

and for the first time there is even a specific agreement on them in the agricultural sector.³⁸

Similar to the Tokyo Round during the 1970s, the negotiations were hobbled by fundamental differences of approach. For some countries, especially the United States, subsidies were the main issue, and they demanded the complete abolition of subsidies or at least a draconian toughening of the provisions governing them. For many other countries, including Canada, the main issue was what they perceived to be the abusive use of countervailing duties. These countries insisted on strengthening the disciplines governing the use of countervailing duties in order in particular to protect themselves against what they consider to be harassment tactics when measures are taken without any real proof that a subsidy exists or that injury has been suffered.³⁹

The Agreement on Subsidies and Countervailing Measures, which came out of the multilateral negotiations, modifies the particulars of the issue and constitutes the foundation on which the NAFTA partners will base their analysis of subsidies and countervailing duties in the North American context. The GATT Agreement contains in this regard three major elements that reflect the main concerns of the Canadian government, as put forth in its proposals to the multilateral negotiations in 1989. The Agreement reached at the Uruguay Round contains for the first time at the multilateral level *a definition of what a subsidy is*. Subsidies are accordingly only "specific" assistance provided by public authorities (e.g. central or provincial governments), that is, they are directed, de jure or de facto and excluding objective criteria or conditions,⁴⁰ only at certain companies (Part I, Articles 1 and 2). It should be mentioned, in this regard, that during the final days of negotiations Canada demanded and obtained changes to the wording of the Agreement so that general provincial subsidies, i.e., non-specific subsidies, would not normally attract countervailing duties.

Second, *subsidies for regional research and development* can no longer attract countervailing duties, except under the conditions set forth in the Agreement (Part

³⁸ GATT, "Agreement on Subsidies and Countervailing Measures" (MTN/FA II-A1A-13) (hereafter the Subsidies Agreement), "Agreement on Agriculture" (MTN/FA II-A1A-3) in the *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, December 15, 1993.

³⁹ See GATT, *GATT Activities 1988* (Geneva, June 1989), pp. 53-54. For what went before and the course of the negotiations leading to this Agreement on Subsidies see McDonough, *Subsidies and Countervailing Measures*.

⁴⁰ Refers to neutral criteria or conditions that do not favour certain companies over others and that are economic in nature and horizontal in application, e.g. the number of employees or the size of the company.