The character and operation of US trade law has had a major impact on the operation of the global trading system. Conflicts about subsidies, dumping and unfair trade cannot be adequately understood without reference to the operation of US law. This chapter gives the reader an overview of that system and some specific information about the way it approaches the subsidy issue. The first section reviews various approaches to thinking about trade and protectionism. This is followed by a brief review of key US institutions and laws. The last section details the operation of the countervailing duty (anti-subsidy) process and recounts a case from the Canada–US relationship: softwood lumber.

TRADE AND PROTECTIONISM

Commenting upon the persistence of protectionism in the face of economic models indicating its futility, a leading economist lamented ‘rarely in the economics profession do we encounter greater dissonance between what we are taught in principle and what we observe in practice’ (Cohen, 1990: 261). From a liberal perspective, government actions that restrict trade are illogical because they fail to maximize economic welfare. To use more colorful language, ‘if there is the equivalent of anti-Christ in economics, it is the proponent of trade restraint’ (Goodwin, 1988: 211). Despite liberal enthusiasm for free trade, its effects vary according to the particular case in which actors attempt its implementation. Further, attempts at free trade are vulnerable to pressure from domestic groups harmed by moves that transfer power to markets from political authority. Labor is not simply a commodity – it is made up of individuals and, in liberal democratic countries, they vote. This tension between the imperatives of international economic liberalism and domestic political backlash is prominent in numerous approaches to international political economy (Strange, 1988b; Cox, 1987; Gilpin, 1987; Block, 1977; Polanyi, 1957).

‘Trade is the stuff of domestic politics’ a leading international political economy text book advises students (Spero, 1985: 91). Indeed, trade law is highly political, but it is not confined to domestic politics. Transnational or international politics intersect with domestic politics...
as economic theory and legal precedent are brought together in a me­lange of interests around trade issues. Forces working at the systemic, state and transnational level all have a role in influencing the trade law system (Lake, 1988; Milner 1988). The US trade law system is primarily an arena of conflict. It is not meant to produce economic efficiency, nor is it designed to operate in a legally coherent or consistent manner. It is the product of a conflictual process and represents the balance of forces influencing US institutions at the time of its intro­duction and is modified through time as forces within and upon American society fluctuate in strength.

Although discussion of protectionism is a staple of trade scholar­ship, it is helpful to consider the precise nature of the protectionist threat. The 1980s saw a multitude of warnings about the imminent protectionist threat and the risks of a breakdown of the trading system. The US, in particular, was identified as a major culprit by its trading allies and domestic liberal ideologues. Liberal economists, seeking to mold the world into their models of perfect free trade, were not comfortable with the system’s trajectory nor calls for fair trade. This section echoes the work of those who challenge the idea that protectionism per se threatens the health of the economic system.

Determining the threat of protectionism requires a decision about how important the export and import of goods is to the global economy. Many trade commentators put it at the center of their analysis. They see the effort at liberalizing trade as a nonstop struggle against the forces of protectionism. The bicycle theory of trade stipulates that unless you keep the bike in motion (liberalizing trade) you will fall off (pro­tectionism). This view usually targets protectionism as the single larg­est threat to world growth.

A more accurate view is that trade-related disputes and protectionist pressures are secondary features of larger structures. The health of the monetary system and the structure of the production system is of greater importance to the global economy. From this viewpoint, the Great Depression was primarily caused by monetary collapse, with tariffs having a secondary effect (Strange, 1985: 239–40). If the monetary system is functioning well and the production system has created a web of con­tracts between countries and corporations, the protectionist threat is not a serious one.

An examination of the past two decades indicates that despite the emergence of a new protectionism and the worst economic downturn since the Great Depression, trade has continued to expand. New protectionism refers to the use of NTBs to support domestic industries.