

the countervailability of "generally available" subsidies, in the WTO sense, may appear warranted. This does, however, muddy the trade rules water by introducing an environmental factor into current subsidy/countervail considerations. As noted above, the purpose of the existing countervailing duty rules is to protect domestic producers from unfair import competition that has benefitted from targeted subsidization. On the other hand, an environmentally based countervailing duty, as expressed by some environmental groups, would be an instrument for encouraging another country to adjust its environmental practices (even those not clearly linked to immediate global commons issues, e.g., user charges for water irrigation purposes) and not strictly, or even primarily, an instrument to protect domestic producers in the importing country from economic injury. Such a tool could become subject to manipulation not only by trade protectionists, but also by those who appear to believe that certain countries should have an extraterritorial right to oblige others to accept harmonized standards. Yet, is this seemingly irreconcilable clash of perspectives necessarily the whole story?

The underlying reason to consider penalizing such "generally available" subsidies through a trade action is an environmental one. In this respect, we face several dilemmas. Countries have already reached a consensus, reflected in the current, arduously negotiated multilateral rules, that "generally available" subsidies are not countervailable from a trade distorting perspective. In respect of natural resource pricing policies, which are often identified as contributing to environmental degradation, further complexities arise. Natural resource pricing policies include removal rights, such as the right to harvest timber, as well as the sale of raw material inputs. But the new WTO Agreement on Subsidies and Countervailing Measures provides an exhaustive definition of subsidy which is based on the concept of a financial contribution which confers a benefit. This definition does not appear to include natural resource pricing.²¹ Environmentalists, however, apply a broader definition of subsidization. From the environmental viewpoint, the question is how environmental concerns can be accommodated, or where to redraw the line on what

²¹Agreement on Subsidies and Countervailing Measures, Article 1, Definition of a Subsidy. If natural resource pricing were accepted as a form of subsidization in a revised WTO context, severe measurement problems would likely arise. The difference between the government price and a "market price" may not be known. One author has noted that "it could be argued that the practical difficulties of establishing the "market price" are so great, and the potential for an incorrect estimate so large, that the toleration of such potential subsidies would produce less distortion in the international economy than would the imposition of countervailing duties based on an inaccurate calculation of market price." See David Scott Nance, "Natural Resource Pricing Policies and the International Trading System," Harvard International Law Journal, Vol.30, 1989, pp.115-6.