

Anti-Dumping and Countervailing Duties: A Primer on Theory and the Hemispheric Trade Context

Competition, Globalization and the Protectionist Propensity

One of the most impressive and persistent trends of the last several decades is the expansion of international trade, largely enabled by the sharp decrease in tariffs over the past half-century. The tremendous influence of trade liberalization and integration, as manifested in globalization¹, on the international political economy (IPE) is evidenced by the increasing share of world trade in world GDP, which has progressively been rising at an unprecedented rate in recent years. Trade across national borders has increased far faster than world GDP. International trade-related spill-overs and cross-currents have had the effect of broadening and deepening linkages between nation states; recent innovations in technology have particularly played a tremendous role in the transformation of the global system, as it has enabled private decisions regarding production, finance and investment to take place relatively free of state intervention, hence serving to buttress the role of private actors in globalization².

Globalization, then, has afforded free trade instruments and frameworks, most notably in the multilateral environment to remain centred on reducing state regulated trade barriers. After all, binding tariffs and applying them equally to all trading partners is key to the smooth flow of trade in goods. Clearly, World Trade Organization (WTO) agreements uphold the principles of free trade and most-favoured-nation treatment, in particular, however they also allow exceptions — in some circumstances. These exceptions relate to actions, in the form of countervailing duties to offset subsidies, taken against dumping (selling at an unfairly low price).³

Antidumping laws and countervailing duties are utilized in order for an importing country to *remedy* trade-distorting practices; and, are viewed as exceptions to free trade norms

¹ “Globalization is a ubiquitous term in the international policy sciences and, as such, has acquired a generalized application in recent years. This, in large part, is the case because it is more so a descriptive rather than analytical concept. It is widely understood as and is synonymous with the increasing and intractable deregulation and integration of cross-border activity amongst various state and non-state actors in the areas of economics, politics and socio-cultural affairs and the harmonization of legal frameworks governing transactions in these areas of activity. Such activity has been consolidated by the current reorganization of legal and social processes in or sociolegal dynamics of the global order and transboundary interactions within that system” (Bardouille, 2001: 22). See N.C. Bardouille, “Towards a Convergence of Regulatory and Supervisory Modalities of Offshore and Onshore Banking Sectors in the OECS Sub-Region”, *Journal of Money Laundering Control*, Vol. 4 (4), July 2001.

² The principle indicators of the proliferation of economic globalization, as is documented in the lexicon of the economics literature, include intra-firm trade (i.e. trade in goods and services described by national accounting systems as occurring within the transnational corporation (TNC)) and intra-industry trade, the diffusion of knowledge intensive sectors and foreign direct investment (FDI) and short-term portfolio equity flows and the growth of associated capital and financial markets.

³ There is a third instance where an exception to free trade norms is allowed under the WTO framework and that is with respect to emergency measures to limit imports temporarily, designed to “safeguard” domestic industries.

precisely because anti-dumping action relates to the imposition of additional import duty on the product in question from a given exporting country in order to mitigate or remove *injury*⁴ to domestic industry⁵ in the importing country. Antidumping and countervailing imperatives, then, represent 'administrative protection' in the form of antidumping suits and countervailing duties utilized, by the 'petitioner'⁶, to remedy a situation where an exporting country and associated firm are engaging in *anticompetitive behaviour*⁷ or trade-distorting - international price discrimination - practices to gain a competitive advantage over foreign counterparts. The end result of the remedy is to skew the price of the exported product to '*normal value*'⁸ in the case of the exporting country and to '*export price*'⁹ in the case of the price in the market of the importing country.

Further Perspective on Anti-Dumping and Countervailing Duties

Dumping is defined in the Agreement on Implementation of Article 6 of the GATT 1994 (The Anti-Dumping Agreement) *as the introduction of a product into the commerce of another country at less than its 'normal value'*. It is generally accepted by economists that antidumping

⁴ The GATT Article 6 of 1994 or the Anti-Dumping Agreement maintains that for anti-dumping measures to be imposed, the investigating authorities of the importing Member must make a *determination of injury*. The Agreement defines the term "injury" to mean either (i) *material injury to a domestic industry*, (ii) *threat of material injury to a domestic industry*, or (iii) *material retardation of the establishment of a domestic industry*.

⁵ The GATT Article 6 of 1994 or the Anti-Dumping Agreement defines the term *domestic industry* to mean 'the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products'.

⁶ The government of the importing country has to prove that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter's home market price), and show that the dumping is causing 'material injury'. GATT Article 6 of 1994 - commonly known as the Anti-Dumping Agreement - clarifies, expands and refines Article 6 which has traditionally had its problems particularly as tariff rates were lowered over time following the original GATT agreement and anti-dumping duties were increasingly imposed often without appropriate proof of 'material injury'. The Anti-Dumping Agreement, provides further elaboration on the basic principles set forth in Article VI itself, to govern the *investigation, determination, and application*, of anti-dumping duties. The Agreement essentially strengthens the requirement for the importing country to establish a clear causal relationship between dumped imports and *injury* to the domestic industry. Furthermore, as articulated by the WTO, the Agreement also enables the '*termination of an anti-dumping investigation in cases where the authorities determine that the margin of dumping is de minimis (which is defined as less than 2 per cent, expressed as a percentage of the export price of the product) or that the volume of dumped imports is negligible (generally when the volume of dumped imports from an individual country accounts for less than 3 per cent of the imports of the product in question into the importing country)*'. Also notable is that with respect to notification the Agreement makes allowances for prompt and detailed notification of all preliminary or final anti-dumping actions to a Committee on Anti-Dumping Practices.

⁷ Anticompetitive behaviour is characterized by an average price for the merchandise, enabled by a subsidy for its export, that is lower than the average cost of production causing or threatening *material injury* to the import competing firms.

⁸ *The 'normal value' is generally the price of the product at issue, in the ordinary course of trade, when destined for consumption in the exporting country market.*

⁹ *This price is based on the transaction price at which the foreign producer sells the product to an importer in the importing country.*

initiatives should be reserved for those cases in which anticompetitive behaviour is involved. A countervailing duty is a defensive instrument that in theory attempts to mitigate, circumvent or respond to other trading nations' *'unfair'* trade practices. This unfair practice is typically associated with a situation where an exporter sells merchandise in the importing country at prices that comparatively speaking are below those for the identical or 'like'¹⁰ product sold in the country of the exporter; specifically, that are *'less than fair value'*. Specifically, if the merchandise has an average price that is lower than the average cost of production the merchandise is thought to be 'dumped'. A response to this is the imposition of a duty. The countervailing duty is essentially a tariff designed to 'counter' the effects of the foreign export subsidy.¹¹

A Theoretical Analysis of Anti-Dumping and Countervailing Duties

The intention here is to examine the effects of a countervailing duty in a perfectly competitive market setting - based on Suranovic's anti-dumping and countervailing duty analysis in *International Trade Theory and Policy Analysis*¹² - in which there are two (large) trading nations trading a particular product in a partial equilibrium model.

With the imposition of an export subsidy a new equilibrium condition is created:

$$P_s^{ex} = P_s^{im} + S$$

$$XS(P_s^{ex}) = MD(P_s^{im})$$

This is the case where:

- 'S' is the specific export subsidy;
- P_s^{im} is the price that prevails in the import market after the subsidy;
- P_s^{ex} is the price that prevails in the export market after the subsidy.

The first condition speaks to a *'less than fair value'* situation. The effects of the subsidy are the price in the export market rises to P_s^{ex} , while the price in the import market falls to

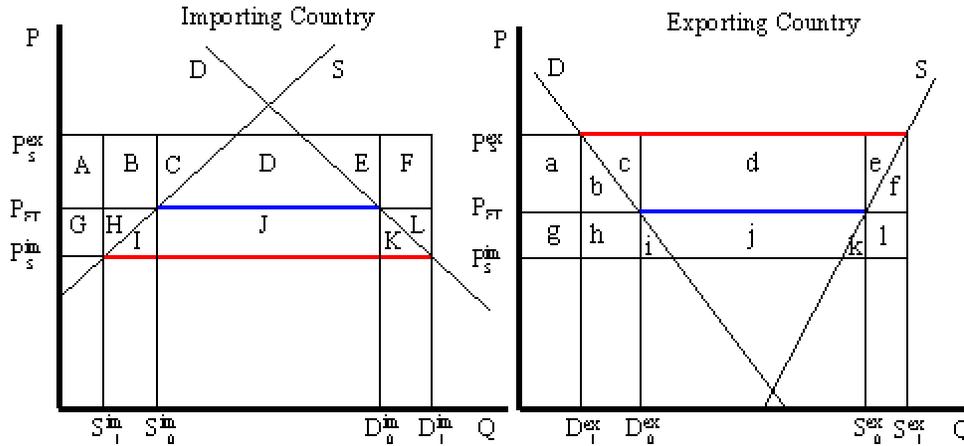
¹⁰ A 'like' product is defined in the 1994 GATT Anti-Dumping Agreement as 'a product which is identical, i.e. alike in all respects to the product under consideration or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration'.

¹¹ Subsidies, in the context of this Brief, are either direct or indirect government grants on the production or exportation of goods; for example, credits against taxes, loans with artificially low interest rates, etc., that provide an unfair competitive advantage to foreign exporters.

¹² S. M. Suranovic, *International Trade Theory and Policy Analysis* (International Economics Study Center, 1997).

P_S^{im} (see Graph 1 below).¹³ The higher level of exports with the subsidy, given by $(S_1^{ex} - D_1^{ex})$, are equal to imports, given by $(D_1^{im} - S_1^{im})$ and are depicted by the red line segments in Graph 1.

Graph 1



Clearly, the subsidy benefits the export producers. Consumers of the product in the exporting country would have to pay more for the product whose 'like' price would be less in the export market. The burden of the increased price of the product for consumers in the market of origin would also be leveraged on the taxpayers of that country; the result being a negative net national welfare effect for the exporting country. Consumers in the importing country benefit from the foreign subsidy, through lower prices for the good, while import competing producers suffer losses because they are out-competed (domestic unemployment typically increases as a result). The net effect for the importing country, however, is positive since the gains to consumers outweigh the losses to producers.

If the import competing firms concerned prove the subsidy causes *material injury* the importing country may levy a countervailing duty which serves to counter the effects of the foreign export subsidy. In theory, the countervailing duty will bring the price in the import market and price in the export market back on par or at free trade equilibrium. Continuing the analysis, then, in the importing country countervailing duty (t) equals the original export subsidy (S); such that the price in the importing country rises and the price in the exporting country falls. The countervailing duty has the effect of forcing the prices in the two markets back to the free trade prices; while export supply equals import demand. *The final equilibrium must satisfy the following two conditions:*

$$P_{S+t}^{ex} + t = P_{S+t}^{im} + S$$

$$XS(P_{S+t}^{ex}) = MD(P_{S+t}^{im})$$

¹³ The effect of the subsidy is to alter the initial free trade price labeled P_{FT} in Graph 1.

$$P_{S+t}^{ex} = P_{S+t}^{im}$$

However, since $t = S$, the first condition reduces to

Imports, then, will fall in the importing country (back to $D^{im0} - S^{im}_0$, see *Graph 1*) and domestic supply will rise (from S^{im}_1 to S^{im}_0 , see *Graph 1*). The countervailing duty would have had the desired effect of eliminating the ‘injury’ caused to import competing firms. Producers in the import-competing industry gain in surplus from the countervailing duty exactly what they had lost as a result of the foreign export subsidy. At the same time, consumers in the import industry lose from the countervailing duty while producers in the exporting country lose and consumers in the exporting country gain in surplus and net national welfare. (The reader is cautioned that the theoretical partial equilibrium model analysis, above, is simplified so as to highlight the effects of a countervailing duty in a perfectly competitive market setting, in a succinct fashion. The model *by no means* comprehensively speaks to the incredible complexities of anti-dumping and countervailing measures/actions in reality).¹⁴

The FTAA Anti-Dumping and Countervailing Duties Framework¹⁵

The Free Trade Area of the Americas (FTAA) Negotiating Group on Subsidies, Antidumping and Countervailing Duties held five meetings in Miami in 2000 - on January 17-19, April 26-28, July 31-August 2, September 11-14 and November 6-9, respectively; with the following specific objectives and work programme as defined by the Ministers in the San Jose Declaration and the Trade Negotiations Committee (TNC) in document *FTAA.ngadcv/01*. The objectives were:

- a. To examine ways to deepen, if appropriate, existing disciplines provided in the WTO Agreement on Subsidies and Countervailing Measures and enhance compliance with the terms of the WTO Agreement on Subsidies and Countervailing Measures.
- b. To achieve a common understanding with a view to improving, where possible, the rules and procedures regarding the operation and application of trade remedy laws in order to not create unjustified barriers to trade in the Hemisphere.

¹⁴ Theoretical aspects of anti-dumping laws and countervailing duties aside, the laws centered on anti-dumping remedies are not without their shortcomings; especially given that anti-dumping laws are viewed as a system of *second best* and anti-dumping & countervailing duties as anachronistic. Mastel maintains that if “evaluated from the perspective of perfectly competitive conditions, anti-dumping laws and all other government efforts to influence the market are difficult to justify because they necessarily alter the optimal market outcome” (see G. Mastel, *AntiDumping Laws and the U.S. Economy* (Washington, D.C.: Economic Strategy Institute, 1998)). In addition, whilst in theory antidumping laws are intended to respond to ‘trade-distorting practices’ Horlick and Sugarman maintain there are *no* WTO or multilateral requirements to ensure anti-dumping measures are applied in the event of such practices – giving way to abuse of this policy instrument (see G.N. Horlick and S.A. Sugarman, “Anti-Dumping Policy as a System of Law”, in M.R. Mendoza, et al., *Trade Rules in the Making* (Organization of American States/Brookings Institution Press: Washington, D.C.: 1999)).

¹⁵ *The following account draws heavily from the Draft Chapter submission of the Negotiating Group on Subsidies, Antidumping and Countervailing Duties to the TNC (FTAA.ngadcv/01).*

The Negotiating Group on Subsidies, Anti-dumping and Countervailing Duties is tasked with addressing the use of antidumping and countervailing duty measures within the FTAA, and identifying possible options for deepening the disciplines on subsidies. In order to advance towards completion of the Group's work programme, Delegations made submissions on their legislation and administrative practices based on the issues raised by them and submitted to the TNC in document *FTAA.ngadcv/01*. In this regard, the Negotiating Group proceeded to submit, comment and pose questions on countries' legislation and practice. The Draft Text reflects all the proposals submitted and discussed by Delegations of the Negotiating Group, and which were drafted on the basis of the provisions of the WTO Agreements on Antidumping and on Subsidies and Countervailing Measures, where appropriate, in keeping with the issues on the table. Only those footnotes of the WTO Agreements on Antidumping and on Subsidies and Countervailing Measures, which are amended by virtue of a country's proposal, are included in the Draft Text. As no consensus was reached on the Draft Text of the Chapter, however, it remains in brackets.¹⁶

After progress in the construction of a Draft Chapter the principal mandate coming out from the Buenos Aires Ministerial Meeting, regarding the Negotiating Group, starting with the Tenth Meeting of the Group (Panama, May 23 – 24, 2001), was to: intensify its work of identifying options for deepening, where appropriate, existing disciplines on subsidies in the WTO Agreement on Subsidies and Countervailing Measures, and to submit to the TNC recommendations on methodologies for deepening disciplines on subsidies by the deadline of April 1, 2002, for evaluation by the TNC after this date.

Secondly, the Negotiating Group was instructed to intensify its efforts to reach a common understanding with a view to improving, where possible, the rules and procedures for the operation and enforcement of trade remedy laws, so as not to create unjustified obstacles to free trade within the Hemisphere, and to submit its recommendations on the methodology to be used to achieve this objective by the deadline of April 1, 2002, for evaluation by the TNC at its first meeting following that date.

Thirdly, the Negotiating Group was instructed to identify, based on the *Study on the Interaction Between Trade and Competition Policies (FTAA.ngadvc/inf/07Cor.1)*, any areas that may merit further consideration by the TNC and to present its results to the TNC by the deadline of April 1, 2002.

Whilst the Negotiating Group's Draft Chapter remains bracketed, signifying on-going consensus-related divergences amongst countries, an issue over which there remains 'particular' contention is *subsidy disciplines*.¹⁷ There are three options for broadening the disciplines on subsidies over which there is no consensus. The three alternatives that have been submitted in the Report to the TNC are labeled Alternatives A, B and C. According to

¹⁶ *Delegations agreed that, in order to avoid unintended legal interpretations and in order to not deprive the general provision(s) of its purpose, the Negotiating Group will, in the next phase of the process, revise the structure of the Chapter by ensuring that all text proposals, as far as possible, focus only on changes to current subsidy, antidumping and countervailing duty rules without attempting to replicate those aspects of the WTO agreements that remain unchanged.*

¹⁷ Anti-dumping laws, in the main, are a response to the prevalence of government subsidies; which typically - through lowering the cost of production and/or export - result in 'dumping'.

CRNM Washington Alternative A is the MERCOSUR¹⁸/Andean/Chile text which ties the work of the Negotiating Group to negotiations in the Market Access and Agriculture Groups. *CRNM Washington* also contends that Alternative B is the US/Canada/CARICOM text which advances a more moderate position and which allows CARICOM sufficient flexibility to advance its interests (*FTAA.ngadv/w/58*). *CRNM Washington* further maintains that Alternative C is the Mexico/Panama submission which constitutes the narrowest formulation and allows for limited flexibility.¹⁹

With respect to CARICOM's position on subsidy disciplines *CRNM Washington* maintains that CARICOM remains affiliated with the original 'compromise document' *FTAA.ngadv/w/58*. This proposal refers to linkages with the work of other Negotiating Groups, but does *not* explicitly tie the progress of the Negotiating Group on Subsidies, Antidumping and Countervailing Duties to that of any other Group. Furthermore, it also mandates an examination of the difficulties faced by FTAA countries in implementing the WTO Subsidies Agreement. This proposal also incorporates a reference to 'existing WTO rights and obligations' the objective of which is to preserve the rights of low-income countries and least developed countries (LDCs) in the hemisphere, such as Guyana and Haiti, which are *not* required to eliminate export subsidies.²⁰ Traditionally, the CARICOM position has been that subsidies play a central part in Member Countries' economic development programmes; and as such, greater flexibility must be afforded these countries in their employ of subsidies. Ultimately, conceptual and definitional approaches to subsidies will temper such flexibility or the lack thereof in the Third Cycle of the FTAA Negotiating Group on Anti-Dumping and Countervailing Duties negotiations.

The United State's Position on the Anti-Dumping and Countervailing Duties Hemispheric Framework

The United States²¹ believes that the FTAA Agreement should make *no* changes to the WTO rules on antidumping and countervailing measures and ensure the right of each country to maintain and apply trade remedies within the trading framework. Because many

¹⁸ MERCOSUR has strongly opposed the inclusion of any text proposal specifically addressing subsidy disciplines.

¹⁹ CRNM (Washington), *Comments on Key Issues and Draft Text – FTAA Negotiating Group on Subsidies, Anti-Dumping and Countervailing Duties* (CRNM (Washington): March 15th, 2001).

²⁰ Haiti and Guyana, two low-income countries, do *not* have the same obligations as other developing countries under the WTO Subsidies Agreement.

²¹ It is worth noting that the United States ranks amongst the most prolific user of anti-dumping remedies; in fact, the United States makes the *most* use of these remedies than any other country in the world. In the latter part of 1995, for example, the United States had 294 anti-dumping measures (this number is reflective of a three-fold increase in its level in the late 1970s) in place, as compared to 133 by the European Union. According to Russell, this translates to some 5 measures for every \$10 billion of United States imports as compared to some 2 measures against the United States by foreign countries for every \$10 billion of United States imports (see B.R. Russell, "How Long can you Tread Water: The Anti-Economic of Trade Remedy Law", in M. Mendoza et al., Trade Rules in the Making (Organization of American States/Brookings Institution, Washington, D.C.: 1999).

of the proposed provisions of any alternative approach with respect to anti-dumping and countervailing regimes would fundamentally change how dumping and injury are *defined* and *measured* the United States rejects any set of rules to be applied to the use of antidumping and countervailing duty measures within the FTAA that would be substantially different from WTO rules.²² The United States is very particular on this, especially as it relates to *dumping*.

At the last meeting of the Negotiating Group, before the January 2001 TNC in Peru, the United States introduced a Draft Text as a 'stand-alone' alternative Draft Chapter to the Text which had been negotiated thus far by the Group.²³ This 'stand-alone' alternative was introduced because the United States' was not pleased with the focus of the Group and wished to discuss issues other than rewriting basic WTO rules. It stated its opposition to the negotiation of separate FTAA rules governing anti-dumping and countervailing duties measures; this should be considered from the context that the Draft Chapter prepared by the Negotiating Group evolved on the presumption that there would be a distinct FTAA regime. The United States 'Alternative B' *proposal* speaks in particular to:

No provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of another Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice, and judicial precedents. Each Party reserves the right to change or modify its antidumping law or countervailing duty law.

Recommendations for the OECS Sub-Region with Respect to the FTAA Negotiating Group on Anti-Dumping and Countervailing Duties

Notable in the area of advancing the interests of small economies and related small and medium-sized enterprise (SMEs), CARICOM proposals have attempted to robustly argue the case for, a critically important issue, raising *de minimus* thresholds in antidumping investigations.²⁴ Although bracketed in the Draft Text CARICOM proposals²⁵ maintained

²² The United States continues to maintain - as it has in the past - that proposals for substantive changes in the rules governing antidumping and countervailing duty measures should only be addressed within the WTO.

²³ The alternative proposal by the US received strong criticisms from Mexico, MERCOSUR, the Andean Group and Chile. The Latin American Delegations are exhibiting little enthusiasm for compromise given the on-going tension which exists between them, the United States and Canada over the submission of alternative text. CARICOM - in the past - joined in expressing its disappointment over the inflexible position the United States had adopted. Canada, notably, was the only active participant in the Group that did not condemn the United States alternative Draft Chapter.

²⁴ The CARICOM proposal's position regarding significantly higher thresholds is conceptually oriented in favour of small economies - just as in the area of remedies, where it is advanced that remedies applied against SMEs those entities targeted must be afforded the 'right' to give an undertaking to raise export prices in the importing market. There is a partiality, then, for duty imposition as a remedy to be employed as a last resort.

²⁵ The CARICOM representative Delegation has also been particularly careful about the nomenclature employed in the Draft Text. This is highlighted, for example, in the all important conceptual approach to the central issue of 'normal value' which CARICOM maintains *shall be determined on the basis of costs representative of normal operating conditions and not on the basis of costs affected by random events. Costs shall be adjusted appropriately to take*

that for the purposes of paragraph 8 of Article 5 of the Antidumping Agreement in investigating exporters based in FTAA smaller economies the margin of dumping shall be considered to be *de minimis* if this margin is less than 5%, expressed as a percentage of the export price. Further still, CARICOM proposals maintain that the volume of dumped imports should be regarded as negligible if the volume of dumped imports from a particular FTAA smaller economy is found to account for less than 6% of imports of the like product in the importing FTAA member, unless exports from FTAA smaller economies which individually account for less than 6% of the imports of the like product in the importing FTAA member collectively account for more than 15% of imports of the like product in the importing FTAA member. The issue of *de minimis* thresholds, then, continues to be an important area deserved of the close attention and scrutiny of Organization of Eastern Caribbean States (OECS)²⁶ members because, while critically important for these economies as an issue in the Draft Chapter, the varying positions on the part of negotiating parties have yet to be satisfactorily reconciled.

What OECS Member States must also remain particularly concerned about is the United States position as regards the establishment of special rules for smaller economies or, in some instances, small enterprises. The United States maintains that such provisions would, in effect, result in a more liberal approach to the measurement of dumping and 'injury' in the case of smaller economies. This, despite the fact that it is widely accepted that the FTAA framework should strive to compensate for differences in size and levels of development, of signatory members, the United States maintains that ultimately the FTAA Agreement is to be a *single undertaking*²⁷; and as such its methodological approach should continue to reflect this.

CARICOM maintained, however, as early as its submission²⁸ at the second meeting of the Negotiating Group that *a clear case exists for the extension of broad exemptions for the benefit of a SME and greater flexibility for all firms with a primary export base established within small economies*. The fact remains, large firms – because of economies of scale and resources - have a greater ability to engage in predatory pricing practices and engage in sustained dumping practices; the SME structure in smaller economies, such as in CARICOM, 'generally' have neither the capacity nor inclination to engage in this.

into account generally accepted business practices in circumstances where economies are undergoing a programme of structural adjustment or recovering from the impact of a natural disaster.

²⁶ The nine OECS Member States are Antigua and Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines; Anguilla and British Virgin Islands are Associate Members of OECS.

²⁷ The ramifications of undue attention on *single undertaking* rationales to justify particular actions has an acute effect on the OECS and its ability to satisfactorily benefit from any dumping disciplines. Attempting to mitigate the effects of this must remain at the forefront of sub-regional policy-makers' approach to the Draft Text of the Negotiating Group. This is particularly pressing as it is the United States stated policy that *with regard to any provisions on improved transparency or due process, although technical assistance or transition periods may be appropriate in some cases, it does not contemplate establishing across-the-board exceptions or separate rules for certain economies.*

²⁸ CARICOM Submission, *CARICOM Submission to FTAA Negotiating Group on Subsidies, Anti-Dumping and Countervailing Duties* (Second Meeting, Miami, 23-24 February, 1999: FTAA.ngadcv/w/05).

However unlikely the abuse of anti-dumping measures in small developing countries, clearly, the use of these measures has grown exponentially in the last decade amongst trading nations as a whole. This is a phenomenon not unique just to developed countries like the United States; other countries including developing countries²⁹ have engaged in this, hence international trade has been significantly distorted. The micro-states and associated firms of the OECS, however, are *not* in a position - due to issues of size and resource constraints - to engage in this practice. What, perhaps, should continue to be reflected in the sub-region's position - as it will be in CARICOM's position in general - in further negotiations of the Draft Chapter is that *the small developing economies of the region have virtually no capacity to provide subsidies on a scale sufficient to cause material injury to our trading partners*. As such, OECS Member States should not acquiesce to a broad-brush application of across-the-board *terms, conditions* and *standards* for all countries - both large and small - but instead assiduously advocate and ensure the reflection of 'broad exemptions' in the Negotiating Group's Draft Chapter.

It is incumbent, then, that the extension of broad exemptions for the benefit of SMEs and greater flexibility for all firms with a primary export base established within small economies be consistently made by Member State representatives at the FTAA. In addition, with respect to exemptions - more robust technical assistance to SMEs and small economies needs to be brought to the front-burner in the Negotiating Group in a more deliberate fashion. This thrust and position, on issues of substance, must remain the capstone of OECS Member States' positions in the negotiation of the Draft Chapter in this Third Cycle of the FTAA vis-à-vis the Anti-Dumping and Countervailing Duties Negotiating Group.

Concluding Remarks

The analysis provided in the main body of the text, above, has attempted to provide a modicum of insight into very complex subject matter. The Brief has certainly *not* reviewed the entirety of the complex nuances of the anti-dumping and countervailing duties subject, especially as it relates to the multilateral framework. The Brief has, however, attempted to speak to the causal relationship between dumped imports and countervailing measures both with reference to theory and policy implications. The Brief has also outlined *some* insights into areas that need to be further pursued by OECS Member States to advance small economy interests in the Negotiating Group framework; which, ultimately, must remain closely tied to efforts on-going by CARICOM-proper to achieve the same.


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²⁹ According to Russell "between 1990 and 1995 the number of active anti-dumping measures of which the GATT or WTO was notified in the twenty-two developing countries for which data were available rose from 16 to 197, an increase of 1,231%. The figures for case initiations are almost equally dramatic. In 1990 just 15 cases were initiated by a broad sample of fifty-four developing countries. By 1995 this number had increased to 157" (see B.R. Russell, "How Long can you Tread Water: The Anti-Economic of Trade Remedy Law", in M. Mendoza et al., Trade Rules in the Making (Organization of American States/Brookings Institution, Washington, D.C.: 1999: 325).

** The next edition of 'Trade Policy Brief' (the June issue) will focus thematically on Competition Policy and the OECS Sub-region; this edition will feature a guest writer - Ms. R. Davis, Economic Affairs Officer, Economic Affairs Division, OECSS.*