
Countervailing Duties

Definition of Subsidy

Although there is now an internationally agreed definition of subsidy in the WTO Agreement on Subsidies and Countervailing Measures, language in the U.S. Statement of Administrative Action accompanying the U.S. Uruguay Round implementing legislation creates concerns regarding the possible countervailability of natural resource measures and upstream benefits as indirect subsidies. In Canada's view, the application of such an approach on indirect subsidies would be inconsistent with WTO rules, as it evades the "financial contribution" requirements of the WTO Agreement on Subsidies and Countervailing Measures.

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 countervailable, any countervailing duty investigation requires a determination on the specificity of a subsidy. The WTO Agreement on Subsidies and Countervailing Measures sets out four individual factors to be taken into account in such a determination. The U.S. Uruguay Round implementing legislation, however, suggests that countervailability determination based on a single factor may be sufficient. In Canada's view, however, there may be circumstances in which use of the single factor test would frustrate the intent of the WTO Agreement by removing the possibility that other specificity factors could be used to contradict a finding of countervailability based on one factor.

Injury, Procedural and Institutional Issues

Initiation

The new GATT rules stipulate that an investigation may be initiated only where there is "sufficient evidence" of a subsidy or of dumping, of injury, and of a causal link between the subsidized or dumped imports and the alleged injury. Frequently, however, the DOC does not conduct before the investigation a substantive review or verification of the allegations of dumping or subsidization, of the presence of injury, or of a causal link between them. On the countervailing duty side in particular, it has been relatively simple for a potential U.S. petitioner to identify Canadian subsidy programs that were involved in previous investigations and then list them in a petition, without offering evidence of whether they were in fact used by a Canadian exporter of the target product.

Standing

While the new U.S. legislation provides improvements related to the verification of a petitioner's standing, Canada still has concerns as the U.S. Statement of Administrative Action provides that, where the management of a firm expresses a position in direct opposition to its workers with respect to a petition, the DOC will treat the production of that firm as representing neither support for nor opposition to the petition. The ability of workers to neutralize effectively industry opposition to a petition gives rise to a concern about multi-plant unions and petitioners acting in concert to artificially satisfy the new standing requirements.