

3. Subsidies and Countervailing Duties

The current GATT rights and obligations for subsidies and countervailing duties are contained in GATT Articles VI and XVI, as well as the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT (the Subsidies Code). With the entry into force of the World Trade Organization (WTO), sometime in 1995, the current Subsidies Code, which does not apply to all contracting parties, will be replaced by the Agreement on Subsidies and Countervailing Measures, which will apply to all WTO members.¹⁴

Countervailing duties are an exception to the general GATT obligation not to increase trade restrictions. Article II of the GATT obliges each party not to impose customs duties in excess of the level listed on its respective tariff schedule. Article VI defines "countervailing duty" as a special duty levied for the purpose of off-setting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any specific merchandise.¹⁵ Countervailing duties are intended to provide an offset to domestic producers when the producers are experiencing economic injury as a result of a foreign country's provision of targeted subsidies to its domestic producers who subsequently market their goods abroad. Under the rules of the WTO, in order to impose countervailing duties a country must determine that subsidization has occurred in the foreign country, and that the subsidization is causing, or threatening to cause, material injury to domestic producers of the like product, or is retarding the establishment of a domestic industry in the country of importation.

Multilateral trade rules draw a critical distinction between "generally available" and "specific" subsidies, and treat each type of subsidy differently. If a subsidy is "generally available", it is not countervailable. Conversely, if a subsidy is "specific" i.e., confined in law, regulation or practice to an enterprise or industry or group of enterprises or industries within the jurisdiction of the granting authority, it is not

¹⁴Several provisions in the Agreement on Subsidies and Countervailing Measures grant the developing countries special and differential treatment. For example, de minimis provisions exempt a developing country from countervailing duties when the subsidy level does not exceed 2 per cent of its value; or the volume of the subsidized imports represents less than 4 per cent, and cumulatively among developing countries benefiting from the provision, less than 9 per cent of total imports. Another provision provides that, in effect, the least-developing countries may maintain export subsidies, while other developing countries have eight years from the entry into force of the WTO to phase out such subsidies.

¹⁵Article VI of the GATT 1994.