

The GATT agreement on subsidies should therefore constitute the starting point for NAFTA negotiations. As a first priority, Canada should ensure that the provisions of the GATT agreement on subsidies are fully complied with in the American legislation, especially in regard to whether *injury* has been suffered and to the need for a *causal link* between the subsidized imports and the injury to a domestic industry. As we have seen, there are some discrepancies between the GATT provisions and the American legislation in this regard. As a result, the American legislation does not always comply with the spirit of the international rules.

Second, Canada should table its proposals that were not taken up in the course of the multilateral negotiations. Basically, these deal with, first, *minimum assistance levels*, below which countervailing duties could not be applied. Most trade experts and experts in international law recommend in this regard a net subsidy level of between three and five percent in order to justify a countervailing duty investigation. Apart from agriculture and some industrial sectors, subsidy levels in Canada are clearly below this threshold. Even if agreement cannot be reached with the United States on this minimum level, any increase in the 1% threshold established at the multilateral negotiations would be of considerable benefit to Canada.

To the extent that one of the objectives of free trade is to ensure better consumer prices as a result of increased competition, the *public interest* and not just that of producers should be duly taken into account in all countervailing duty investigations. American trade law focuses almost exclusively on producer interests and neglects the interests of consumers and others who could benefit from subsidized imports. In the case, once again, of the notorious softwood lumber dispute, the American associations of homebuilders and wood suppliers sided with the Canadian producers since they knew that countervailing duties would cause prices to rise and sales to fall.⁴⁸ The Agreement on Subsidies that came out of the Uruguay Round only suggests that national bodies take into account the interests of consumers and industrial users of imported products that are being investigated (Article 19:2).

Americans have a tendency to believe that subsidies are a foreign practice and not to take into account the assistance which they themselves provide to economic activity. In addition, the countervailing duties levied by the United States are much more damaging to the interests of their trading partners, because of the number of these duties and the size of the American market, than all similar duties that these trading partners might levy. Canada should therefore emphasize equity and insist that only *net subsidies* should be considered, that is, the difference between the foreign subsidy that is being investigated and the assistance granted to the domestic industry.

⁴⁸ *The Financial Post*, February 11, 1994, p. 9.