

government successfully sought the establishment of a new NAFTA working group on dumping and antidumping duties with a mandate to seek solutions that reduce the possibility of disputes in this area. The three governments have instructed the group to complete its work by the end of 1995.³

In light of the evident interest, in this Paper I plan:

- to outline briefly the principal deficiencies of current antidumping practice;
- to provide several suggestions as to what issues a step-by-step antidumping reform process might address;
- without engaging directly in the debate as to whether competition policy should eventually replace antidumping within a free trade area, to question whether eventual engagement on competition policy over the longer term is, in fact, avoidable, even if we might want to postpone detailed discussions beyond the foreseeable future as some commentators have suggested; and
- with a view to encouraging further research, to present a tentative list of binding criteria that could guide the enforcement of competition policy within the free trade area in a manner that respects the complex nature of competitive markets, while reducing the uncertainties implicit in that policy of which some recent critics have complained.

This Paper should be viewed as a preliminary attempt to push forward certain aspects of the debate on the appropriate balance between trade remedy and competition laws and practice, especially within a free trade area. The Paper recognizes that trade remedy practice is deeply entrenched in U.S. policy and that progress will be difficult. Nonetheless, the case for pursuing reform vigorously is compelling.⁴

³ At the same time, the NAFTA countries set up another working group on subsidies and countervailing duties with the same mandate. Moreover, in Article 1907(2) NAFTA member countries agreed to consult on the potential to develop more effective rules and disciplines concerning the use of government subsidies and the potential for relying on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.

⁴ For a companion piece on subsidies and countervailing duties, see Gilbert Gagné, "Le libre-échange nord-américain, les subventions et les droits compensateurs: la problématique et les options", Ministère des Affaires étrangères et du Commerce international, Document du Groupe des politiques, No.94/13 (Juillet 1994).