

The problems related to subsidies and countervailing duties have also been addressed under the auspices of the GATT. The delayed conclusion of the multilateral trade negotiations complicated the timing of the Canada-U.S. reform agenda related to trade remedies. The bilateral FTA negotiations were, largely as a consequence of the ongoing multilateral work, unsuccessful. In the meantime, the negotiations for a North American Free Trade Agreement (NAFTA) that concluded in 1992 (including Mexico) presented an opportunity for Canada at least to remove any ambiguity as to the permanence of the FTA panel mechanism. In November 1993, moreover, the Liberal government obtained from Washington the renewal of the undertaking to work towards trade remedy reform by the end of 1995.

The results of the Uruguay Round have in part met Canada's objectives. The multilateral Agreement on Subsidies includes in this regard: a definition of subsidy; an exemption from trade remedies for certain subsidies that benefit research and regional development; and a tightening of the provisions governing the use of countervailing duties and the multilateral settlement of disputes (the latter as part of the generic dispute settlement provisions).

These achievements could serve as a basis for further improvements to the NAFTA provisions. North American negotiations should seek in the short term to counter the harassment of our exports to the United States. If changes regarding subsidies prove necessary, as this is the main leverage that Canada has to encourage the U.S. to negotiate seriously, these could, if in the national interest and in light of severe budgetary constraints, imply a reduction of the scope and level of specific kinds of subsidies. On the subsidy side, a dynamic approach could even be adopted by Canada by putting forward to the U.S. authorities formal proposals to stop bidding wars between public authorities to attract investments.

As a first priority, Canada should make certain that the results of the multilateral negotiations are faithfully implemented into domestic law, including in the United States, and are observed. Subsequently, the Canadian government should again put forward its proposals that have not yet been adequately addressed at the multilateral level, including those related to the use of countervailing duties, that is, an increase of the de minimis level below which countervailing duties cannot be applied; the strengthening of the public interest clause; consideration of the concept of net subsidy; a clear and circumscribed definition of domestic industry; and, finally, provisions to the effect that, in order to impose a countervailing duty, the regulatory authority must determine that a subsidy constitutes the principal and not just one of the causes of injury, while strengthening the concept that the amount of a duty be no more than required to remove the injury.