy or practice of a foreign government that is viewed to be (a) inconsistent with the provisions of, or otherwise denies the United States benefits under, any trade agreement, or (b) an unjustifiable, unreasonable, or discriminatory burden or restriction on U.S. commerce. Should negotiations fail to produce the desired goal, then the USTR has the authority under this statute to retaliate against those practices by imposing trade sanctions or by ordering the suspension or withdrawal of U.S. trade concessions.

The statute was first incorporated into U.S. trade in order to provide a mechanism for allowing American firms access to the consultation and dispute settlement mechanisms of the General Agreement on Tariffs and Trade (GATT).[3] Since that time the law has been changed to go well beyond GATT covered trade disputes. For instance, according to the law in its present form, U.S. commerce includes international trade in goods or services as well as foreign direct investment by U.S. persons with implications for trade in goods or services.

The law also spells out in more detail the types of policies, acts or practices that the USTR is directed to see eliminated. "Unjustifiable" practices are those that violate or are inconsistent with U.S. international rights. "Discriminatory" practices are those that deny most-favored-nation treatment to U.S. commerce. The term "unreasonable" refers to acts, policies or practices that are not necessarily illegal or inconsistent with U.S. international legal rights, but are viewed as being unfair. Examples of such practices are identified in the 1988 amendment to Section 301. They include *inter alia* denial of investment or trade opportunities; denial of adequate intellectual property rights protection;

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[3]For more on the relationship between Section 301 and the GATT dispute settlement process, see Feketekuty (1990).

tolerance of systematic anti-competitive activities by foreign firms; foreign export targeting; and foreign practices deemed to be anti-labor such as laws restricting the rights of labor unions to organize or bargain collectively, laws allowing child or forced labor, and failure by governments to provide standards for minimum wages, hours of work, and occupational health and safety.

A 301 case begins in one of two ways. It may start with a petition filed with the USTR requesting action and setting forth allegations in support of the request. The USTR has 45 days to decide whether to initiate an investigation. Alternatively, the USTR may self-initiate an investigation on his own or at the direction of the President. In either event, once begun, the statute spells out several deadlines for possible action.

At the outset of an investigation, the USTR is required to request consultations with the foreign country regarding the issues of the case. The goal of these consultations is the negotiation of a binding agreement to eliminate the practice or policy that interferes with U.S. commerce or an agreement for the foreign country to provide compensating, preferably to the U.S. sector that was originally harmed by the policy or practice. If the foreign country is a signatory with the United States of a trade agreement, such as GATT or the CUSTA, and consultations do not produce an agreement, then the matter is to be taken to formal dispute settlement procedures provided under the agreement at the end of the consultation period specified in the agreement or after 150 days from the start of consultations, whichever is shorter.

Regardless of whether or not formal dispute settlement is involved, the USTR has a clear deadline for announcing his determinations regarding the grounds for action and the actions to be taken in the event that consultations fail. In cases involving formal dispute settlement, the deadline is the earlier of the 30 days after the end of dispute settlement proceedings or 18 months after the initiation of the investigation. In most other cases the deadline is 12 months after the case is initiated, except for cases involving an allegation of the denial of intellectual property rights protection, where the deadline is 6 months after initiation. Any actions taken by the United States against recalcitrant foreign governments usually must be imposed within 30 days of the USTR announcement, although delays are possible.

Under the most recent provisions of the act, mandatory retaliation is required if the USTR determines that U.S. rights under a trade agreement are being denied or that foreign practices are unjustifiable and burden or restriction on U.S. commerce. Retaliation can be of several forms, including suspension or withdrawal of trade concessions, imposition of duties or other trade restrictions. Several exceptions to mandated action exist. These include cases where the United States has received an unfavorable determination or ruling under GATT or other trade agreement dispute settlement process; cases where the USTR determines that the foreign country is taking steps to eliminate the problem or provide compensation; and cases where retaliation would adversely affect the United States economy or national security.

If the USTR determines that foreign practices are unreasonable or discriminatory, then mandatory action is not required. However, according to the law, the USTR is to take "all appropriate and feasible action" to eliminate the offending policy or practice. Again, the statute provides the USTR with the authority to impose retaliation or to suspend or withdraw trade concessions.

2.2 History of Section 301 Cases

Through early 1992, 88 Section 301 cases have been initiated by USTR.[4] Table 1 provides some detail on each of these cases. The first Section 301 case was filed on July 1, 1975, against the government of Guatemala. The case was filed on behalf of Delta Steamship Lines, Inc. which complained that Guatemala discriminated against foreign shippers when it required that certain cargoes shipped to Guatemala must be carried on Guatemalan vessels. Following negotiations between the petitioner and the National Shipping Line of Guatemala, an agreement was reached and the case was terminated in the summer of 1976.

Asian countries have been the most important target of Section 301: thirteen cases have been initiated against Japan; eight against Korea; six against Taiwan; four against India; three against Thailand; and two against the Peoples' Republic of China. European countries have been the second most important target of Section 301 cases.[5] Twenty nine cases have been initiated against one or more countries of the EC. In addition, Austria, Norway, Sweden, Switzerland, and the former U.S.S.R. have each been involved in separate Section 301 actions.

Countries of Latin America are the third most frequent target of Section 301 actions, with eleven cases since 1975. In addition to the Guatemalan case described above, Brazil and Argentina have each been involved in five Section 301

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[4]This total includes both standard and self-initiated Section 301 actions as well as self-initiated Super 301 and Special 301 initiatives. In the country totals that follow, one case (Case #10) is included in both the EC and the Japanese totals.

[5] Three of the cases filed against Japan (Cases #74-#76) and two of the cases filed against India (Cases #77-#78) were self-initiated by the USTR as part of the Super 301 exercise mandated by legislation included in the Omnibus Trade and Competitiveness Act of 1988.

cases.[6] Canada is the only other country to have been charged in Section 301 actions. It has been involved in eight cases.[7]

The use of Section 301 rose dramatically during the Reagan Administration. Part of this rise was tied to a switch in trade policy in 1985. At that time, the United States had been experiencing record trade deficits for several years and calls were growing in Congress for increased protection. In order to counter these demands, President Reagan announced a new policy regarding international trade. This policy called for international macroeconomic policy coordination to facilitate a fall in the value of the dollar, which at that time had been soaring in value. The new policy urged American firms to take greater advantage of measures available to them to fight "unfair" trade in American markets by pursuing antidumping or countervailing duty cases, and it promised that the U.S. government would make more vigorous use of Section 301 in order to open foreign markets to U.S. goods. To demonstrate its commitment to this change in policy, the government self-initiated several Section 301 cases, including cases against Japan, Korea, and Brazil. By self-initiating these cases, the government confirmed that it viewed itself as having an interest in achieving a successful resolution to these disputes, thereby raising the stakes in the negotiating process. These were the first cases ever self-initiated by the USTR. Since 1985,

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[6]One of the cases initiated against Brazil (Case #73) was part of the Super 301 initiative.

[7]One of these cases (Case #58) did not involve bilateral consultations. Rather, the case grew out of a settlement between the United States and Canada over subsidized softwood lumber exports to the United States. In this case, the Section 301 statute enabled the President to impose a tariff on softwood lumber imports from Canada. This tariff was then immediately repealed when Canada instituted a pre-negotiated export tariff on the product. For more on this case, see below.

Two cases (Cases #80 and #87) have been initiated since the formation of the CUSTA.

19 more have been self-initiated; cumulatively, self-initiations now account for 25 percent of all Section 301 actions.

Several of the most recent self-initiations have come because the Section 301 statute has been strengthened in recent trade legislation. In 1989, under the auspices of the Super 301 provisions of the Omnibus Trade and Competitiveness Act of 1988, the USTR announced that it had identified several priority practices of three countries, Japan, Brazil, and India, that burdened or restricted U.S. commerce.[8] These practices included barriers to foreign investment and foreign insurance sales by India, import licensing practices of Brazil, and Japanese government procurement practices that affected U.S. exports of supercomputers and satellites. The passage and subsequent implementation of Super 301 lead to considerable outcry from U.S. trading partners, who viewed these actions as violations of international law.[9] Indeed, none of the three countries identified as "unfair" traders agreed, at first, to even enter into negotiations with the United States. All three sets of cases have now been resolved, although it is questionable as to the role played by Super 301 in achieving these results. For instance, in May 1990, the USTR, Carla Hills, announced that due to dramatic changes in Brazilian trade policy instituted by the newly elected government, she was terminating the case against Brazil. Several cases against Japan were terminated in June 1990, following the negotiation of bilateral trade agreements and the completion of the Structural Impediments Initiative talks. Hills also terminated the two Super 301 cases against India in June 1990, announcing that

[8]Korea and Taiwan escaped being also named as priority countries by agreeing at the eleventh hour to reduce certain trade barriers affecting U.S. exports.

[9]For a critical appraisal of Section 301 and Super 301, see Bhagwati (1990). For a defense of these policies, see Feketekuty (1990).

issues involving investment and services were being negotiated in the Uruguay Round.

Another provision of the 1988 trade bill has led to additional self-initiations. This provision, known as Special 301, requires that the USTR identify countries that fail to provide adequate intellectual property rights protection. On May 1, 1991 Carla Hills self-initiated Special 301 cases against India and the Peoples' Republic of China. These cases have not yet been resolved.

2.3 Cases involving Latin America

As noted above, Latin American experience with Section 301 largely has been limited to U.S. trade disputes with Argentina or Brazil. Several of these cases have been quite contentious, ultimately producing no resolution and leading to U.S. retaliation. In this section, several of the Latin American Section 301 cases are described in greater detail.

Case #24: Argentina Hides In October 1981 the (U.S.) National Tanners' Council (NTC) filed a petition with the USTR alleging a breach by Argentina of the 1979 U.S.-Argentina hides agreement. It called for U.S. concessions on imports of corned beef and cheese and reduced U.S. tariffs on Argentine cattle hide leather. In return, Argentina agreed to convert its export ban on cattle hides into an export tariff (initially at 20%) and to begin a series of reductions in that tariff, eliminating it by October 1981. The NTC argued that Argentina had failed to institute the final two reductions in the tariff, thus violating the agreement. They also charged Argentina with maintaining a minimum export price on hides greater than the transaction price and assessing the export tax on the higher price, thereby raising an additional barrier to the export of Argentine hides.

The effect of these practices the NTC argued was to give Argentine tanners an artificially cheap source of raw cattle hides and thus an unfair advantage in U.S. and third country markets. The USTR initiated an investigation of the case in November 1981 and consulted with the Argentine government on two different occasions. The talks did not produce any agreement and in October 1982, President Reagan terminated the hides agreement and increased the U.S. tariff on leather imports.

Case #49: Brazil Informatics In September 1985, as part of the new trade policy initiative of President Reagan, the USTR self-initiated a Section 301 case against the informatics policies of Brazil.[10] The case was begun in reaction to a 1984 Brazilian law that codified and extended policies followed since the 1970s to promote a national informatics industry. The USTR listed four elements of the informatics law as targets for elimination: a market reserve policy that restricts production and sales of certain products to Brazilian firms; administrative burdens including lengthy inspections of imported goods or the denial of their entry into the Brazilian market; prohibition of foreign investment in certain informatics sectors; and failure to provide intellectual property rights protection for foreign computer software. The USTR estimated in its initial documentation of the case that the Brazilian policy had imposed annual lost sales of $340-$450 million on U.S. makers of computer hardware and software.

[10]Informatics refers to those industries that incorporate digital technology, including computers, computer parts, communications switching equipment, instruments, process controls, optical and electronic components, and computer software.

Following four fruitless bilateral discussions, President Reagan determined that the Brazilian informatics policy was "unreasonable" in October 1986. At that time, he order the USTR to notify GATT of the U.S. intention to suspend tariff concessions for Brazil and to effect such suspension when appropriate. However, he postponed ordering retaliation and continued the case until December 30. In December, the USTR suspended the case with respect to market reserve and administrative burdens on imports, citing improvements in Brazil on these matters. However, President Reagan threatened retaliation within six months should continued negotiations fail to achieve progress on intellectual property protection and on investment issues.

On June 30, 1987, the USTR suspended that portion of the case dealing with intellectual property rights protection based on Brazilian legislative action toward enactment of a bill that would provide copyrights to computer software. By November, however, misunderstandings reemerged and the negotiations again collapsed. The President announced his intention to prohibit the import of Brazilian informatics products and to raise duties (to 100%) on $105 million of other Brazilian products. But, before retaliation was implemented the Brazilian legislature enacted a new software copyright law. In February 1988, retaliation was indefinitely postponed. Later that year, the USTR announced that it did not wish to pursue retaliation, although it would continue to monitor Brazilian practices toward U.S. firms.

Case #53: Argentina Soybeans and Soybean Products In April 1986, the (U.S.) National Soybean Processors Association (NSPA) filed a petition against the practices of the Argentine government with respect to its system of export taxes on soybeans and soybean products. The complaint raised by NSPA was over the differential in the export taxes assessed against raw soybeans and processed soybean products; in 1986 the export tax on soybeans was 28.5 percent and 16.5 percent on soybean oil and meal. NSPA argued that the higher tax on raw soybeans discouraged their export and artificially lowered their price inside Argentina. This, NSPA maintained, provided an implicit subsidy to soybean processors and represented a major factor for the declining share of U.S. products in third country markets. The goal of the NSPA petition was a reduction in the differential. The U.S. soybean growers association also supported the NSPA petition and urged USTR to take a position in its negotiations that the differential should be removed by raising the lower of the two taxes to the higher level.

Following bilateral consultations, President Reagan suspended the investigation in May 1987, when Argentina assured the United States that it was planning to eliminate its export taxes. In February 1988, Argentina reduced the differential by 3 percentage points. However, later that year Argentina instituted a tax rebate scheme on soybean product exports, and consultations were resumed. The tax rebate scheme was suspended in December 1988. As of early 1992, the export tax differential was still in place, standing at 6 percent; USTR continues to consult with Argentina periodically over its policies toward its soybean processing industry.

Case #61: Brazil Pharmaceuticals In June 1987, the (U.S.) Pharmaceutical Manufacturers Association (PMA) filed a petition complaining of Brazil's lack of process and patent protection for pharmaceuticals. In particular, pharmaceutical products had not been patentable since 1945 and processes were excluded from patent protection in 1969. The PMA claimed in their petition that this lack of protection enables pirate producers to import and/or copy raw materials as well as finished products without the burden of covering the cost of innovation. As an additional hindrance to foreign producers, in some cases Brazil restricted imports of foreign products when domestic pirated products were available in the local market; banned foreign investment that would compete with Brazilian owned pharmaceutical companies; and placed strict price controls on many drugs. The PMA estimated that the cost of these policies in terms of lost exports over the period 1979-1986 stood at $204 million.

USTR initiated an investigation in July 1987 and requested bilateral consultations. Talks were not held until the following February, and resulted in no progress on the issue. In July 1988, President Reagan declared Brazil's policy to be unreasonable and a burden on U.S. commerce. In October 1988, retaliatory 100 percent *ad valorem* tariffs were imposed on $39 million worth of Brazilian exports to the United States, including certain paper products, nonbenzenoid drugs, and consumer electronics. In June 1990, the Brazilian government announced that it would seek legislation to provide patent protection for pharmaceutical products and the process of their production. One day later, the USTR announced that it would terminate the application of retaliatory duties on Brazilian goods. In May 1991, the USTR reported that although the Brazilian government had submitted patent legislation to its congress, the proposed law contained certain deficiencies.

These four cases illustrate many interesting points about Section 301 trade policy. First, it is not surprising that major trade disputes have arisen between the United States and Brazil and Argentina. These latter two countries are major markets in Latin America, and, until recently have followed import substitution development policies that adversely affect U.S. exports. In addition, these countries share comparative advantage with the United States in certain agricultural products. Thus policies by any one of the three that affect its agricultural exports could influence the markets for the other countries in the rest of the world. Thus the policy emphasis of the United States has been on these countries.

Second, the scope of actions that can bring on a case goes well beyond GATT proscribed activities. Indeed, none of these cases involved claims of GATT violations nor led to the use of the GATT dispute settlement mechanism. Two of the cases, Brazil Informatics and Brazil Pharmaceuticals, did involve disputes over investment and intellectual property rights issues wherein international codes of conduct are currently being negotiated in the Uruguay Round. Thus, the use of Section 301 in these instances demonstrates the increasing willingness of the United States to anticipate the results of the GATT negotiations by writing its own rules of "acceptable" conduct in these aspects of trade policy and attempting to force compliance of these rules on other countries.

The Argentina Soybeans case illustrates that the United States is fully prepared to dictate rules to other countries that it routinely violates at home; its chief complaint was the differential export tariff imposed by Argentina. This tariff clearly conforms to the principle of maintaining positive effective rates of protection on higher value-added goods; a practice identical in effect to escalating import tariffs by stages of processing. Such tariff escalation is common in the United States.[11]

The Argentina Soybeans case is interesting for several other reasons. First it illustrates the lack of economic analysis that goes into the construction of a case or the decision to initiate an investigation. In particular, recall that

[11]See, for example, Table 6.7 in Husted and Melvin (1990, pg. 178).

the case involved a claim that Argentina's export tariff system helped contribute to a loss of U.S. market share in third country markets. Clearly, if Argentine producers were able to undersell U.S. firms despite having to pay a 16.5 percent export tariff, it seems only logical that the Argentines would have an even greater market share in the absence of such taxes. Even if the doubtful analysis of NSPA had theoretical merit, the USTR initiated an investigation without any empirical evidence of a relationship between Argentine tariff policies and world market conditions. Indeed, the law does not require that any such evidence ever be provided by petitioners in the case.

Second, the case illustrates the ability of powerful sectors in the U.S. economy to influence U.S. policy. Indeed, the support of the soybean growers lobby for this case rested on a U.S. negotiating target of closing the tariff differential by raising the lower of the two tariffs, thus making "voluntary" export restraint an unstated but clear goal of the private sector petition. Their direction guided some of the early goals of the bilateral consultations. It is ironic, however, that the ultimate resolution of the case through the lowering of the export taxes (and their differential) clearly helped the Argentine economy and hurt both elements (i.e. growers and processors) of the U.S. soybean industry.

The examples above illustrate one final point concerning U.S. trade policy. The issues raised by the U.S. government clearly produced acrimony on both sides. The atmosphere surrounding the discussions has been heated, with the U.S. side often claiming that promises that had been made were later broken. In these cases, the United States has been willing to raise the stakes in the dispute by self-initiating cases; it has repeatedly threatened retaliation and has imposed it on several occasions. It has refused to allow considerations such as the level of economic development in these countries to serve as an excuse for policies it considers unfair.

2.4 Economic Analysis of Section 301

Despite its recent prominence as a major tool of U.S. trade policy, relatively little theoretical or empirical analysis has been devoted to the topic. One exception is McMillan (1990) who argues that both the distributive and the efficiency impacts of Section 301 can be understood in the context of a simple game of dividing a dollar.[12] Suppose that there are two bargainers, A and B, who seek to divide between them $1. If they agree, A receives z, which he values at rz (r>0) while B receives 1-z, which B values at 1-z. Bargaining proceeds in sequence, with A making an offer, followed by a counter offer from B if B rejects the first. The process of alternating offers can continue on indefinitely, however at each step there is a small but non-zero probability that bargaining might break down forever. Should that occur then the fallback levels of utility for A and B are f_a and f_b respectively.

If each player is fully rational in his expectations about the behavior of the other and information on both sides is perfect, then the unique equilibrium outcome to this game is that A receives a payoff of $[r + f_a - rf_b]/r2$ and B receives $[1 + f_b - (f_a/r)]/2$. As the equilibrium to this game clearly illustrates, each bargainer's payoff rises the larger is his own fallback position and falls the larger is his opponent's. In other words, the options available in the event of the collapse of negotiations affect the terms of the agreement. This illustrates how the retaliation authority provided to the USTR by Section 301 is designed to improve the negotiating position of the United

[12] McMillan attributes this game to Binmore, Rubenstein, and Wolinsky (1986).

States. That is, retaliation by country A in the event of a collapse in negotiations would lower f_b, improving A's bargaining position. In contrast, counter-retaliation by B would lower f_a and A's ultimate payoff. As the model also clearly shows, the more A values its payoff from the game (i.e. the larger is r) the stronger is A's bargaining position

These comparative statics results help us to understand some implications about the use of Section 301. First, the relatively large proportion of Section 301 cases that have been aimed at Latin American countries and several developing countries of Asia could well be due to the fact that these countries export a disproportionate share of their output to the United States. Thus, U.S. retaliation against these countries would clearly damage their fallback positions. In addition, these countries have limited ability to counter-retaliate credibly against U.S. commerce. Thus, the United States knows going into the dispute that it is bargaining from a position of strength and is prepared to use it to achieve its goals. The model also suggests that the United States is likely to be most successful if it picks targets where the cost to foreigners of ending the practice is relatively small. As McMillan notes, this could lead to negotiated bilateral solutions that divert trade in favor of the United States rather than truly opening markets to global competition.[13]

A major assumption of the model described above is that information is

[13]The example that McMillan cites is the settlement of a 1985 case between Korean and the United States over trade in insurance. The settlement merely guaranteed greater market access for two U.S. firms. Another example is the semiconductor agreement signed in 1986 between the United States and Japan. Among other things, this agreement called for foreign market share to rise in Japan to 20 percent of semiconductor sales within five years. When the United States retaliated in 1987 over violations of the agreement it complained that U.S. market share was not growing at a rate sufficient to achieve the market share target. For more on the trade diverting aspects of Section 301, see Bhagwati (1988), especially pages 124-125.

perfect. In real world situations, however, this is unlikely to be the case. Various game theoretic models of bargaining show that when negotiators have private information, the likelihood rises of either a breakdown in negotiations or an extension of the length of time required to reach a solution. This is because negotiators attempt to benefit from their private information. Thus, the existence of privately held information may lead to an inefficient outcome, including retaliation.

The most recent theoretical work on Section 301 type policy mechanisms is by Eaton and Engers (1992). This paper models how threats and/or the imposition of international sanctions affect the behavior of the target country. More precisely, the paper assumes the existence of a country, S, that seeks to encourage a certain level of behavior, a, of another country, T, by threatening and then possibly imposing economic sanctions, s, on that country. Utility in S (in T) is an increasing (decreasing) function of a. Utility in both is decreasing in s. Parties interact by making alternate moves. S begins by announcing a desired level of a that it wants T to pursue. T then decides whether it will comply. Then S decides whether or not to impose sanctions, and so on.

There are many possible equilibria to games of the sort the authors explore. They focus on the limit of finite horizon equilibria and show that equilibria exist which sustain a narrow range of possible levels of action by the target country. This range could include zero action and/or full compliance. The width of the range depends upon each party's toughness in terms of its willingness to bear the cost of sanctions. In general, the more patient is a party and the tougher it is, and the better it does. As was the case with McMillan's model, this analysis suggests that sanctions may be most effective when the target's gains from trade are large and the sender's small. Thus, Section 301 may be more effective when aimed at major U.S. trading partners than against countries such as India that do not trade extensively with the United States.

The feature that differentiates the Eaton and Engers model from McMillan's is the fact that in the former the imposition of sanctions lowers the utility of the sanctions imposing country. This is clearly the case in the real world, wherein the United States has repeatedly demonstrated restraint in its use of Section 301 sanctions. As noted above, the United States has often been reluctant to impose sanctions, and, in several circumstances, it has lifted them on the promise of a change in behavior.

The paper also shows that a threat of sanctions may be sufficient to induce the desired behavior. Indeed, Milner (1990) and Hudec (1990) document how the initial implementation of Super 301 and Special 301 induced several countries to undertake trade liberalization and protect intellectual property rights in order to avoid being targeted by the United States.

3. Section 301 in the Context of a Free Trade Area

3.1. Dispute Settlement in the CUSTA

A major goal for the Canadian side in the negotiation of the CUSTA was to establish an institutional framework that would insulate Canada from what it considered to be the vagaries of U.S. trade policy.[14] In the end, the CUSTA did not change the trade laws of either country. However, the agreement did create two dispute settlement mechanisms designed to arbitrate disagreements between the

[14]For more on the Canadian perception of U.S. trade policy, see Rugman (1988).

two countries.[15] One of these mechanisms, Chapter Nineteen, permits the formation of binational panels to arbitrate disputes that arise over the operation of anti-dumping or countervailing duty laws in either country. With one additional exception, Chapter Eighteen of the CUSTA provides for a mechanism for addressing all other disputes that might arise between the United States and Canada on the implementation and operation of the CUSTA or on any actions taken by either that is viewed by the other to nullify or impair any benefit that country expected under the agreement.[16] Thus, Chapter Eighteen offers a forum for reaching bilateral settlement of many Section 301 cases.

Chapter Eighteen provides for the creation of the Canada-United States Trade Commission (CUSTC), composed of representatives from both countries and headed by the principal government officials in charge of trade policy. The CUSTC examines any measure that affects the operation of the agreement and that cannot be solved in bilateral consultations. If the CUSTC cannot resolve the problem within 30 days it may refer the dispute to a panel for arbitration. The panel is composed of five members, two of whom must be from the United States and two of whom must be from Canada. The fifth panelist serves as chairman and can be from either country. Panelists are chosen from a roster of prospective members maintained by the CUSTC. Once the panel is appointed, each side has the right to at least one hearing before the panel as well as the opportunity to provide written submissions and rebuttal arguments. Unless previously agreed, the panel has three months to present an initial report containing findings of fact; its

[15]Bello, *et al.* review the operation of these mechanisms from their inception through mid 1991.

[16]Bilateral disputes over the operation of financial institutions other than insurance companies are handled under a separate mechanism (Chapter Seventeen) also established in the agreement.

determination as to whether the measure at issue is or would be inconsistent with the obligations of the agreement; and its recommendations, if any, for resolution of the dispute. The panel may also provide preliminary estimates of the trade effects of the measure at issue.

Following the initial report, each country has two weeks to provide comments; these comments or any additional panel findings may be incorporated into a final report that is to be delivered to the CUSTC within 30 days of the initial report. If mutually agreed upon, the arbitration process is binding for both sides, with the panel report providing the basis for a solution to the dispute. If not, the panel recommends a solution to the CUSTC, which, in turn, is required to resolve the problem. In the event that all mechanisms fail, either party can withhold benefits of equal effect or terminate the agreement upon six months notice.[17]

3.2 Cases involving Canada

Canada has been the target of eight Section 301 cases. The three most recent of these cases have either been initiated since the inception of the CUSTA or have made use of the CUSTA dispute settlement mechanism. Consequently, these cases are useful in understanding how the United States utilizes Section 301 with a partner country of a free trade agreement; the cases are described below.

Case #55: Canada Fish On April 1, 1986, Icicle Seafoods and nine other companies with fish processing facilities in Washington and southeastern Alaska filed a petition with USTR alleging that Canada prohibition of exports of

[17]For more on the operation of the dispute settlement mechanisms under the CUSTA, see Anderson and Rugman (1990) and (1991).

unprocessed sockeye salmon, pink salmon, and herring were in violation of GATT Article XI which prohibits most export restrictions. The USTR initiated an investigation on May 16, 1986 and conducted several bilateral consultations with representatives of the Canadian government. These consultations failed to provide a satisfactory resolution to the issue, and the case was referred to the dispute settlement mechanism of GATT. Canada argued before the dispute settlement panel that while its export restrictions did indeed violate GATT Article XI, they were integral to Canada's west coast fisheries conservation and management regime. Thus, Canada maintained that its policies were covered by GATT Article XX, which allows measures relating to the conservation of exhaustible resources. The United States won a favorable panel decision from GATT in 1988; this decision was adopted by the GATT Council in March 1988.

Although Canada announced in March 1988 that it would not oppose the panel decision, it maintained the claim that its policies were based on legitimate fishery conservation and management concerns. Hence, it declared that as of January 1989 it would replace the export ban with a landing requirement system that would be consistent with the GATT. This new system called for landing and inspection of all fish prior to export. In August 1988, the USTR informed the Canadian government that the proposed requirements would not satisfactorily remedy Canada's GATT violation since they would be inconsistent with the GATT as well as the CUSTA, which was then pending entry into force.

Canada delayed repealing its export ban, and in March 1989 the USTR determined that the ban denied the United States a right to which it was entitled by the GATT. At the same time, the USTR called for a public hearing to be held in April 1989 to consider possible trade actions against Canada as a result of this determination. One day before the public hearing, the Canadian government repealed its export prohibition and replaced it with regulations requiring all Pacific roe herring and salmon caught in Canadian waters to be brought to shore in British Columbia prior to export. In an exchange of letters during the following month, the United States and Canada agreed to submit Canada's policy of landing requirements to a CUSTA dispute panel.

In October 1989, the panel issued its final report, in which it found that Canada's 100 percent landing requirements violated CUSTA Article 407, which prohibits GATT-inconsistent export restrictions. The panel's report was not binding; it did contain several alternative solutions available to Canada. One alternative, the panel said, was the imposition of more limited landing requirements to the extent justified in particular areas on conservation grounds. Based on the panel report, the USTR determined that the landing requirements denied U.S. rights under the CUSTA.

On February 23, 1990, the CUSTC decided upon an interim settlement of the dispute. The principal elements of the Commission's decision were that the United States would be guaranteed a 25 percent share of at-sea exports of Canadian herring and salmon and that the fish exported directly to the United States would be subject to at-sea verification and sampling. Based on this settlement, the USTR terminated its Section 301 investigation in June 1990.

Case #80: Canada Import Restrictions on Beer During the negotiation of the CUSTA, neither side could convince the other to lower existing barriers on international trade in beer. Instead, the agreement grandfathered state and provincial laws regulating beer trade in place at the time, with both sides agreeing not to erect new barriers. On June 29, 1990 the USTR initiated an investigation of complaints by G. Heileman Brewing Company, Inc. that Canada's import restrictions on beer--

including listing requirements, discriminatory mark-ups, and restrictions on distribution--were inconsistent with the GATT and the CUSTA. In September 1990, the Stroh Brewing Company filed a petition complaining about the distribution and pricing practices of Ontario with respect to imported beer. In October 1990, the USTR decided to incorporate these additional complaints into its ongoing investigation.

At the heart of this case is the authority over liquor control given to individual provinces by the Canadian government. Provincial liquor boards have monopoly on the importation of beer and other alcohol into a province, whether from a foreign country or any other province. Canadian importers and consumers cannot bypass the provincial board by importing directly. Each province requires licenses to manufacture, keep, or sell beer in its territory. With the exception of two provinces, imported beer must be sold to local liquor boards, which, in turn, require or arrange delivery to their own central distribution centers. Retail prices of beer include customs duties, federal and provincial taxes, as well as various mark-ups determined by the boards. Mark-ups, charges, and minimum pricing arrangements are sometimes applied differently between imported and domestic beers.

In February 1991, the U.S. complaint was referred to a GATT dispute settlement panel.[16] The United States asked the panel to declare the Canadian beer practices contrary to GATT articles II (security of tariff concessions), III (national treatment), XI (elimination of quantitative restrictions); and XVII (operation of state trading enterprises). In October 1991, the panel released a report finding several of the provincial liquor practices to be inconsistent with

[16]The United States chose to take its complaint to the GATT rather than the CUSTA dispute settlement mechanism because existing provincial barriers had been grandfathered into the CUSTA.

the GATT. In January 1992, the USTR determined that the United States had been denied rights entitled to it under the GATT and requested comment on possible trade actions.

In April 1992, the United States and Canada reached an agreement to settle their dispute over provincial beer practices. However, before the agreement could be implemented, Ontario announced a 10 cent per can tax on beer sold in the province. Since most Canadian beer is sold in bottles while most imported beer is sold in cans, the tax fell more heavily on imports. The Ontario government also announced a $2.53 per case warehouse charge on imported beer. The U.S. government protested these new taxes; in July 1992, it retaliated with trade sanctions of $2.60-$3.00 per case on beer imported from Ontario. On the same day that these duties were announced, the Canadian government counter-retaliated with comparable tariffs on U.S. beer imports. Both tariffs remain in place.

Case #87: Canada Softwood Lumber The Canada softwood lumber case arose over a disagreement between the two countries dealing with the enforcement of a settlement to a 1986 countervailing duty (CVD) case. In that year, a group of U.S. lumber producers filed a complaint with the U.S. Department of Commerce (USDOC) and the U.S. International Trade Commission (USITC) alleging that the low fees charged by Canadian provinces to clear timber from government lands represented an implicit subsidy to Canadian lumber producers. Before the case was completed the two countries signed a memorandum of understanding that called for Canada to collect a 15 percent *ad valorem* export tariff on softwood lumber exports to the United States.[19]

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[19]A temporary import duty of 15 percent *ad valorem* was imposed by the United States for the ten day period between the signing of the memorandum of understanding and the date when Canada began collecting its export tax. The

Over time, various provinces instituted "replacement measures" (including increases in stumpage fees) that served to shift the costs of Canadian timberland maintenance to the Canadian lumber industry. As these measures were introduced, Canada, with the approval of the United States, began to lower its export tariff by an equivalent amount. By 1987, the export tariff on lumber from British Columbia was zero, and, by 1990, the USDOC agreed that the actions taken by Quebec had replaced all but 3.1 percent of the tax. Alberta and Ontario also took various during this period. As such, Canada announced in late 1991 that it was terminating the memorandum of understanding and thereby its collection of the export tax.

The USTR responded immediately to the Canadian action by self-initiating a Section 301 investigation against Canada and determining that the actions of Canada were unreasonable and burden on U.S. commerce. She instructed the Secretary of the Treasury to impose bonding requirements on Canadian softwood lumber imports on a province specific basis at the *ad valorem* rates that had been collected by the Canadian government. This bonding requirement would remain in place until the completion of a CVD investigation by the U.S. government.

Subsequently, the USDOC and the USITC undertook a CVD investigation. The USDOC determined that the effect of various federal and provincial policies was to provide a subsidy of 6.51 percent on softwood lumber exports. The USITC found that the effect of this subsidy was to injure US lumber producers. Thus, a countervailing duty was introduced on Canadian lumber imports. The Canadian government has protested these findings and has appealed the case to a Chapter Nineteen panel under the CUSTA. The panel has yet to make a ruling in the case.

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authority to impose this temporary tariff came from Section 301 (Case #58), when the President determined that the Canadian timber practices were an unreasonable burden on U.S. commerce.

4. Section 301 and the Negotiation of a WHFTA

4.1 U.S. Concerns

Each year since 1985, the Office of the USTR has published the National Trade Estimate Report on Foreign Trade Barriers (hereafter Trade Estimates Report). This document offers official estimates of the degree to which foreign practices and policies act as a barrier to U.S. commerce; its publication is mandated by the Section 301 statute.[20] While not explicitly acting as a guide to current or future Section 301 actions, this document serves to indicate various national policies that may be of concern to USTR. Moreover, it represents a guide to Congress, which monitors carefully the implementation of Section 301. In addition to the Trade Estimates Report, the Senate Finance Committee recently requested the USITC to undertake a study of the current state of U.S. market access in Latin America. In June 1992, the USITC released its findings.[21] The material contained in these documents spells out major objectives for the United States in any WHFTA negotiations; if these goals are not met, the chances of Congressional approval are greatly diminished.

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[20]The Trade Estimates Report attempts to provide an inventory of the most important foreign barriers to U.S. exports of goods and services and barriers affecting U.S. investment and intellectual property rights. This inventory is presented on a country by country basis and includes "if feasible" quantitative estimates of the impact of these policies on the value of U.S. exports. Much of this information is obtained from U.S. embassies and is anecdotal and highly suspect. This is especially true for the data contained in the first several reports. In addition, the report provides information on trade barriers in only a subset of the many trading partners of the United States. The Latin American countries discussed in the 1992 report are Argentina, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Paraguay, and Venezuela.

[21]See United States International Trade Commission, U.S. Market Access in Latin America: Recent Liberalization Measures and Remaining Barriers (With a Special Case Study on Chile), Publication 2521, June 1992.

Based on an simple analysis of these documents, the chief concern of the United States in its current commercial relations with Latin American is insuring adequate provision of protection for intellectual property rights (IPR).[22] Several Latin American countries are on the Special 301 "watch list" of countries that, in the view of USTR, do not provide adequate IPR protection. These countries are Argentina, Chile, Colombia, and Venezuela. Brazil is one of only four countries on a Special 301 "priority watch list".[23] [24]In addition to these countries, the 1992 Trade Estimates Report is critical of the IPR policies of Ecuador, El Salvador, Guatemala, and Paraguay.

In any WHFTA negotiations, the United States can be expected to demand that Latin American countries adopt and then enforce IPR protection measures at least as stringent as those recently undertaken by Mexico. Some movements along these lines have recently been taken by Argentina, Chile, and the Andean Pact countries, but even in these cases concerns remain in the U.S. government. The United States is likely to push for agreements in a WHFTA that commit members to adhere to the IPR code negotiated in the Uruguay Round or undertake equivalent obligations should the round fail.

Another area of major concern to the United States will be issues related to direct foreign investment. It can be expected to seek removal of limitations

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[22]This has been confirmed in private discussions with representatives from USTR.

[23]There are ongoing Section 301 cases against the IPR policies of the other three countries.

[24]Canada is also on the "watch" list, largely because of its compulsory licensing provisions for pharmaceuticals. Mexico had been named to the first "priority watch" list in 1988. However, following enactment of legislation to modernize protection of patents, trademarks, and trade secrets, the USTR dropped Mexico from all Special 301 lists in April 1990. IPR protection has ceased to be an issue of contention between Mexico and the United States.

on foreign equity participation. It also opposes various trade related investment measures, such as trade balancing requirements on foreign firms.

A final issue repeatedly cited in the Trade Estimates Report as a problem area for U.S. commercial interests are government procurement policies of countries such as Brazil and Colombia that discriminate in favor of locally produced goods. The United States is likely to seek more competitive procurement procedures and the elimination of discriminatory treatment for local suppliers.

4.2. Options for Negotiation

All of the problems mentioned above could become targets of future 301 actions and will, undoubtedly, be discussed in any WHFTA negotiations. Given that U.S. approval on any WHFTA pact depends in part on meeting at least some of the goals described above, an important question for the other WHFTA countries becomes what institutions will they seek to put in place that will serve to arbitrate future disputes, thereby reducing the need for the United States to resort to Section 301 (or other trade remedies) and building political support for the agreement.

The importance of a strong dispute settlement mechanism at the heart of a WHFTA cannot be overstated. Trade is much less important for the United States than it is for any other potential member of WHFTA. This strengthens the ability of the United States to use Section 301. As Hankey (1992) notes, dispute settlement procedures "give the parties equal weight under the law of the agreement, and therefore should neutralize the power differential between them."[25] Various aspects of dispute settlement mechanisms enhance this process; these aspects must be negotiated.

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[25]Hankey (1992), page 4.

For instance, a crucial element of the mechanism will be whether the parties accept the recommendations of the panel process as binding or non-binding. In the CUSTA, dispute settlement decisions are binding only if both parties agree to treat them as such. The limited experience with the process to date suggests that both sides prefer non-binding recommendations from panels, with ultimate settlement of disagreements fashioned by the politicians that make up the CUSTC. While non-binding arbitration is more flexible, it reverses to at least some degree the balance of power that the mechanism is supposed to convey to the agreement. After all, if agreements are ultimately determined by the political process, then negotiators from the most powerful country involved in the dispute will have an upper hand in fashioning a resolution.[26] Thus, given that the United States, through its use of Section 301, is likely to be quite intrusive in attempting to alter foreign practices, equity interests would seem to argue for a binding panel process.

Another feature of the process that must be negotiated has to do with who is enfranchised by the mechanism. Neither GATT nor Chapter Eighteen of CUSTA permits private parties to initiate dispute settlement cases against the practices of foreign governments. Thus, in those instances where U.S. firms feel that they have been hurt by foreign practices, they must first make their case to the U.S. government, which, in turn, initiates a Section 301 investigation. Contrary to the goals of the statute, the initiation of a Section 301 case by the U.S. government may exacerbate tensions and slow down the process of achieving

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[26]Anderson and Rugman (1990) are quite critical of the fact that none of the Chapter Eighteen cases decided to date have involved binding panel decisions. They write, "[W]hat is required is not politicization by putting the problem back into the hands of politicians, but rather a stronger independent body that can tell either federal government that a practice has to be changed." Anderson and Rugman, page 41, footnote 168.

an agreement. This is especially true in those instances where past trade disputes with the United States have been rancorous. If private parties were allowed direct access to the process, as they are under Chapter Nineteen of the CUSTA, the use of Section 301 would likely be limited to only those most egregious of cases where the weight of the U.S. government in reaching a settlement would be viewed as essential.

Another way to reduce international frictions is to initiate dispute settlement earlier in the process. That is, panels could be established at the onset of bilateral consultations, rather than resorting to the process after reaching a political impasse.[27] Finally, if parties to the dispute were asked to calculate the net benefits to both producers and consumers in both countries from eliminating the offending practice, panels could incorporate these details into the decision making process, and frivolous complaints might be deterred.

5. Conclusion

Section 301 is that part of U.S. trade policy that authorizes the USTR to negotiate the elimination of foreign government practices viewed by the United States to adversely affect U.S. commerce. Along with negotiating authority, the statute empowers the USTR to order trade retaliation against recalcitrant countries. Since its inception in 1974, Section 301 has been a source of conflict and controversy between the United States and some of its trading partners; its use to open foreign markets has been widely labelled as "aggressive unilateralism."

This paper has sought to discuss the role of Section 301 in current U.S. trade policy and to speculate the role this statute might play in the context of a WHFTA. The paper reaches the following conclusions.

[27]This change in the process has been suggested by Bello *et al.* (1991).

First, Section 301 will not disappear even after a WHFTA is put in place. The United States has begun two cases against Canada since the formation of the CUSTA and has used the dispute settlement mechanism in the CUSTA to settle an ongoing third case. Moreover, Section 301 is extremely popular in Congress; future trade legislation may strengthen some of its provisions, and the newly elected Clinton administration is likely to make greater use of existing authority. However, it is extremely unlikely that the United States would ever be so unrestrained in its use of Section 301 so as to threaten or undermine international agreements such as GATT or the CUSTA.

Over time, disputes will arise between the United States and one or more of its WHFTA trading partners. Consequently, a well functioning dispute mechanism is a necessary part of any WHFTA. Such a mechanism would serve to balance the unequal economic power of the United States with its trading partners. In such a mechanism, Section 301 would serve as a vehicle for bringing a U.S. complaint to a dispute panel. If the dispute process is widely viewed as fair and above politics, then U.S. interests can be served while tensions are diffused.

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Table 1
Section 301 Cases

Case #	Target Country	Date Filed	Self-Initiated[1]	Date Resolved	Nature of Case	GATT consultations	Retaliation[2]
1	Guatemala	7-1-75	No	6-29-76	cargo restrictions	No	
2	Canada	7-17-75	No	3-14-76	egg import quotas	No	
3	EC	8-7-75	No	7-21-80	import levies on eggs	No	
4	EC	9-22-75	No	1-5-79	min. prices/ canned goods	Yes	
5	EC	11-13-75	No	6-19-80	malt export subsidies	No	
6	EC	12-1-75	No		flour export subsidies	Yes	Export Enhancement Program counter subsidies
7	EC	3-30-76	No	6-18-80	variable levy on sugar	Yes	
8	EC	3-30-76	No	1-5-79	cattle feed rules	Yes	
9	Taiwan	3-15-76	No	12-1-77	tariffs on appliances	No	
10	EC & Japan	10-6-76	No	12-9-78	deflection of steel trade	No	
11	EC	11-12-76	No	8-10-86	citrus tariffs	Yes	40% tariff on EC pasta
12	Japan	2-14-77	No	3-3-78	market access for silk	Yes	
13	Japan	8-4-77	No	12-85	leather quotas	Yes	raised tariffs & received trade compensation
14	USSR	11-10-77	No	7-12-79	marine insurance monopoly	No	
15	Canada	8-29-78	No	10-30-84	taxes on U.S. advertising	No	enacted mirror legislation
16	EC	11-2-78	No	8-1-80	wheat export subsidies	No	
17	Japan	3-14-79	No	1-6-81	import restrictions/cigars	Yes	
18	Argentina	5-25-79	No	7-25-80	marine insurance monopoly	No	
19	Japan	10-22-79	No	1-6-81	pipe tobacco restrictions	Yes	
20	Korea	11-5-79	No	12-29-80	market access (insurance)	No	
21	Switzerland	12-6-79	No	12-11-80	eyeglass standards	No	
22	EC	8-20-81	No	6-28-82	sugar export subsidies	Yes	
23	EC	9-17-81	No		poultry export subsidies	Yes	
24	Argentina	10-9-81	No	11-16-82	breach of hides agreement	No	ended agreement & raised tariffs
25	EC	10-16-81	No	9-15-87	pasta export subsidies	Yes	imposed tariffs
26	EC	10-23-81	No	12-1-85	canned fruit prod. subsidies	Yes	
27	Austria	12-2-81	No	7-20-83	specialty steel subsidies	Yes	negotiated voluntary export restraint (VER)
28	EC (France)	12-2-81	No	7-20-83	specialty steel subsidies	Yes	negotiated VER
29	EC (Italy)	12-2-81	No	7-20-83	specialty steel subsidies	Yes	negotiated VER
30	Sweden	12-2-81	No	7-20-83	specialty steel subsidies	Yes	negotiated VER
31	EC (U.K.)	12-2-81	No	7-20-83	specialty steel subsidies	Yes	negotiated VER

Case #	Target Country	Date Filed	Self-Initiated	Date Resolved	Nature of Case	GATT consultations	Retaliation
32	Canada	6-3-82	No	9-23-82	railcar export subsidies	Yes	became countervailing duty (CVD) case
33	EC (Belgium)	6-23-82	No	7-20-83	specialty steel subsidies	Yes	negotiated VER
34	Canada	7-27-82	No		subsidies: front-end loaders	Yes	
35	Brazil	10-25-82	No	11-85	shoe import restrictions	Yes	
36	Japan	10-25-82	No	12-85	shoe import restrictions	Yes	raised tariffs & received trade compensation
37	Korea	10-25-82	No	8-83	shoe import restrictions	No	
38	Taiwan	10-25-82	No	12-19-83	shoe import restrictions	No	
39	Korea	3-16-83	No	12-15-83	steel rope subsidies	Yes	
40	Brazil	4-16-83	No		soy products subsidies	Yes	
41	EC (Portugal)	4-16-83	No		soy products subsidies	Yes	
42	EC (Spain)	4-16-83	No		soy products subsidies	Yes	
43	Taiwan	7-13-83	No	3-22-84	rice export subsidies	No	
44	Argentina	9-21-83	No	5-25-89	air courier monopoly	No	
45	Taiwan	12-19-83	No	4-26-84	film distribution/access	No	
46	EC	5-25-84	No	5-21-85	satellite launching subsidies	No	
47	EC	8-17-84	No		fertilizer standards	Yes	
48	Japan	6-14-85	No		semiconductor barriers	No	raised tariffs
49	Brazil	9-16-85	Yes	10-6-89	informatics barriers	No	
50	Japan	9-16-85	Yes	10-6-86	local tobacco monopoly	No	
51	Korea	9-16-85	Yes	8-28-86	local insurance monopoly	No	
52	Korea	11-4-85	Yes	8-28-86	intellectual property rights (IPR)	No	
53	Argentina	4-4-86	No		soybean export taxes	No	
54	EC	3-31-86	Yes		ag import barriers/enlargement	No	raised tariffs and quotas
55	Canada	4-1-86	No	6-1-90	fish processing restrictions	No	
56	Taiwan	8-1-86	Yes	10-1-86	customs valuation	No	
57	Taiwan	10-27-86	Yes	12-5-86	beer/wine/tobacco laws	No	
58	Canada	12-30-86	Yes	1-8-87	softwood lumber subsidies	No	
59	India	1-6-87	No	5-88	almond quotas	Yes	
60	EC	7-14-87	No		meat processing standards	Yes	
61	Brazil	6-11-87	No	6-27-90	IPR: drug patents	No	raised tariffs
62	EC	11-25-87	Yes		beef hormones	Yes	raised tariffs
63	EC	12-16-87	No	1-31-90	oilseed subsidies	Yes	
64	Korea	1-22-88	No	5-31-88	cigarette barriers	No	
65	Korea	2-16-88	No	3-22-90	beef licensing system	Yes	

Case #	Target Country	Date Filed	Self-Initiated	Date Resolved	Nature of Case	GATT consultations	Retaliation
66	Japan	2-6-88	No	7-5-88	citrus quotas	Yes	
67	Korea	4-27-88	No	1-18-89	wine barriers	No	
68	Argentina	8-10-88	No	9-23-89	IPR: drug patents	No	
69	Japan	11-21-88	Yes	7-31-91	construction barriers	No	
70	EC	11-14-88	No	2-26-90	zinc export controls	Yes	
71	EC	5-8-89	Yes	10-1-89	canned fruit subsidies	No	
72	Thailand	4-10-89	No	11-23-90	tobacco barriers	Yes	
73	Brazil	10-6-89	Yes*	5-21-90	import licensing	Yes	
74	Japan	6-16-89	Yes*	6-15-90	satellites procurement	No	
75	Japan	6-16-89	Yes*	6-15-90	supercomputers procurement	No	
76	Japan	6-16-89	Yes*	6-15-90	forest products barriers	No	
77	India	6-16-89	Yes*	6-14-90	investment barriers	No	
78	India	6-16-89	Yes*	6-14-90	insurance barriers	No	
79	Norway	7-11-89	No	4-26-90	gov't procurement: toll equip	Yes	
80	Canada	5-15-90	No		beer barriers	Yes	raised tariffs
81	EC	11-15-90	Yes	12-21-90	EC enlargement agreement	Yes	
82	Thailand	11-15-90	No		IPR: motion pictures	No	
83	EC	11-28-90	No		meat standards	Yes	
84	Thailand	1-30-91	No		IPR: drugs	No	
85	India	5-26-91	Yes**		IPR	No	
86	China	5-26-91	Yes**		IPR	No	
87	Canada	10-4-91	Yes		softwood lumber subsidies	No	CVD case initiated; duties imposed
88	China	10-10-91	Yes		market access	No	

Source: <u>International Trade Reporter: Import Reference Manual</u>, Washington D.C.: The Bureau of International Affairs, Inc., 1992, Section 49.

Notes:
1 *Super 301 Case; **Special 301 Case
2 Retaliation is broadly defined by the author to include various measures including other forms of U.S. trade policies.