

excluded from potential countervail action.¹⁶

4. Countervailing-Like Duties and the Environment

To pose the question of whether subsidies, in a broader sense that goes beyond the current WTO definition of actionable subsidies, should be countervailable is not to suggest accepting the holus-bolus use of countervailing duties to compensate for differences in countries' environmental standards that reflect different environmental conditions or inevitable disagreements over the nature of the environmental threat or local environmental priorities. This Paper does not suggest that tariffs or other trade measures be put into place to alter competitive positions arising from differences in environmental standards or compliance costs per se. There is no suggestion that countervailing-like duties be used for the extraterritorial enforcement elsewhere of one country's domestic standards or to equalize prices on the basis of the cost structure of exploiting the resource in the country contemplating the use of such a measure. This dangerous view that there should be such compensating tariffs - "levelling the playing field" - has been put forth elsewhere.¹⁷

Varying production costs or environmental standards, either of which may differ across jurisdictions depending on the characteristics of local eco-systems, are not and should not be the basis for applying countervailing-like duties, nor is there a strong

¹⁶The WTO agreement on subsidies also identifies non-actionable (specific) subsidies on which countervailing duties cannot be applied. In the environmental context, payments up to 20 per cent of the cost of adoption of existing facilities to new environmental laws and requirements, subject to certain conditions, are considered non-actionable subsidies. These conditions are that the facilities to be adopted must have been in existence for at least two years, and that the assistance must be of a one-time, non-recurring nature, and must be available to all firms that are able to adopt the new equipment and/or production processes. The environmentally related payment must also be "directly linked to and proportionate to a firm's planned reductions of nuisances and pollution in nature, and does not cover any manufacturing cost savings which may be achieved," and it must not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms. The WTO Agreement on Agriculture also provides that "payments under environmental programmes" and "infrastructural works associated with environmental programmes", under certain conditions, are exempt from the subsidy reduction commitments in the rest of the agricultural text.

¹⁷The view that tariffs should compensate for differences in environmental costs was put forward by U.S. Senator David Boren. In 1991, Boren introduced a bill entitled the "International Pollution Deterrence Act", which proposed that tariffs which reflected the cost that a foreign producer would incur under U.S. standards. The Conference Board, "Understanding European Environmental Regulation", Report Number 1026, 1993, p. 14.