

Another distinction between "social dumping" and dumping in a GATT sense is that "social dumping" often is taken to refer to an action by government, while in the GATT dumping refers to an action by a private producer. Under the GATT, governments have no obligation to encourage domestic firms from not dumping or of preventing firms from doing so. Under "social dumping", the concern appears to be with actions, i.e., setting domestic labour rights or standards, taken by governments; or perhaps more appropriately, inaction by governments, i.e., the failure to enforcement labour rights. Analytically, this is a useful distinction. Wages, to a great extent, are properly and directly a component of costs controlled by firms. This is the level at which charges of "dumping" make some analytical sense, although, again, it is important to emphasize that dumping in the trade sense does not occur unless a firm manipulates its prices between markets.

But what of a government's failure to implement and enforce "adequate" labour rights? Is such a government failure not akin to a subsidy that might legitimately attract a "social countervail"? It has been asserted that such "social dumping" is a form of subsidization and that countervailing duties are an appropriate response.⁴³ Under current GATT rules, "low" labour rights or standards or the failure to enforce labour standards would not constitute a subsidy, but Parties to a trade-labour agreement might wish to consider expanding the definition to include labour practices. This, however, raises the extremely complex and larger question of whether or not differences in economic or social policies should be considered a form of subsidization.

The allegation that a country is engaged in practices that might merit a "social countervail" in an importing country is easy to make, but difficult to substantiate. In the first place, formal labour rights and standards are often high in developing countries (this is certainly the case in Mexico), and sometimes higher than in certain developed countries (a comparison of U.S. and Mexican labour law is revealing in this respect). In the second place, the relationship between labour rights and labour costs is not straight-forward. There is little empirical evidence on the relationship. Gunderson concluded that the limited empirical evidence tends to suggest that in Canada unions increase wage costs by approximately 10 to 25 percent, but that some of the cost increase is effectively reduced by the positive productivity-enhancing effects of unions.⁴⁴ Servais also has found that the actual influence of

⁴³ Jim Stanford, Going South. Cheap Labour as an Unfair Subsidy in North American Free Trade, Canadian Centre for Policy Alternatives, Ottawa, December, 1991.

⁴⁴ Morley Gunderson and Anil Verma, "Canadian Labour Policies and Global Competition", The Canadian Business Law Journal, Volume 20, 1992.