

It was in a climate of considerable concern, then, that the previous government decided that a free trade agreement was needed in order to forestall protectionist trends in the United States and enhance Canada's security of access to the American market and the predictability of trade relations with our neighbour to the south.

The protectionist trends in the United States are most apparent in regard to exports that have benefited, or are deemed to have benefited, from subsidies. The U.S. Congress, which has authority over trade policy, has proved sensitive to pressures of this kind. The concept of "subsidy" has been expanded over the years, among other things, and successive laws have been passed to cover any government policies other than those of a general nature.⁴ Members of Congress even regularly propose amendments to expand the scope of trade remedy legislation and the concept of subsidy to include not only practices aimed at particular companies or industries (specific subsidies, for instance assistance for the textile industry), but also government assistance available to all kinds of companies (general subsidies, for instance, benefits available to industry in general for research and development). This was also the case when the 1988 Omnibus Trade and Competitiveness Act was drawn up.

In addition, these pressures and lobbying have tended to influence the determinations of investigating bodies and tribunals responsible for trade issues. The most noteworthy example was the decision of the U.S. Department of Commerce in 1983 that the government stumpage fees charged to companies did not constitute a subsidy; however, another complaint from American softwood lumber producers resulted in 1986 in the same practice being judged by the same department to be an unfair subsidy liable to countervailing duties,⁵ since these stumpage fees or concessions were set at lower than market prices, contrary to the practice in the United States.

American law provides for the levying of countervailing duties on all subsidies over a minimal (*de minimis*) level of 0.5 percent in net subsidies aimed at specific companies or industries, or groups of companies or industries. As a result, disputes over subsidies normally focus on whether they are general or specific. This can have serious implications, in particular for regional development subsidies offered only to

⁴ See Gary Clyde Hufbauer and Joanna Shelton Erb, *Subsidies in International Trade* (Cambridge, Mass./London: MIT Press for the Institute for International Economics, 1984), pp. 90-93.

⁵ Countervailing duties are defined as duties levied by a country on an imported good, the production of which was subsidized—or is deemed to have been subsidized—in the exporting country. These duties are called "countervailing" because the amount of the duties is based on an evaluation of the amount of the subsidy and they aim to offset the subsidy. An alternative to the levying of such duties is for the exporting country to undertake to eliminate or reduce the subsidy or take other measures related to it (for instance, an export tax) or for the exporting company to raise its prices.