

it highly unlikely that Canadian exporters (including foreign investors in Canada who export) will suffer serious fallout from U.S. or Mexican global safeguard actions in the future.<sup>34</sup>

With respect to subsidy/countervail, the MTN agreement will bring a number of valuable improvements, including more precision for such key concepts as: subsidy, specificity, serious prejudice, circumvention, sunseting, and de minimis. Further gains in future negotiations are reasonable goals to pursue multilaterally (depending on the MTN result), or perhaps regionally, given the U.S.'s greater willingness to negotiate in this area in return for further discipline on subsidy practices. The search for improvements could focus on establishing:

- a tighter definition of industry (to mean all producers of a specific good in the territory of a Party, thereby restricting the ability of regulators to play fast and loose with the composition of the "industry" subject to investigation); and
- the concept of net subsidy (whereby the level of the subsidy potentially countervailable is the amount of benefit conferred on the exported good less any bounty enjoyed in the importing country by the locally produced like product allegedly suffering damage from imports).

In any event, competition policy does not lend itself easily to replacing countervail. The former addresses the market behaviour of firms. The latter redresses the trade distorting impact of government largesse.

The same is not the case with regard to anti-dumping. Dumping occurs when a firm introduces a product into the commerce of another country at less than its normal value, that is, when the export price is less than the comparable price, in the ordinary course of trade, for the same product when destined for consumption in the exporting country. Defined this way, different kinds of "dumping" exist, several of which have little to do with the abuse of market power.

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<sup>34</sup> The same cannot be said with the same assurance with respect to other countries, as the waiving in the MTN text of the traditional compensation requirement for global measures of less than three years duration may actually increase the number of safeguard actions, while the MTN definition of domestic industry is looser than that in the NAFTA and provides import regulators with continuing scope for "creative" misuse of the safeguards regime.