

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Goods (GATT)  
Negotiating Group on Subsidies  
and Countervailing Measures

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COMMUNICATION FROM EGYPT

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

GENERAL

1. The ministerial Declaration launching the Uruguay Round of negotiations states that the negotiations in the area of Subsidies and Countervailing Duties "shall be based on a review of Article VI and XVI and the MIN Agreement on Subsidies and Countervailing Measures with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade".

Even though the basic rules contained in Article VI and XVI of the General Agreement have been further clarified and elaborated by the Agreement on Subsidies and Countervailing Measures, which was negotiated in the Tokyo Round of Trade Negotiations, serious problems have arisen in the application of the provisions as inter alia :

- i) there is no clear definition of what constitutes subsidies;
- ii) there is no agreement on subsidies which are countervailable and those which should not be subject to countervailing measures;

iii) the criteria laid down for the determination of "injury" is being weakened by the adoption of such practices as "cumulation of imports", and that for "determination of industry" by inclusion of producers which are not producers of "like products".

2. There is also an increasing trend to initiate investigations for the levy of countervailing duties, even in cases where it has not been possible to establish for the complaining producers that the increased subsidised imports are causing injury, not merely to them, but also to the industry as a whole. Commencement of investigations on insufficient grounds puts exporters to unnecessary expenditure for legal defence and thus leads to their harassment. Further, when countervailing measures are taken without following fully the procedures laid down for investigations and complying with the criteria laid down for their imposition, they could have serious harmful effects on trade.

#### DEFINITION OF SUBSIDY

3. A precise definition of subsidy has been difficult to establish. To help establish a clear definition it should be accepted that only "measures which constitute charge on the public account of government budget such as grants, concessional loans, loan guarantees" constitute a subsidy.

#### AMOUNT OF SUBSIDY

4. The measurement of the amount of a subsidy should be based on the "cost-to-government" criterion.

#### NON-COUNTERVAILABLE SUBSIDIES

5. Negotiations should aim to develop consensus regarding the circumstances under which certain practices could be considered to constitute countervailable subsidies.

Firstly, only subsidies defined under (3) above should be taken into account. Consequently, an important element is whether there is a financial contribution by a government. The concept of financial contribution should be interpreted in a restrictive manner and not include the so called opportunity cost. Furthermore, the notion of countervailable subsidy should be based on the concept of specificity. This concept should be interpreted as relating exclusively to the question of whether a government makes a given programme available to a specific industry or a group of industries; a pure "effect" test should be rejected.

Secondly, a clear distinction is necessary between trade distorting subsidies and subsidies which is designed to enhance efficiency, facilitate the development of infrastructure for industrialization or facilitate structural adjustment. Such subsidies normally have no trade-distorting effects and therefore should not be countervailable.

Thirdly, negotiations should carefully review certain recent developments relating to the application of countervailing measures to counter so-called "natural resource subsidies" and other similar measures involving government pricing of raw materials for the domestic use, insofar as such practices involve dual pricing schemes. The examination of whether a countervailable (domestic) subsidy exists in a given case should be based strictly on the concepts of financial contribution by a government as explained above and on the principle of specificity. It is particularly important to arrive at a clear understanding that the examination of whether these practices constitute subsidies should not be based on a comparison of the price at which the product in question is sold to domestic producers with external prices or a constructed "true market value". Other particular practices which should be examined in detail in order to clearly define, in the light of the general criteria mentioned above, whether they constitute countervailable subsidies, if they include regional assistance measures, research and development programmes, indirect subsidies, etc...

Fourthly, it is also desirable that the imposition of counter-vailing duties be subject to a "public interest" clause.

#### AMOUNT OF COUNTERVAILING DUTIES

6. This amount should be determined at a level sufficient to remove injury.

#### DETERMINATION OF INJURY/THREAT OF INJURY/CUMULATION

7. There is a need to address a number of issues concerning the determination of material injury in countervailing duty cases. Of utmost importance is the question of cumulation; the Group should try and reach agreement that the injury standard requires importing countries to determine that subsidized imports from a particular supplier contribute significantly to the material injury suffered by a domestic industry. Furthermore, there is a need to examine the manner in which the causality requirement should be interpreted. The amount of subsidization should be an important consideration in the determination of the existence of a causal link between subsidized imports and material injury to a domestic industry. The Group should also address the question whether it is appropriate to apply countervailing duties on the basis of a finding of a "threat of material injury".

#### DOMESTIC INDUSTRY

8. Regarding the procedures for the initiation and conduct of countervailing duty investigations the following issues deserve special attention. The concept of "domestic" industry by or on behalf of which a petition can be filed must continue to relate only to producers of the "like product". The basic element in determining what constitute "like product" is the characteristics of the product not its uses. In this regard there is also a need to develop procedures to ensure that a petition is indeed filed by or on behalf of a majority of the domestic producers concerned, i.e. a procedure for the verification of the standing of a petitioner needs to be developed.

DEVELOPING COUNTRIES

9.A. It is essential that negotiations should reaffirm the provisions of Article 14.1 and 2 of the subsidies code. There is also need to reaffirm the purely voluntary and unilateral character of "commitment" under Article 14.5. In this respect, it is necessary to carefully examine the use of Article 19.9 in relation Article 14.5

It should also reaffirm the principle that the situation where a developing country does not enter into a commitment under Article 14.5, it is adequately dealt with by the provisions of Article 14.6 and 14.8 of the Code.

B. The Group should also examine ways in which differential treatment can be given to developing countries in the area of countervailing measures. There could be a rule that, if imports from developing countries account for less than a specified percentage of domestic consumption and or imports, no countervailing measure shall be imposed on such imports.

INITIATION OF INVESTIGATION / REVIEW OF COUNTERVAILING MEASURES

10. Initiation of investigation on unfounded, and fragile grounds should be avoided as this constitutes unnecessary harassment, distorts trade, and often hampers investment. To prevent this it should be provided that :

A) there should be no automaticity to initiate CVD investigation.

B) with respect to outstanding countervailing measures, the negotiation should focus on two priority issues :

Firstly, the question of so called "sunset clause and  
secondly, the procedure for review and revision of counter-  
vailing measure in order to ensure full observance of the  
provision laid down in Article 4.9 of the Agreement.

11. Another issue relating to the initiation of a countervailing duty investigation is the problem of the simultaneous initiation of anti-dumping and countervailing duty investigations on imports of the same product from the same country.