

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG10/W/10

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Group of Negotiations on Goods (GATT)

Negotiating Group on Subsidies  
and Countervailing Measures

ISSUES PROPOSED FOR NEGOTIATIONS

Note by the secretariat

1. As requested, the secretariat has prepared a concise version of the checklist circulated in MTN.GNG/NG9/W/9/Rev.1. This list only registers specific issues proposed for negotiations and should not be considered as a position paper. In particular, it does not describe the reasons which delegations may have had in proposing these issues.

2. This note has been prepared on the secretariat's own responsibility. Neither its contents, nor the way or order in which the issues have been presented commit any delegation.

## I. PRINCIPLES AND APPROACHES

1. Need to ensure, prior to the extension of existing disciplines or the establishment of new disciplines, that the basic principles and rules contained in the existing framework are fully applied.
2. Importance of a review of the fundamental objectives of Articles VI and XVI of the General Agreement and of the relationship between these two articles prior to the examination of specific improvements to the current rules.
3. Need to address fundamental questions regarding the two different approaches on which the existing regulation of subsidies and countervailing measures is based: on the one hand the approach which considers the effects of subsidies and defines remedies in relation to those effects, and on the other hand the approach which considers that certain types of subsidies should be prohibited per se.
4. Importance of a resolution of certain conceptual and definitional issues (which have been left unresolved in the negotiation of the Code\*) prior to the examination of a possible reinforcement or extension of the existing rules.
5. Primacy of dealing with trade-distorting subsidies; the question of definition, important as it may be, should not be considered a necessary condition to ensure strengthening of disciplines on trade-distorting subsidies.
6. Need to arrive at a better balance and more symmetry between rights and obligations regarding the use of subsidies and rights and obligations regarding the use of countervailing measures and to negotiate in parallel on subsidies and countervailing measures.
7. Recognition of essential linkages between subsidies and countervailing measures in the sense that any more explicit limitation on the right to countervail has to be assessed in light of whether there is a compensatory strengthening of the right to take direct remedial action against trade distorting subsidization.

## II. DEFINITIONS AND CONCEPTS RELATING TO SUBSIDIES

### A. Definition of a subsidy

1. Elaboration of criteria to determine the existence of a subsidy (e.g. financial charge incurred by a government on behalf of a beneficiary)

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\* The term "the Code" used hereinafter means Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

2. Distinction between subsidies and other measures having trade distorting effects.
3. Distinction between subsidies and incentives (i.e. trade neutral measures taken to induce or encourage the pursuit of some desired direction in a country's development objectives).

4. Targeting and other industrial policy measures that affect trade.

B. Actionable subsidies

1. Countervailable subsidies

(i) definition and/or criteria (e.g. specificity)

(ii) measurement of the amount of a countervailable subsidy: effective cost to the government versus benefits to the recipient.

2. Prohibited export subsidies (review of the Illustrative List)
3. Other actionable (under track II) subsidies (illustrative list?).

C. Non-actionable subsidies

1. Definition (e.g. which do not distort trade by causing material injury, serious prejudice or nullification or impairment of the benefits to another contracting party) and/or criteria (e.g. general availability).

2. Illustrative list (e.g. generally available measures, certain types of regional subsidies, structural adjustment subsidies and input subsidies).

III. DISCIPLINES ON SUBSIDIES

A. Serious prejudice

1. Definition of serious prejudice and/or criteria for determining the existence of serious prejudice.

2. Disciplines for securing appropriate remedial measures to be applied in response to a finding of serious prejudice (which measures would remove or nullify its cause). Application of these disciplines in the case of adverse effect arising in:

- (a) the domestic market of the importing country
- (b) the domestic market of the subsidizing country
- (c) third country markets.

3. Re-examination of the utility of the "serious prejudice" concept as a basis for future work.

B. Subsidies other than export subsidies

Clarification of the rights and obligations regarding the use of subsidies other than export subsidies, in particular:

- (a) subsidies that do not create additional economic advantages to improve the competitive standing of the beneficiary
- (b) domestic subsidies having the effect of export subsidies
- (c) subsidies displacing exports of another contracting party from a third country market.

(See also Part II - Definitions and Part III:A - Serious prejudice.)

C. Export subsidies on primary products

1. Review, with a view to improving GATT disciplines, of the provisions of Article XVI:3, building on the recognition embodied in Article XVI:2 and the exhortation in the first sentence of Article XVI:3. Examination of the application of the "more than an equitable share" rule for primary products in order to ensure that it provides clear guidance as to the permissible scope of primary product subsidization.

2. Negotiation of a similar prohibition to that of Article 9 of the Code on the use of export subsidies for primary products.

D. Export subsidies on non-primary products

1. Effective application of the provisions of Article 9 of the Code, in particular regarding export subsidies in the case of processed products containing primary components.

2. Clarification of the scope of the Illustrative List.

3. Review and updating of the Code provisions relating to export financing.

(See also Part VII.)

E. Notifications

1. Common understanding of notifiable subsidies, consistent with the objectives of improved GATT disciplines.

2. Review of the objectives and procedures associated with the notification requirement with a view to:

- (a) establishing more detailed guidelines on the contents, form and frequency of notifications;
- (b) improving transparency (e.g. more specific information on objectives, type, possible conditions attached)
- (c) facilitating the examination and surveillance of subsidies that affect trade.

IV. ISSUES RELATING TO THE DETERMINATION OF THE EXISTENCE OF MATERIAL INJURY AND THREAT THEREOF

A. Definition of the term "domestic industry"

- 1. Reaffirmation of the definition of "domestic industry" provided for in Article 6:5 of the Code.
- 2. Clarification of the meaning of the term "a major proportion" used in Article 6:5 of the Code.
- 3. Application of the definition of "domestic industry" in cases involving processed agricultural products.
- 4. Reaffirmation of the definition of "like product" as provided for in Footnote 18 to Article 6:1 of the Code.
- 5. Clarification of the term "like product" in the context of the treatment of parts and components of finished products subject to countervailing duty investigations; criteria for the imposition of countervailing duties on imports of parts and components.

B. Threat of material injury

- 1. Examination of whether it is appropriate to take countervailing duty action on the basis of a finding of the existence of a threat of material injury.
- 2. Consideration of the possibility to incorporate into the Code the Recommendation adopted on this issue by the Committee on Anti-Dumping Practices (ADP/25).

C. Cumulative injury assessment

- 1. Consideration of the possibility to prohibit injury assessment on a cumulative basis.

2. Consideration of the possibility to agree on a market penetration threshold below which imports would not be cumulated for the purpose of a determination of injury.

3. Consideration of the principle that if subsidized imports from a particular country do not contribute significantly to the injury to the domestic industry, those imports should not be cumulated with imports from other sources.

D. Amount of subsidy and determination of injury

Amount of the subsidy as an element to be taken into account in the consideration of the causal link between subsidized imports and injury to a domestic industry.

V. DEFINITION OF SALE; "INTRODUCTION INTO THE COMMERCE"

Clarification of the expression "introduced into the commerce of an importing country" (Article VI:1 of the General Agreement)

VI. INITIATION AND CONDUCT OF COUNTERVAILING DUTY INVESTIGATIONS

A. Initiation of countervailing duty investigations

1. Definition of the term "domestic industry" for the purpose of determining the standing of petitioners.

2. Verification of the standing of parties to file countervailing duty petitions.

3. Clarification of the expression "sufficient evidence" as used in Article 2:1 of the Code.

4. Consideration of ways to secure the interests of exporters in cases of unfounded investigations.

B. Conduct of countervailing duty investigations

1. Review of the scope of information required for the conduct of an investigation.

2. Review of Article 2:9 of the Code with a view to preventing punitive use of "the facts available".

## VII. IMPOSITION AND DURATION OF COUNTERVAILING MEASURES

### A. Imposition of countervailing measures

1. Principle that the imposition of countervailing measures should never be mandatory and should be subject to a "public interest" clause.
2. Principle that the level of a countervailing duty should be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry.
3. Non-application of countervailing measures in cases where the level of subsidization is de minimis or in case of marginal suppliers.
4. Exemption from the application of countervailing measures of practices which are subject to commitments under Article 14:5 of the Code.
5. Application of a material injury test in countervailing duty investigations by all countries.

### B. Undertakings

Review of Article 4 of the Code with a view to reducing the discretion of authorities of importing countries to refuse offers of undertakings.

### C. Duration, review and revocation of countervailing measures

1. Development of rules providing for periodic reviews of countervailing measures and their termination when no longer warranted.
2. Introduction of a "sunset" clause.

### D. Use of countervailing measures in case of injury to an industry in a third country

Remedies equivalent to countervailing duty actions in case subsidized exports to a given market cause injury to suppliers in third countries.

## VIII. DEVELOPING COUNTRIES

### A. Export subsidies granted by developing countries

1. Strengthening of the provisions for special and more favourable treatment of developing countries regarding the use of export subsidies on non-primary products.
2. Review of the operation of Article 14:5 of the Code and of the use of Article 19:9 in relation to Article 14:5.

3. Review of the application of Article 14 of the Code in the context of the more advanced developing countries and to economic sectors in which an industry in a developing country is internationally competitive.

4. Consideration of possibility to grant special and more favourable treatment to developing countries regarding export subsidies on primary products.

B. Countervailing measures on imports from developing countries

Exemption from application of countervailing measures of export subsidies granted by developing countries which are the subject of commitments under Article 14:5.

IX. DISPUTE SETTLEMENT

Examination of possible improvements of dispute settlement mechanism of the Code in light of the work of the Negotiating Group on Dispute Settlement.