

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

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SUBSIDIES AND OTHER NON-TARIFF SUPPORT PROGRAMMES AFFECTING
MARKET ACCESS IN WORLD MINERALS, METALS AND ENERGY TRADE

Submission from Australia

The following submission has been received from the delegation of Australia with the request that it be circulated to members of the Negotiating Group on Natural Resource-Based Products.

OVERVIEW

This paper examines subsidies and other non-tariff support programmes affecting market access in world minerals, metals and energy trade and considers the implications for the NRBP Group. It concludes that:

- . These measures substantially inhibit and distort trade to the detriment of importing and exporting countries alike:
 - highlighting the need to give this area due priority in the negotiations.
- . Subsidies and other non-tariff support programmes affecting market access share many common characteristics and in the NRBP area are often interlinked:
 - the impact on trade is determined by the totality of the "package" of such distortions;
 - indicating the benefits of addressing the problems these measures pose to NRBP trade horizontally rather than in isolation.
- . The nature, extent and impact of these measures are substantially similar in relation to ferrous and non-ferrous minerals and energy NRBPs.
- . An important common characteristic shared by these measures in the NRBP area is a lack of transparency which serves to obscure a full appreciation of their costs to both implementing countries and their trading partners:

- emphasizing the need for appropriate information to be brought forward both to facilitate the negotiation process and, on an ongoing basis, to enhance discipline over these measures.

The significance of these measures for world trade, the common characteristics they share in relation to NRBP trade, their often interlinking character, and the relatively discrete product coverage of the NRBP Group all favour the exploration by the NRBP Group of bold and effective multilateral solutions to these problems.

The Uruguay Round provides an opportunity to achieve:

- (1) more operationally effective rules on the use of subsidies which impact on trade in natural resource-based products;
- (2) reductions in existing production subsidies and other support practices which impact adversely on NRBP trade opportunities;
- (3) improved transparency and measurement of the impact of NRBP support practices adopted by some countries.

INTRODUCTION

Protectionism since the Tokyo Round has further distorted markets for a range of minerals, processed metals and energy. An important element of this has been the use by some countries of subsidies and other support measures which have a direct impact on market access.

Budgetary and other protective supports by some Governments to preserve uneconomic mine capacity and processing or to establish new mines and processing capabilities is a major cause of world oversupply and downward pressure on prices. Such supports, often a mix of production subsidies, tariffs and other trade distorting measures such as market reservations, penalize efficient low-cost producers and interfere with the rational development of new suppliers and growth in international trade.

Given the importance of natural resources as key inputs to industry, and the present distortions and uncertainties, it is in the interests of both consuming and producing countries to reduce impediments to the essential process of structural adjustment as new and more competitive sources come into production. Subsidy and other support practices impacting on the minerals and energy elements of natural resources trade are examined in Attachment A.

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- (3) improved transparency and measurement of the impact of NRBP support practices adopted by some countries.

EXISTING GATT PROVISIONS ON SUBSIDIES

There are a number of existing GATT provisions concerned with the application of subsidies which are relevant to natural resource-based products. These are set out in Attachment B.

It is considered that this Group should examine the GATT and Code provisions dealing with subsidies with a view to identifying areas of weakness or ambiguity which have impaired their effective operation in so far as they relate to natural resource-based products and to suggest appropriate improvements. The nature and form of any agreed solutions could where appropriate be referred to other relevant negotiating Groups.

1. Existing rules on subsidies

It is Australia's view that some of the GATT and Code language concerning the use of production subsidies is too vague and accommodating to the point that the interests of all participants are not adequately protected. Scope exists for greater definition of the types of subsidy practices which should be proscribed. Australia suggests that price support mechanisms and budgetary assistance to production would come into this category. A possible exception could be those measures which form part of an open and transparent industry adjustment programme which has clearly defined timed limits and elements of degressivity over the life of the adjustment programme. It is suggested that if a country wishes to include production subsidies and other support measures which have a trade impact as part of a structural adjustment programme it should submit details of that programme at the outset for scrutiny by contracting parties with regular reviews during the life of the adjustment programme.

2. Reductions in existing production subsidies and other supports

In terms of the balance of participants' rights and interests it is desirable that in the course of these negotiations agreement is reached on the gradual elimination of existing subsidies linked to production and other support practices on NRBP's which have an adverse trade effect. It is Australia's view that a phased reduction over a period of 10 years from the scheduled completion of the Uruguay Round (1990) is sufficient time to allow the necessary social and economic adjustments to take place at a measured pace. Indeed some countries which employ such measures have already commenced programmes to reduce gradually these subsidies and other forms of assistance. Contractual obligations in the GATT could facilitate structural adjustment and ensure that future inefficiencies and domestic economic dislocations do not become entrenched.

3. Greater transparency of subsidy and other support practices

As has been demonstrated in Attachment A and in other submissions to this Group, the problems of subsidies (as well as of other support practices) in natural resource-based products take many forms and impact adversely on the trading interests of a number of countries.

Any examination of subsidy notifications under GATT Article XVI:1 quickly shows that less than a third of GATT members lodge notifications. Very few notifications involve natural resource-based products. The quality of these notifications varies considerably and it would appear that differences exist over which subsidies should be notified despite the fact that "GATT-law" interpretation of the notification exists. Part of the problem is that there is little, if any, adherence to transparency and compliance with the obligation to notify, and no analysis of the data provided. There is a need to establish effective obligations to notify all forms of assistance and for these returns to be analysed so that the true extent of subsidy and other support practices can be determined.

DEVELOPING COUNTRIES

Australia recognizes the special interests of developing countries concerning support practices. Where the need is demonstrated, developing countries could maintain a longer adjustment period or other arrangements of similar effect for specific support measures which have an impact on trade.

CONCLUSIONS

The Australian proposal addresses those support programmes which inhibit rather than facilitate rationalization. Participants would remain entitled to implement, under specified conditions, structural adjustment programmes which do not impact negatively on trade. An important outcome of the negotiations will be one that encourages the adoption of measures designed to facilitate necessary adjustment/restructuring within acceptable parameters.

It is Australia's view that the NRBP Group should seek solutions to the problems of production subsidies and other support measures as an integral element of the outcome on market access issues affecting NRBP in the context of the Uruguay Round.

ATTACHMENT AMARKET ACCESS ISSUES IN WORLD ENERGY, FERROUS AND
NON-FERROUS MINERALS TRADEA. SUBSIDY AND OTHER NON-TARIFF SUPPORT MEASURES

This part provides a short outline of subsidy and other non-tariff support measures affecting market access in each of the above sectors as a factual background against which to base the following discussion of some of the principal unresolved issues confronting the NRBP Group.

ENERGY

Illustrative of the trade-distorting measures in world energy trade are the domestic support programmes applied by a number of countries in relation to coal.

Subsidy and other non-tariff coal support measures affecting market access include:

- . direct and indirect subsidies, including grants and other budgetary measures to offset losses and finance investment and stockpiling costs;
- . import quotas and licensing;
- . regulations governing coal/energy use;
- . fixed prices and/or tonnage commitments for domestic coal, whether by Government regulation, contracts between Government instrumentalities, or contracts between private parties negotiated under Government auspices.

The cost of these programmes to consumers and taxpayers within several implementing countries has more than doubled over the past five years. Over the same period, prices for internationally traded coal have declined markedly and lower cost and efficient coal mines have been forced to close. For example, in Australia alone sixteen coal mines have closed and 3,500 jobs have been lost since December 1986.

FERROUS MINERALS AND METALS (STEEL)

Iron ore production in a number of countries is supported by direct subsidization of mines.

Subsidy and non-tariff measures affecting market access in the steel sector include:

- . voluntary restraint arrangements;
- . import quotas/licensing;
- . direct and indirect subsidies, including grants and other budgetary measures, to offset operating losses and finance investment;
- . import price trigger-mechanisms with associated threats of dumping or countervailing duties actions;
- . country of origin rulings affecting import quotas;
- . local content provisions;
- . use of technical standards and certifications as barriers;
- . government ownership practices involving output prices not related to production costs.

NON-FERROUS MINERALS AND METALS

Subsidy and other non-tariff support measures affecting market access in the non-ferrous minerals and metals sector include:

- . direct subsidization of exploration, production, stockpiling and processing through, inter alia, grants and non-commercial loans;
- . indirect subsidization through provision of government-owned services and inputs on non-commercial terms;
- . dual pricing schemes to isolate domestic production from international market prices;
- . import licensing and quotas;
- . government ownership practices involving output prices not related to production costs;
- . voluntary restraint arrangements.

Measures such as these are applied by a large number of countries in relation to the full range of non-ferrous minerals and metals. They are applied to both unprocessed and processed mineral NRBPs, with interventions at the latter stage tending to create further trade distortions for both upstream and downstream products.

B. GENERIC NATURE OF THE APPLICATION OF THESE MEASURES

The preceding outline highlights the substantial similarity in the nature of measures used to support less efficient domestic production of energy, ferrous and non-ferrous mineral NRBPs. As these products share the

characteristic of being essential raw materials to industrial production, the nature of the problems these measures create is also substantially the same.

Moreover, many of the support measures in this area are applied generically to the mining sector - irrespective of whether coal, copper or iron ore is being extracted - or to the minerals processing sector - irrespective of whether steel or copper rods are being produced.

Accordingly, any distinction between these sectors could be seen as artificial and may serve to undermine the scope for developing and implementing appropriate and effective disciplines.

C. IMPLICATIONS FOR NRBP NEGOTIATIONS

1. Magnitude of the effects of these measures

The measures outlined in Part A pervade world trade in mineral and energy NRBP, substantially inhibiting trade growth and distorting investment and trade flows.

The costs of such measures to efficient minerals, metals and energy exporters are clear. Diminished market opportunities reduce economies of scale and diminish export receipts. These costs fall on all such exporters, developed and developing countries alike.

The costs of such measures to implementing countries are no less real. These include:

- . creation or perpetuation of inefficient industry structures, with the associated costs of misapplied resources;
- . where subsidization measures are relied on, a direct budgetary burden on all taxpayers, including consumers and more efficient industries;
- . where non-budgetary measures are employed, increased input costs to consuming industries, and often forced reliance on inferior raw materials, which ultimately undermine the international competitiveness of secondary industries.

Moreover, all countries - whether they protect domestic minerals and energy industries or not - must contend with the destabilization of efficient and reliable supply sources, and a diminished capacity of those countries to purchase imports.

The extent of the distortions in this area is well illustrated by coal. Over the past five years the cost of coal support programmes in a number of countries has more than doubled as the price gap between imported and domestic coals has widened. A conservative estimate of Production Subsidy Equivalents in the United Kingdom, Federal Republic of Germany and

Japan last year totalled US\$8.8 billion, or some US\$47.50 per tonne. By contrast, the total value of coal exports by Australia - the world's leading coal exporter - was only US\$3.6 billion, at an average price of just US\$35.27 per tonne.

Natural resource-based products - including those in the minerals and energy sector - are the essential building blocks of industrial production in developing and developed countries alike. Trade distortions in this sector thus impact on the trading system as a whole, to the detriment of importing and exporting countries alike, diminishing prospects for the development of vigorous and dynamic industries based on the principle of comparative advantage.

The magnitude of the problems in this area has recently been recognized by a number of international organizations. For example:

- . in May 1987 the Energy Ministers of the International Energy Agency agreed that energy markets could only function properly if countries avoided barriers to energy trade and followed sound price and tax policies;
- . in October 1987 the Minerals and Energy Forum of the Pacific Economic Cooperation Conference noted the impact of trade barriers on world minerals, metals and energy trade;
- . in December 1987 several delegations to the OECD High Level Group on Commodities raised the issue of trade protection, particularly in the form of subsidization practices, on world minerals and metals trade.

While this paper does not address all elements of natural resource-based products, it is apparent especially from earlier work in relevant GATT working parties, that many of the same types of barriers and market distortions apply to these specific resources.

Given the importance of NRBPs to all countries it is essential that progress be made on these issues during the Uruguay Round.

2. The problem of transparency

A common characteristic shared by subsidies and other non-tariff measures affecting market access in the minerals and energy area is a need for transparency as to the existence, operation and effect of particular measures. The relative lack of transparency implicit in any non-tariff measure is further exacerbated in the NRBP area by the tendency to use a complex of interacting measures in any one market and a relatively high incidence of government ownership and/or regulation.

This lack of transparency often obscures the true costs of support measures to domestic taxpayers and consumers, and to existing or potential exporters. Moreover, it impedes progress in analysing individual measures and in achieving agreement on appropriate negotiating modalities.

3. The task for the Uruguay Round

In order to make progress on the vast array of trade-distorting measures, it has been traditional to distinguish between subsidies and other forms of non-tariff barriers. For practical reasons in trying to find a "rules-based" solution only, such an approach has been desirable and indeed necessary in order to manage the negotiation of appropriate disciplines. In the NRBP context, however, it should be noted that such a complete separation is undesirable and should be unnecessary.

Most subsidies and other support measures share a common policy objective of conferring an advantage on one sector or activity relative to other domestic activities and to competing imports. The object is to protect less efficient domestic production. To achieve this many countries employ a complex mix of measures involving tariffs, subsidies and other NTMs to protect the same industry.

These problems are highlighted by an examination of the indirect subsidy maze in the NRBP area. For example, a number of participants have raised the issue of dual or double pricing as a matter warranting attention in the NRBP Group. But how should such measures be characterized?

On one analysis, dual pricing schemes directed at artificially depressing domestic prices for NRBP inputs can be viewed as an indirect production subsidy to the further processed product. Yet the efficacy of such a scheme often rests on some form of export restraint to ensure the domestic NRBP is not diverted to more lucrative export markets. Conversely, a dual pricing scheme which artificially raises domestic NRBP prices can be seen as either an indirect subsidy to the production of that NRBP, or as a corollary to the import restraint necessary to ensure that windfall gains are not made by foreign exporters.

A fragmented approach to negotiations in the NRBP area is undesirable, for it diverts attention from the impact of such measures to the form of intervention applied, often resulting in arid debate over definitions. Moreover, to examine such measures in isolation from the factual context in which they occur poses the risk that their true significance to world trade will be obscured.

It is not sufficient simply to refer issues to the generic negotiating groups. The NRBP Group provides a valuable opportunity to address the full range of measures affecting market access in NRBP trade comprehensively and to promote trade liberalization of mutual benefit in an internationally co-operative way. Subsidies and non-tariff barriers affecting market access in the NRBP area ultimately impact on all participants, whether NRBP exporters or importers, and irrespective of whether developed or developing. More liberal trade in NRBPs would benefit all.

Australia suggests that solutions to NRBP issues need a combination of more operationally effective rules and contractual commitments to reduce existing market access barriers in all their forms.

We reserve the right to make further submissions on these issues in the interests of achieving this result.

Accordingly, Australia submits that the opportunity the NRBP Group presents to make real progress on issues in this area is too valuable to be wasted.

ATTACHMENT B

PROVISIONS IN GATT ARTICLES AND CODES OF RELEVANCE TO SUBSIDIES
AND OTHER NON-TARIFF SUPPORT PROGRAMMES AFFECTING MARKET ACCESS

GATT Articles

Article III: National treatment on internal taxation and regulation

- . Paragraph 1. Internal taxes and other internal charges, laws, regulations and requirements affecting the internal sale, use etc. of products and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions should not be applied to imported or domestic products so as to afford protection to domestic production.
- . Paragraph 5. No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources.
- . Paragraph 8(a). The provisions of this Article do not apply to laws, regulations or requirements governing procurement by government agencies of products for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

Article XI: General elimination of quantitative restrictions

This Article prohibits inter alia, import restrictions other than duties, taxes or other charges, such as quotas, import licences or other measures.

The only exception allowed which may be relevant to minerals exports is under paragraph 2(b) which permits export or import prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade.

Article XIII: Non-discriminatory administration of quantitative restrictions

If import restrictions are applied, they must be applied in a manner which does not discriminate between contracting party suppliers.

Article XVI: Subsidies

Subsidies maintained by contracting parties including income or price support measures which operate directly or indirectly to increase exports from or to reduce imports into its territory must be notified in detail to the GATT. Where it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by such subsidization, the party concerned must, on request discuss the possibility of limiting the subsidization.

Under the provisions of this Article, contracting parties should also seek to avoid the use of subsidies on exports of primary products (including minerals) and to cease to grant subsidies on exports of products other than primary products.

Article XX: General exceptions

This Article allows the adoption or enforcement by contracting parties of measures to achieve a variety of objectives including those necessary to protect human, animal or plant life or health, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.

Articles XXII and XXIII: Consultation and nullification or impairment

These Articles include the provisions for consultation and settlement of disputes between contracting parties, particularly where one party considers that the benefits to which it is entitled under the GATT are being nullified or impaired by the actions or failure to carry out obligations by another party.

Article XXVIII bis: Tariff negotiations

Where tariffs imposed in imports of minerals are considered too high, this Article makes provision for negotiations for the reduction, removal and/or binding of these tariffs.

Differential and more-favourable treatment for developing countries

Part IV of the GATT, the provisions of a decision taken in the context of the Tokyo Round of Multilateral Trade Negotiations and specific provisions in various of the GATT Codes allow for the granting of differential and more-favourable treatment to developing countries.

The Tokyo Round decision also specifies, inter alia, that any differential and more-favourable treatment provided should not raise barriers to or create undue difficulties for the trade of any other contracting party.

SUBSIDIES CODE

Article 8: Subsidies - general provisions

This Article recognizes that subsidies are used by governments to promote important objectives of social and economic policy and that they may cause adverse effects to the interests of other signatories. Signatories also agree to seek to avoid causing through the use of any subsidy:

- . injury to the domestic industry of another signatory;
- . nullification or impairment of the benefits accruing directly or indirectly to another signatory under the General Agreement;
- . serious prejudice to the interests of another signatory.

Article 9: Export subsidies on products other than certain primary products

For the purposes of the Subsidies Code, minerals are not included in the classification "certain primary products".

This Article provides that signatories shall not grant export subsidies on products other than certain primary products.

Article 11: Subsidies other than export subsidies

This Article recognizes that subsidies other than export subsidies are widely used as important instruments for the promotion of social and economic policy objectives and does not intend to restrict the right of signatories to use such subsidies to achieve these and other policy objectives including:

- . the elimination of industrial, economic and social disadvantages of specific regions;
- . to facilitate the restructuring ... of certain sectors;
- . generally to sustain employment ...

Signatories shall seek to avoid damaging the interests of other signatories when using subsidies as set out in Article 8.

Articles 12, 13, 17 and 18: Consultations, conciliation, dispute settlement procedures and authorized counter measures

These Articles cover the procedures for handling differences and disputes between signatories arising as a result of the use of subsidies.

Article 14: Developing countries

Signatories recognize that subsidies are an integral part of economic development programmes of developing countries. Therefore, the commitment of Article 9 shall not apply to developing country signatories subject to certain provisions (relating mainly to developing countries endeavouring to enter into commitments to reduce or eliminate export subsidies when their use is inconsistent with competitive and development needs).

ANTI-DUMPING CODE

Article 12: Anti-dumping action on behalf of third countries

This Article contains the provisions for anti-dumping (and countervailing) action on behalf of third countries.

Application for such action must be made to the importing country by the authorities of the third country concerned, but the decision on whether or not to proceed rests with the importing country.