

is very difficult. In addition there can be problems, in practice, determining whether assistance measures are general or specific, as was the case in the softwood lumber dispute. Finally, the same holds true for the method of calculating the size of a subsidy and the corresponding size of the duty, as we saw in the dispute over pork. In case of disputes over subsidies, it is therefore important to have a North American tribunal to decide the issue. The tribunal would not make judgments of a general nature, such as about the validity of measures, but only about specific cases that give rise to disputes.

Bidding wars to attract investment pose another set of thorny problems which the permanent tribunal could study. Here too, if the United States rejects this option, the provisions that already exist in NAFTA for the general settlement of disputes (Chapter 20) could be used to help limit bidding wars over the assistance to be provided.

In North American negotiations on subsidies, Mexico's interests place it on Canada's side, which could lend added weight to Ottawa's proposals. Between 1980 and 1986, Mexican exports to the United States were subjected to 14 countervailing duties.<sup>60</sup> Like Canada, Mexico has what are called "concessions" for the exploitation of natural resources, as well as subsidies for regional development.<sup>61</sup> The latter have attracted most of the countervailing duties levied by American authorities.<sup>62</sup>

Mexico, which only became a member of GATT in 1986 and did not follow the Subsidies Code produced by the Tokyo Round, did not benefit until then from the injury criterion that the United States applied to signatories of the Code. In addition, the United States demanded that developing countries which signed the Code enter a bilateral undertaking almost always involving a reduction in subsidies. As a result, Mexico signed in 1985 a bilateral agreement on subsidies, which has been renewed and in which the Mexican authorities agreed to eliminate or reduce several subsidies, in particular those with a more direct effect on international trade, in exchange for the American authorities agreeing to determine whether injury had been done, or there was a threat of injury, before levying countervailing duties. Since then, the United States has never initiated a countervailing duty investigation of Mexican imports. What is noteworthy in all this is that the Mexican government deemed that it was in the national interest to abolish or reduce a number of subsidies in exchange for U.S.

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<sup>60</sup> GATT, annual report of the Committee on Subsidies and Countervailing Measures (1981-92), *Basic Instruments and Selected Documents*, supplements no. 28 to 39.

<sup>61</sup> For an analysis of subsidies in Mexico, see the unpublished paper by Cecilia Siac written for the C.D. Howe Institute.

<sup>62</sup> See McDonough, *Subsidies and Countervailing Measures*, pp. 23-24.