

Recommendation 7. Tightening Countervailing Duty Provisions of the SCM Agreement

Canada will need to review continually amendments to U.S. legislation to ensure conformity with the SCM Agreement. The domestic implementation process in the U.S. has been used to provide a protectionist interpretation of its MTN obligations. In the context of future discussions in either the WTO or the NAFTA about the further tightening of disciplines applicable to countervail, Canada may wish to pursue the following negotiating objectives:

- **Actionable Subsidies**

a) The SCM Agreement allows countervailing measures against imported goods without determining whether and to what degree the domestic industry petitioned for countervailing duties is also subsidized. Although this "net subsidy" approach was discussed during the Uruguay Round negotiations, it was not possible to incorporate it in the SCM text, in part due to U.S. opposition. Future negotiations in either the WTO or the NAFTA may provide an opportunity to re-engage on this matter.

b) Moreover, Article 14 of the SCM Agreement requires that the national investigating authority provide a transparent investigative process when calculating actionable subsidies for countervail purposes, or that a methodology be provided through national legislation. The U.S. Department of Commerce published proposed countervailing duty regulations in 1989, but has apparently never finalized these regulations. This should be done.

- **Injury or Technological Protectionism?**

The SCM Agreement requires greater clarification on a causal link with purported sources of injury. The SCM, unlike U.S. legislation, requires that there be a causal connection between the subsidized import and alleged injury. (Other factors such as productivity or changes in demand and supply often explain the problems that domestic industry or specific companies are facing.) To date, the U.S. has done little to clarify these important concepts in its own law.

Recommendation 8. The Application of Foreign Trade Remedy Laws Should Not be at the Expense of Canadian Technology-Intensive Industries.

Countervail has become increasingly counterproductive, particularly with regard to NAFTA markets. One approach under discussion within the NAFTA calls for different sectors of the economy to be exempt from countervailing duty actions and