
dumping, subsidy or injury. Canada has long taken the position that any action taken further to U.S. anti-circumvention provisions without an appropriate investigation would be inconsistent with the United States' obligations under the WTO Anti-dumping Agreement.

Questionnaires

Canada has serious concerns regarding the nature, amount and level of detail required by U.S. Department of Commerce (DOC) questionnaires in anti-dumping duty investigations. Canada has made representations on this issue, noting most particularly that because of the nature of Canadian exports to the United States, i.e. small truckload shipments, responding to DOC questionnaires places a far greater burden on Canadian producers/exporters to submit information on a far greater number of individual shipments.

Countervailing Duties

Definition of Subsidy

There is now an international agreed definition of subsidy incorporated in the WTO Agreement on Subsidies and Countervailing Measures. Within that definition, however, U.S. legislation clearly gives rise to Canadian concerns regarding the possible countervailability of natural resource measures and upstream benefits as indirect subsidies. It is clear that language in the Statement of Administrative Action which accompanied the legislation is aimed at ensuring the countervailability of national resource measures as indirect subsidies. Any such action could be challenged since, in Canada's view, the WTO Agreement does not extend to natural resource pricing.

A further concern is language in the U.S. Uruguay Round implementing legislation which indicates that the DOC is not required to consider the "effect" of a measure in determining whether it is a subsidy. The United States' approach to the so-called "effects test" is a retrograde step in U.S. trade remedy law.

Specificity

Since "generally available" subsidies are not subject to trade action, any countervailing duty investigation requires a determination on whether a subsidy is specific or targeted. The WTO Agreement on Subsidies and Countervailing Measures sets out four factors to be taken into account in determining whether a subsidy is de facto specific. The U.S. Uruguay Round implementing legislation, however, provides that a determination of de facto specificity may be based on a single factor. In Canada's view, while a subsidy may be found to be de facto specific, (and therefore subject to trade action) on the basis of one factor, all four factors must be considered in arriving at that determination. There may be circumstances, for example, in which the other specificity factors could be used to explain away a finding of de facto specificity based on one factor.