

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED
MEN.GNG/NG10/7
8 June 1988
Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Subsidies
and Countervailing Measures

MEETING OF 1-2 JUNE 1988

Note by the Secretariat

1. The Group held its seventh meeting on 1-2 June 1988 under the Chairmanship of Mr. Michael D. Cartland (Hong Kong). The Group adopted the agenda set out in GATT/AIK/2663.

Discussion of fundamental objectives and concepts of Articles VI and XVI of the General Agreement as well as the relationship between these two provisions. Proposals relating to the negotiating basis and the future framework

2. One participant reiterated the importance of having a common understanding on fundamental objectives of Articles VI and XVI and of agreeing on the overall direction of the negotiations. He noted that there was little agreement in the Group as to whether subsidies or countervailing measures were the problem. His delegation's view was that participants could not expect tighter disciplines on countervail unless they were prepared to contemplate increased disciplines on subsidies and vice versa. Furthermore, there was a need to design an effective dispute settlement system for this area and to improve notification procedures, especially regarding subsidies in the industrial field. Another participant agreed that there was a rampant use of subsidies and countervailing duties and that both should be subjected to appropriate disciplines. However, any approach which would prohibit all subsidies would be in contradiction with the principles of Article 11 of the Code. In his view there was a need to work out a system which would prevent any abuse either of subsidies or of countervailing duties.

3. One participant presented its view that Article XVI did not intend to prohibit the use of subsidies but only to restrain their possible negative effects. Any other interpretation of this Article, in particular that condemning subsidies per se, could not be correct. The use of certain subsidies was justified for economic, social or environmental reasons and even if in some cases those subsidies had some effects on trade, such effects should be tolerated. Article VI constituted an exception to the general GATT rules and should therefore be used only for exceptional purposes and not for offsetting comparative advantages or impeding international trade. A different approach to subsidies under Article VI than under Article XVI had been causing serious problems, thus creating the

need to work out a uniform approach. Furthermore, new rules should, on the one hand, clarify which subsidies were subjected under Article XVI disciplines and, on the other hand, prevent any abuse of Article VI. The existing system under which it was irrelevant for countervailing duty action whether a subsidy was prohibited or not should be reconsidered.

4. Several delegations referred to the proposal in MTN.GNG/NG10/W/17 and considered it as a good starting point. However, it was stressed that it was indispensable to deal with the issue of subsidies and that of countervailing measures in a strictly symmetrical manner. Some delegations expressed their concern regarding the possibility to countervail prohibited subsidies without the injury test and without an appropriate investigation. They also considered that it would be difficult to agree on how to identify different categories. In particular, it was not clear what the decision-making process would be in the cases of disputes as to which category a given subsidy belonged. Some delegations were of the view that there were important lacunae in this proposal regarding, for example, definition of a subsidy and in particular of an actionable subsidy, improved disciplines on countervailing duties and special treatment for developing countries.

5. Some participants considered that it would be difficult to make further progress in the Group without reaching some understanding on a general framework. They said that the proposal in MTN.GNG/NG10/W/17 could constitute such a framework. Its basic structure, in particular three categories of subsidies, built upon the existing situation. Important improvements of disciplines would result from shifting the burden of proof in the case of prohibited subsidies and from the possibility of expeditious counteraction. The question remained open as to whether the measures to be taken without the injury test by the importing country should be countervailing duties or other countermeasures. The category of prohibited subsidies should go beyond the existing prohibitions and include also other trade distorting subsidies, in particular those causing nullification or impairment. Another point to be clarified were the notions of injury and of serious prejudice, which would play an important rôle in the use of actionable subsidies, while the category of prohibited subsidies should be based mostly on a normative approach (illustrative list). Finally, an effective mechanism to deal with third country market subsidization would have to be worked out. Another participant considered that although the effect-oriented approach should continue to be the basic one, the identification of the category of prohibited and non-actionable subsidies could be based mostly on a normative approach. The categorization process would be very complex, e.g. classification of structural adjustment subsidies or defining actionability which might vary from case to case. The use of countervailing duties without injury test could be possible only if strictly limited to the existing prohibitions. Further elaboration was also needed regarding such issues as application of countervailing duties, determination of injury, remedies in the case of third country subsidization.

6. The representative having submitted the proposal contained in MTN.GNG/NG10/W/17 explained that his proposal should be considered as a starting point and that a number of issues (e.g. dispute settlement or special treatment for developing countries) could be dealt with in the course of its elaboration. Three categories of subsidies and the legal consequences attached to them ensured some symmetry between subsidies issues and countervailing duty issues and provided for better disciplines on both sides. The proposed framework would be built into the multilateral system and most decisions would be taken by appropriate multilateral bodies. Countervailing action without the injury test would be strictly limited to cases of clear violation of accepted prohibitions; this corresponded to the retaliation concept generally recognized in international law. Although it might be difficult to come out with one single definition of a subsidy, each category would have to be defined and thus there would be three corresponding definitions. The problem of third country subsidization would require further discussions, but the starting point was the idea of appropriate financial compensation.

7. One participant introduced a proposal for strengthening international subsidies discipline (MTN.GNG/NG10/W/20) and stated that, as the disciplines of the Subsidies Code had nearly collapsed, it was necessary to start afresh with a fundamental reworking of the GATT rules. The proliferation of trade distorting subsidies and accompanying trade disputes had already badly undermined the credibility of the GATT and the international trading system. The provision of subsidies had not expanded trade or opened new markets but instead had generated matching subsidies and countermeasures. The lack of effective GATT disciplines and dispute settlement procedures had imposed dangerous pressures on national governments to act unilaterally and defend their fundamental interests. While his government had to deal bilaterally with certain measures in recent years, it had done so because of the absence of credible GATT alternatives. He believed that two fundamental issues had to be addressed: (i) the appropriate level of GATT disciplines with respect to subsidies and other substantially equivalent forms of government assistance, and (ii) the elaboration of a credible and effective dispute settlement system for the enforcement of those rules. The basic ideas contained in the proposal, related to the prohibition of all export subsidies, vigorous disciplines on the use of domestic industrial subsidies, new disciplines relating to targeting, elimination of all subsidies affecting trade in agricultural products, strong and enforceable disciplines concerning natural resource practices; further strengthening of countervailing duty provisions, greater adherence of developing countries to basic GATT disciplines in this area, and development of stronger enforcement mechanism through effective dispute settlement procedures. He emphasized that the subsidies and countervailing duty negotiations were of fundamental importance to the Uruguay Round and that consequences of failure in this area were difficult to contemplate.

8. Some participants considered that this proposal was unbalanced as it concentrated mostly on subsidy issues. One delegation reaffirmed the importance it attached to the question of elaborating appropriate

definitions and concepts and recalled its position that this process could take place in parallel with negotiations on other issues. Another delegation reiterated its position that the question of targeting should be approached on a case-by-case basis and not in general terms. It also expressed its concern about implicit weakening of disciplines on the use of countervailing duties. Some other participants considered that it was normal for a participant to concentrate, in his proposal, on issues of special interest to him; therefore, it was up to other participants to ensure that their interests were also presented. Some delegations, while stressing the need for an appropriate balance between subsidies and countervailing measures, saw in this proposal a number of interesting points such as the prohibition of all export subsidies, stronger disciplines on domestic subsidies including import substitution measures, mechanism to deal with third country subsidization and effective dispute settlement mechanism. One of these delegations stressed the urgency underlying this proposal which resulted from the fact that multilateral disciplines had collapsed in an area where fundamental trade problems were involved. A number of delegations reserved their right to revert to this proposal at the next meeting.

Issues proposed for negotiations (MTN.GNG/W/9/Rev.3 and MTN.GNG/NG10/W/10/Rev.1)

9. The Group took note of the revised checklist of issues proposed for negotiations in MTN.GNG/NG10/W/9/Rev.3

Consideration of specific drafting proposals (including explanatory texts) on particular issues

10. The Group noted that no specific drafting texts had been submitted in time for this meeting. In this respect one participant expressed its regret that none of the working papers submitted in the Group of Experts of the Committee on Subsidies and Countervailing Measures had been released to the Negotiating Group.

Arrangements for the next meeting of the Group

11. The Group decided to meet on 28-29 June 1988 and hold a subsequent meeting on 24-25 October 1988. The agenda for the next meeting would include:

- (a) continuation of the discussion of proposals contained in MTN.GNG/NG10/W/17 and W/20, as well as any other proposal which would be submitted in time for the next meeting;
- (b) discussion on a possible framework (basis) for the negotiations;
- (c) consideration of specific drafting proposal which would be submitted in accordance with the procedures agreed at the February 1988 meeting of the Group (MTN.GNG/NG10/6, paragraph 11(iii)).