The results of the Uruguay Round have in part met Canada's objectives. The multilateral Agreement on Subsidies includes in this regard: a definition of subsidy; an exemption from trade remedies for certain subsidies that benefit research and regional development; and a tightening of the provisions governing the use of countervailing duties and the multilateral settlement of disputes (the latter as part of the generic dispute settlement provisions).

These achievements could serve as a basis for further improvements to the NAFTA provisions. North American negotiations should seek in the short term to counter the harassment of our exports to the United States. If changes regarding subsidies prove necessary, as this is the main leverage that Canada has to encourage the U.S. to negotiate seriously, these could, if in the national interest and in light of severe budgetary constraints, imply a reduction of the scope and level of specific kinds of subsidies. On the subsidy side, a dynamic approach could even be adopted by Canada by putting forward to the U.S. authorities formal proposals to stop bidding wars between public authorities to attract investments.

As a first priority, Canada should make certain that the results of the multilateral negotiations are faithfully implemented into domestic law, including in the United States, and are observed. Subsequently, the Canadian government should again put forward its proposals that have not yet been adequately addressed at the multilateral level, including those related to the use of countervailing duties, that is, an increase of the de minimis level below which countervailing duties cannot be applied; the strengthening of the public interest clause; consideration of the concept of net subsidy; a clear and circumscribed definition of domestic industry; and, finally, provisions to the effect that, in order to impose a countervailing duty, the regulatory authority must determine that a subsidy constitutes the principal and not just one of the causes of injury, while strengthening the concept that the amount of a duty be no more than required to remove the injury.

We also recommend in the medium term that the mechanism of ad hoc panels give way to a permanent tribunal, which could decide on the validity of injury determinations by national authorities. If agreement on a permanent tribunal seems unlikely, then other, less ambitious, options may be considered, notably the resort to panels to provide an advisory opinion as regards whether injury has occurred. The panel mechanism under Article 1904 would still be available in case of subsequent dispute to settle the issue of whether national law has been correctly applied. The main objective is, as far as possible, to achieve common decision-making on injury issues.