What is meant by the "domestic industry" is also important.[49] Article 16:1 of the GATT Agreement on Subsidies repeats word for word the definition that is given in the 1980 Subsidies Code. It is defined there as:

> "the domestic producers as a whole of the like products or . . . those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, *except* that when producers are *related*[50] to the exporters or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, the term "domestic industry" *may be* interpreted as referring to the rest of the producers." (The emphasis is mine.)

In addition, a country's territory *may* be divided into two or more competitive markets, and the producers within each market *may* be regarded as a separate industry, if the producers within such market sell all or almost all of their production in that market and the demand in that market is not to any substantial degree supplied by producers located elsewhere in the territory. If there is a concentration of subsidized imports in one of these isolated markets and they are causing injury, injury *may* be found to exist, even if it does not involve a major portion of the total domestic industry (Article 16:2).

Countervailing duties should therefore be levied only on products sent to the affected part of the national territory. *However,* if the constitutional law of the importing country does not allow this, countervailing duties can only be levied for the entire territory if the exporters have been given an opportunity to cease exporting at subsidized prices to the area in question or else if such duties cannot be levied solely on the products of specific producers supplying the area in question (Article 16:3).

Although the United States has never used this provision making it possible to divide the national territory into areas for the purposes of levying countervailing duties, it is nevertheless true that the weakness and quite permissive nature of the

[49] I am indebted to Keith Christie for the following proposals about the definition of "domestic industry." See Christie, *Mondialisation et la politique officielle*, pp. 44-46.

[50] The definition of the term "related" was refined as a result of the Tokyo Round and the 1993 Agreement on Subsidies stipulates: " . . . producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter."