

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Negotiating Group on Subsidies  
and Countervailing Measures

COMMUNICATION FROM NEW ZEALAND

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

The agreed negotiating plan for the Group on Negotiations on Subsidies and Countervailing Measures notes that the negotiating objective is 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". Accordingly, the initial phase provides for participants to submit proposals on issues to be taken up in the negotiations. In accordance with those terms of reference, and without prejudice to the possibility of suggesting additional issues as well as more detailed elaboration, the New Zealand delegation suggests the following should be included in the context of issues for review:

1. Subsidies in general

The operational effectiveness of Article XVI:1 is an issue that would be appropriate for review. Some elaboration under the MTN Agreement on Subsidies and Countervailing Measures has been provided. But, inter alia, there is an absence of detailed precision on or explicit guidelines to be utilized for ascertaining whether serious prejudice arising from trade impacting subsidies exists in a given case. The implications of this lack seem to be most acute in situations where there is distortion of the conditions of normal competition on world markets. Furthermore, as provisions presently stand, it is possible for a finding of serious prejudice to be made in a particular case, but there is a lack of discipline for securing appropriate remedial measures to be applied in response to such a finding, such as would remove or modify the cause of such serious prejudice. There would be value too in considering the scope for achieving, in relation to the notification obligation, a clarified and common understanding of notifiable subsidies consistent with the objective of improved GATT disciplines.

GATT SECRETARIAT

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## 2. Export subsidies

There is a need for a review, with a view to improving GATT disciplines, of the provisions of Article XVI:2 and 3. Notably, there is a need to build on the recognition embodied in Article XVI:2 and the exhortation in the first sentence of XVI:1 in the direction of improving the conditions of competition on world markets for primary products currently covered by the equitable share criterion in the second sentence of Article XVI:3.

## 3. Export subsidies on products other than certain primary products

It is apparent that a systematic practice of export subsidization of certain products processed from, but other than, primary products, has developed in spite of the terms of the clear proscription of export subsidies on non-primary products embodied in Article XVI:4 of the General Agreement and Article 9 of the Code on Subsidies and Countervailing Measures.

In light of this, there is a need for a review of the effective application of the above provisions in relation to this practice. Such review, in keeping with the objective of achieving improved GATT disciplines, would be directed toward obtaining improvement in the observance of existing disciplines. It could include, as appropriate, relevant matters related to the more effective functioning of the dispute settlement provisions in this area.

## 4. Calculation of amount of subsidy

This is an area where varying national practices lead to uncertainty in international trade. Experience has shown that the very basis for calculation of countervailing duty by any given administration (let alone as between different contracting parties), can be variable, even where there is no variability in the common basis for calculation, certain methods of calculation can still lead to a trade disrupting and distorting lack of symmetry as between level of subsidy granted, level of subsidy assessed, and level of countervailing duty actually applied in a given case. The need to develop uniform practice also needs to be based firmly on the basic principle embodied in the terminology of Article VI:3 of the General Agreement, viz, that the countervailing duty that may be levied on a particular product determined to be subsidized should be strictly linked to the actual "estimated bounty or subsidy determined to have been granted ... on the manufacture, production or export of such product". That is, the countervailing duty to be applied to a particular product should be assessed strictly in relation to the actual subsidy granted on that particular product imported.

## 5. Definition of countervailable subsidies

There is a need for developing precision on the nature of the distinction between "general availability" and "specificity" of subsidies as they relate to application of countervailing duties. Such distinction does not explicitly exist in Articles VI or XVI, although some important elements exist in the Agreement on Subsidies and Countervailing Measures. In assessing the scope for any such clarification, it would be necessary to bear in mind the terms of Article VI:3. It will also be necessary to bear in mind the terms of Article XVI:1.

## 6. Negotiating techniques

In general terms, there will be a need to work in a pragmatic manner, but there will be a need also to take account of the essential linkages that exist between issues.

For instance, the question of general availability/specificity in countervailing duty proceedings could not be dealt with effectively in the absence of precision in respect of the obligations and rights under Article XVI:1. Where direct or indirect subsidies affecting trade are concerned, possible clarification on the conditions for the application of countervailing duty to imports is but one element of an approach to restore or strengthen the balance of rights and obligations. That element of an approach cannot be developed in isolation from, e.g. improvements in the existing rights and obligations that are embodied in Article XVI:1 as relate, e.g. to serious prejudice arising from trade impacting subsidization. More precisely, any more explicit limitation on the right to countervail under the terms, e.g. of Article VI:3, has to be assessed in light of whether there is a compensating strengthening of the right to take direct remedial action against trade impacting subsidization seriously prejudicial to another contracting party. This is particularly important in relation to maintaining effectively the balance that currently exists in Article XVI:1 in respect of rights to action in respect of a home market or in respect of world markets.