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Negotiating Group on Subsidies
and Countervailing Measures

COMMUNICATION FROM CANADA

I INTRODUCTION

Participants at the March meeting of the Negotiating Group on Subsidies and Countervailing Measures were invited to make submissions on issues they believe should be addressed in the negotiations. This submission contains preliminary Canadian views on the overall approach to the negotiations as well as on specific issues that should be addressed.

II GENERAL

The negotiating mandate agreed to for the Subsidies and Countervailing Measures Negotiating Group states that "negotiations shall be based on a review of Articles VI and XVI and the MTN Agreement on subsidies and countervailing measures, with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade". With this mandate, the negotiations will need to review and address the whole inter-related complex of issues related to both the use of subsidies and the application of countervailing measures.

Before examining specific improvements to the current rules, it will be important to review the fundamental objectives of Articles VI and XVI. For example, Article VI leaves no doubt regarding the requirements for imposing such duties: the existence of subsidization and its causal link to injury. The purpose of countervailing duties is not to offset comparative advantage. With respect to Article XVI, it is clearly recognized that subsidies may cause serious prejudice to the export or import interests of other parties and the possibility of limiting the subsidization in such instances is clearly envisaged. Disciplines on the use of subsidies were intended. Experience with the Agreement on Subsidies and Countervailing Measures suggests that the balance between Articles VI and XVI may be insufficiently appreciated. If the objective of "improving GATT disciplines relating to all subsidies and countervailing measures" is to be realized we must be prepared to envisage more symmetry and better meshing of the rights and obligations of both Articles VI and XVI. To that end the work of this Negotiating Group should seek first to reach an understanding on the direction and dimension of the negotiations before it addresses specific problems.

At the appropriate time, and in the context of the review of the fundamental objectives, Canada will want the negotiating group to examine a number of specific issues. The issues identified in this submission are not exhaustive and Canada reserves the right to make further submissions on these or other topics.

III COUNTERVAILING DUTIES

The GATT provides for the unilateral right to impose countervailing duties to offset the injurious effect of subsidized imports. However, if this right is not carefully circumscribed, countervail action can become an instrument of protectionism and harassment and impose considerable burdens on exporters and their governments. This can occur whether or not a countervail action results in the application of duties. As such, it is appropriate to review the requirements associated with the initiation of an investigation, its conduct and the imposition of duties. With respect to initiation, the issues of the verification of the standing of the complainant and injury thresholds are particularly important. The scope of information required for the conduct of an investigation should be reviewed. With regard to duty imposition, the current rules should be examined to ensure that duties are not unjustifiably applied (e.g., against marginal suppliers or in situations where the level of subsidization is insignificant).

Furthermore, there is a whole range of issues surrounding the definition and measurement of a countervailable subsidy which should be reviewed to ensure uniform application of countervail legislation. The need to examine such issues is particularly important in light of the unilateral right to impose countervailing duties. A lack of agreement in this area is the source of many problems that have arisen under the current rules (e.g. general availability, cost to government/benefit to recipient, input subsidies).

The lack of clarity regarding, inter alia, the definitions of industry and of sale have given rise to problems (particularly with regard to capital goods and processed agricultural products) and they need to be reviewed. Rules should also be developed to ensure periodic reviews of the need for countervailing measures and their termination when no longer warranted as well as for determining the appropriate level of countervailing duty. Lengthy delays in reviews and adjustment to changed circumstances unjustifiably penalize exporters.

Discussions in other negotiating groups (such as Group Agriculture) will have clear relevance to concerns in this

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Negotiating Group relating to both countervail and subsidies. Similarly, this Negotiating Group will address issues that are important to other GATT Codes e.g. Article VI deals with both anti-dumping and countervailing duties and there are many common issues.

IV SUBSIDIES

Concurrent with the review of countervailing duty principles and practices, there is a need to consider the rules applicable to subsidies inter alia in light of their growing fiscal importance in recent years. The objectives of and procedures associated with the notification requirement should be reviewed to make them more meaningful. Similarly, in light of the disputes that have arisen in recent years, the disciplines and rules associated with subsidies, particularly subsidies on the export of certain primary products, are clearly in need of improvement. Clarification of the rights and obligations regarding the use of subsidies other than export subsidies is required if effective rules are to be subject to less unilateral determination and provide more certainty for traders and investors, particularly as they relate to the application of countervailing duties. This could involve greater international consensus and more useful and effective

guidance regarding the nature of subsidies that could be considered countervailable or non-countervailable as well as the examination of the rights and obligations of countries regarding subsidies affecting exports to third country markets.

V DISPUTE SETTLEMENT

For various reasons, there are a relatively large number of outstanding panel reports made pursuant to the dispute settlement provisions of the MTN Agreement on Subsidies and Countervailing Measures. This problem might be substantially reduced if there are improved disciplines on the provision of subsidies and the taking of countervail actions. The negotiations underway in the Negotiating Group on Dispute Settlement may have relevance for improving the dispute settlement provisions of the Agreement. Once those negotiations have advanced, the Group should review the work and assess the degree to which it is relevant.