

companies that are located, or are going to locate, in economically disadvantaged regions. In addition, subsidies that are general can prove to be of greater benefit to certain kinds of companies and therefore turn out *in practice* to be specific. For instance, general subsidization of investment may favour industries with high capital ratios.

Countervailing duty investigations aim therefore to demonstrate that a subsidy is specific (the Specificity Test). In addition, in order for a countervailing duty to be levied, it is necessary after the GATT Tokyo Round to show material injury or a threat of material injury to the industry or to the competing domestic industry, or else a substantial delay in the creation of a domestic industry. The 1980 Subsidies Code that came out of the Tokyo Round⁶ requires in addition that there be a *causal connection* between the subsidized imports and the alleged injury. However, there is no mention of this in the American legislation implementing the Tokyo Round (the 1979 Trade Agreements Act).⁷ It is certainly not easy to show that a subsidy is causing material injury to an industry in a foreign country. First, what is meant by a "domestic industry"? Second, what is "material injury"? The GATT Subsidies Code does not have a lot to say in this respect.

Other factors, such as productivity or changes in supply and demand may explain the problems that a company or a domestic industry is experiencing. As Gary Horlick points out, it is basically a judgment call.⁸ Article 6:4 of the Subsidies Code stipulates in this regard that "it must be demonstrated that the subsidized imports are, through the *effects* of the subsidy, causing injury." Once again, the American legislation does not mention this. The result is that the United States tends to interpret the concept of injury quite broadly and to associate it with any increase in subsidized imports, even if factors other than subsidies may explain the increase, and therefore, the injury suffered.⁹ Rodney Grey, for his part, emphasized that the concept

⁶ The General Agreement on Tariffs and Trade (GATT), *Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade* (Geneva, 1979). Referred to hereafter as the GATT Subsidies Code.

⁷ We are referring under Title VII of this legislation to Section 701(a) regarding the general rules for levying countervailing duties.

⁸ Gary Horlick, "Analysis of the Dispute Settlement Provisions: A U.S. Perspective," in Murray G. Smith and Frank Stone (eds.), *Assessing the Canada-U.S. Free Trade Agreement* (Halifax: Institute for Research on Public Policy, 1987), p. 104.

⁹ See Alan M. Rugman and Andrew Anderson, *Administered Protection in America* (London/New York: Croom Helm, Routledge/St. Martin's Press, 1987); Ronald A. Cass, "Economics in the Administration of U.S. International Trade Law," doc. no. 16, Ontario Centre for International Business (Toronto, July 1989). For an evaluation of American provisions and practices in determining injury, see Ronald A. Cass and Warren F. Schwartz, "Causality, Coherence and Transparency in the Implementation of International Trade Laws," in Michael J. Trebilcock and Robert C. York (eds.), *Fair Exchange: Reforming Trade Remedy Laws* (Policy Study 11) (Toronto/Calgary: C.D. Howe Institute, 1990), pp. 24-90. For a comparison of the