

One useful starting point for negotiations about countervailing duties is the GATT Subsidies Code, which, although ambiguous, has a different emphasis than the U.S. law. The preamble states that the objective is to "reduce or eliminate the trade restricting or distorting effects" of subsidies. The problem is to reconcile the inherent tension between the exercise of national sovereignty through the use of domestic subsidies and to limit their possible (or perceived) trade-distorting effects.

The Subsidies Code contains a list of export subsidies that should be prohibited in a bilateral trade agreement. There are different options for implementing the principle that domestic subsidies should be permitted where they serve important national economic, social, or industrial policy objectives and do not adversely affect trade. One option is that the two countries could negotiate a list of current assistance programs or, alternatively, general categories of domestic subsidies that are to be exempted from countervailing duty procedures. Adopting this approach would enable the two governments to take account of the offsetting effects of each other's various subsidy programs. Each country's list would be different and would reflect government policy priorities. The lists could be specific and capable of amendment by application to a binational commission, or they could be more general and delineated by categories such as regional development, natural resource, environmental, health and safety, agricultural, and cultural programs. The advantages of this approach are that Canadian governments would be more certain about which programs might be subject to countervailing duties.

Another option to limit the application of U.S. countervailing duties would be to negotiate the requirement that there must be a strong causal link between particular Canadian subsidies and injury to U.S. industries. For example, in the Fresh Groundfish case currently under investigation, there is a considerable possibility that the ITA will find countervailable subsidies