

d. Modify Domestic Law

The U.S. and Canadian Governments could agree in the FTA on some specific ways in which the general principles on subsidies would be reflected in their respective domestic laws on countervailing duties. Some of the policies proposed for consideration in this context include:

(i) A guarantee that the ITA will maintain its current practice of refusing to countervail programs formally and actually available to more than a limited number of producers or industries (the "general availability" rule).³⁸ For example, in the countervailing duty case involving Canadian softwood lumber, the ITA determined that, because stumpage policies made timber available on the same terms to several different industries, the alleged stumpage subsidies, even if they existed, were generally available and therefore not countervailable. (Comment: An agreement on maintaining the current application of the general availability rule may be attractive, as it would involve the classic common law method of gradually adding

³⁸ This policy is based upon the statutory definition of a countervailable domestic subsidy as one granted "to a specific enterprise or industry or group of enterprises or industries." 19 U.S.C. § 1677(5).