

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

Negotiating Group on Subsidies
and Countervailing Measures

COMMUNICATION FROM THE UNITED STATES

The following communication has been received from the delegation of the United States with the request that it be circulated to members of the Group.

I. Introduction

The Ministerial Declaration launching the Uruguay Round calls for subsidies negotiations "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." Under the agreed negotiating plan for this group, the participants are to submit proposals on issues to be taken up in the negotiations during the "initial phase" of the negotiating process. This initial phase will provide a common basis for future negotiations.

The United States considers that the Uruguay Round should seek to strengthen current disciplines over the use of trade distorting subsidies. With this in mind, and without prejudice to the possibility of submitting additional topics for negotiation in the future, the U.S. Delegation submits the following proposal for the Group's consideration.

II. Review of Existing Disciplines

Despite initial optimism after the Tokyo Round, the Subsidies Code appears to have contributed little to the strengthening of international disciplines over the use of subsidies in world trade. Instead, it has become increasingly apparent that there is little or no international consensus over the meaning of vital GATT and Subsidies Code rules. The absence of agreement as to some of the most important elements of the Code has encouraged a proliferation of trade-distorting subsidies and has generated trade frictions. At the same time, hopes that the dispute settlement provisions of the Code would provide effective recourse

against trade-distorting subsidy practices have largely evaporated in a series of unresolved dispute settlement proceedings. As a result, the Subsidies Code has become a source of conflict, rather than an instrument for conciliation and the objective arbitration of differences between contracting parties.

The United States believes that these difficulties are the result of basic deficiencies in the existing GATT and Subsidies Code provisions. The current rules with respect to some of the most sensitive and contentious subsidy practices are so vague as to invite differences of interpretation. In other areas, the GATT and the Code rules are so weak as to provide few constraints over subsidies practices that clearly result in harm to the interests of other nations. Finally, in certain instances, the GATT and the Code draw distinctions between permitted and prohibited subsidy practices that appear to have little basis in sound economic policy.

Accordingly, the U.S. Delegation believes that the review of existing disciplines should encompass the following problem areas:

A. Article XVI:3 and Article 10:

The review should examine the application of the "more than an equitable share" rule for primary products. The United States believes that this rule has serious conceptual flaws and in practice has failed to provide clear guidance as to the permissible scope of primary product subsidization. As a result, the rule has imposed little discipline over agricultural subsidies.

On the basis of this review, the participants will be able to come to a conclusion on the basic question of whether -- pending results from Negotiating Group Agriculture -- the current GATT and Subsidies Code rules provide a useful starting point for further work. If not, the Group might wish to explore some alternative approach to primary product subsidies negotiations.

B. Article XVI:1 and Article 8:

The review should examine whether GATT Article XVI:1 and Subsidies Code Article 8 provide an appropriate level of discipline over trade-distorting domestic subsidies. There appears to be some question as to what, if any, obligation exists if a domestic subsidy causes "serious prejudice" to the trade interests of another contracting party or signatory. In particular, it is unclear whether a contracting party whose subsidy practice has been found to cause serious prejudice has a corresponding obligation to reduce or eliminate the offending subsidy or to take any other action to relieve the serious prejudice.

If the review either shows that no obligation exists or reveals an underlying lack of agreement as to the extent of the domestic subsidy obligation, then participants might wish to reexamine the utility of the "serious prejudice" concept as a basis for future work.

C. Article XVI:4 and Article 9:

Experience has shown that there is currently no agreement among Code Signatories on the scope of Article 9, as well as the role and effect of the "Illustrative List" associated with Article 9. These points should be clarified through the review.

D. Article 14:

The Tokyo Round Subsidies Code imposes a lower level of obligation with respect to export subsidies by developing country signatories. In particular, the Code specifies that the developing country signatories are not subject to Article 9's prohibition on the use of export subsidies for non-primary products, but instead are subject to the more limited obligations of paragraphs 5 through 8 of Article 14. These distinctions do not appear in GATT Article XVI.

The United States believes that it would be useful to review the application of Article 14 in the context of the more advanced developing countries. The United States also believes that it would be useful to examine the application of Article 14 to economic sectors in which an industry in a developing country is internationally competitive and, as a result, the need for subsidies to facilitate the economic development program of that country is not readily apparent.

E. Article VI:6 and Article 6:5:

In the context of the Subsidies Code, at least two disputes have arisen between signatories over the question of what constitutes the "domestic industry" in countervailing duty investigations involving processed agricultural products. The review of these GATT disciplines should focus on the relationship between the primary and processed product producers in certain processed product industries where the production of the primary product in question is wholly or primarily dedicated to the production of the processed product.

F. Article XVI:1:

The United States believes that it would be useful to review the application of the subsidies notification procedures of GATT Article XVI:1. These procedures were designed to promote multi-lateral review of all subsidies that operate directly or indirectly to increase exports or reduce imports. Work to date has revealed a number of disagreements as to the scope of Article XVI. These disagreements have reduced transparency and have weakened the ability of the Contracting Parties to effectively review subsidy practices that affect trade.

III. Other Issues Proposed for Negotiation

A. The Issue of "Targeting":

Industry targeting consists of a government plan or scheme of coordinated measures to assist specific export-oriented industries. While some targeting measures are clearly covered by subsidies disciplines, the application of the Code to other measures is unclear. As a result, there has been extensive debate in the Subsidies Code Committee over whether government "targeting" practices fall within the internationally-accepted definition of a subsidy. To date, however, there has been no agreement as to whether industrial policy-type measures that result in the indirect channeling of resources to a specific industry or sector constitute countervailable subsidies or should be addressed under some other provision of GATT.

The United States believes that the Uruguay Round negotiations should clarify what remedies are available for the trade distortions and economic damage associated with targeting and other industrial policy measures that affect trade. The United States is concerned that the international trade rules do not adequately address the trade damage that can result from industrial targeting programs.

B. Treatment of Forest, Fishery, and Farm Products:

In the Tokyo Round Subsidies Code negotiations, primary mineral-origin products were removed from the scope of subsidy rules affecting primary products in general and subjected to Article 9's prohibition on export subsidies. The U.S. Delegation believes that the Negotiating Group should consider negotiating a similar prohibition on the use of export subsidies for forest, fishery, and farm products.

C. Dispute Settlement:

Since the subsidies issues have created particular difficulties in the dispute settlement process, the United States believe that it would be useful to examine the application of dispute settlement mechanisms to subsidies disputes, in light of work in the Dispute Settlement Negotiating Group.

D. Export Financing:

The United States believes that it would be useful to review and update the Subsidies Code provisions relating to export financing.