

## SUBSIDIES PROVISIONS

### COUNTERVAILABLE SUBSIDIES

The Agreement on Subsidies and Countervailing Measures contains, for the first time, an internationally-agreed definition of subsidy. Certain types of subsidy, particularly those for regional development, the environment, and research and development, are not to be subject to countervailing duties, provided that they are administered in a way that is consistent with the agreement. These provisions on "green light", or non-actionable subsidies expire in five years unless there is an agreement to extend it.

The implementing legislation includes new definitions of actionable and non-actionable subsidies. The legislation also reflects the new internationally-agreed criteria for the notification and protection of non-countervailable subsidies. It also establishes that the DOC cannot investigate subsidies that have been notified as non-actionable to the WTO Subsidies Committee unless they have been challenged and overturned through WTO procedures. Provisions has also been made specifying that the U.S. can agree to an extension of the agreement pertaining to non-actionable subsidies only upon legislative approval by Congress.

### SPECIFICITY

The legislation allows the DOC to use only one of the four specificity factors in determining countervailability provided that all four factors are considered. The four factors are: a) extent to which Government acts to limit availability of the program; b) number of users; c) whether any users receive benefits in dominant or disproportionate way; and, d) whether Government exercises discretion in awarding benefits. The language on specificity is consistent with current U.S. practice.

### EFFECTS TEST

The legislation changes existing law by directing that the DOC need not consider the "effect" of a measure in determining whether it is a subsidy. In describing this change, the SAA makes reference to Canada's softwood lumber case, and states that the Administration "wants to make clear its view that the new definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review."