

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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

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NEGOTIATING FRAMEWORK

Proposal by Canada

I. Introduction

The Punta del Este Ministerial declaration states 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".

In order for these negotiations to move ahead, there is a need for a comprehensive, balanced approach. It must be recognized that the problems and the issues to be addressed in the negotiations cannot be considered in isolation from one another. The various elements of the negotiation must be integrated into a coherent framework so that different views can be discussed between countries without leading to a stalemate. This paper proposes such a framework encompassing the issues of subsidies, countervailing duties and other remedies, and dispute settlement, as well as the linkages between them.

Countries agree to submit by June 1989 proposals that will address the elements of the framework and their interrelationships, in terms of the problems and issues to be addressed along the lines set out below. In this way, concerns and proposals can be brought to the table by each country in a fashion that allows substantive negotiations to be engaged with a view to achieving a comprehensive agreement on improving GATT disciplines as agreed by Ministers at Punta del Este.

A three-stage negotiating process is envisaged. First, countries would be guided by the framework in the preparation of their negotiating proposals. The framework would be taken as indicative of the problems and issues to be addressed by countries in making their submissions, but would neither preclude additional elements nor prejudice the form of the results that might emerge from the negotiations. Until proposals have been received, the Negotiating Group would continue its conceptual discussions of the various issues. Second, upon receipt of proposals, they would be examined by the Negotiating Group. At an appropriate time, the Negotiating Group would take stock of the various proposals to ensure a

sufficient basis to proceed to a final stage. Finally, substantive negotiations would be engaged on the basis of the similarities and differences in the elements and linkages addressed in the proposals.

## II. Subsidy disciplines

### Problem:

Subsidies can result in inefficient allocation of resources, both within economies and internationally, and undermine the gains from international trade. The absence of definitions and clear disciplines can result in costly trade frictions and competitive subsidization and create strains on the dispute settlement process.

### Issues to be addressed:

There is need for clear definitions and improved and more effective direct disciplines on subsidies that adversely affect international trade. Current rules are only partially effective as regards export subsidies and impose no effective disciplines on use of domestic subsidies. The latter may have the effect of injuring a domestic industry of another party through subsidized exports, the displacement of imports or displacement of exports in third country markets. To give substance to its discussions on these points, the Group will need to address the following issues:

#### 1. Scope of subsidy disciplines<sup>1</sup>

- Too broad an approach that sweeps in all subsidies could frustrate the operation by governments of legitimate social and economic policies; too narrow an approach, on the other hand, would constrain the effectiveness of subsidy disciplines in dealing with the full range of problems that can be created by subsidies in international trade.

#### 2. Possible forms of subsidy disciplines

- Prohibition of certain subsidy practices.
- Undertakings to freeze or reduce levels of subsidization (e.g., on a sectoral or programme-specific basis).

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<sup>1</sup>As agreed by Ministers in the Punta del Este Declaration, the Negotiating Group on Agriculture has primary responsibility for all aspects of agriculture. Because of the interrelationships between the issues being dealt with, it is recognized that aspects of agriculture may be discussed by the Negotiating Group on Subsidies and Countervailing Measures at an appropriate stage, taking into account progress in the Negotiating Group on Agriculture.

- Consideration of subsidies to determine their consistency with agreed criteria for identifying distortive/non-distortive practices.
- In terms of both general criteria (e.g. nature, purposes, and objectives of subsidy) and specific criteria (e.g. potential or actual trade impact, general availability, size of subsidy relative to recipient firm/project).<sup>1</sup>

### III: Remedies, direct disciplines and their relationship

#### Problem:

Currently, the main remedy for subsidy-related trade problems is the unilateral use of countervailing duties. Countervail provides, under specific circumstances, a remedy against the subsidization of exports into a domestic market, but it is not effective in dealing with problems of import-displacing subsidies or third-country export subsidies. Countries adversely affected by the latter types of subsidies currently have no remedy other than the nullification and impairment provisions of the General Agreement and the Subsidies Code, which have not proven effective. Improvement and expansion of the scope of direct disciplines on subsidies may be a more effective approach to these problems, although in addition, more effective remedies will be necessary. Questions may also arise regarding continued unilateral use of countervailing duties, which could create difficulties if applied simultaneously with direct disciplines.

#### Issues to be addressed:

1. Possible additional remedies with respect to subsidies creating third-country export or import replacement problems
  - Types of remedies that could be envisaged (e.g. right to compensation/retaliation, requirement for repayment of subsidy by recipient).
  - Question of allowing unilateral action or subjecting the taking of any remedy to a multilateral process
  - Precise form, scope and nature of multilateral process with respect to remedial actions, including involvement of third countries.
2. Whether or to what degree subsidies that meet conditions of agreed direct subsidy disciplines remain subject to application of remedies, including countervail.

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<sup>1</sup>In this connection, consideration could be given to appropriate criteria for identifying subsidies related to developmental objectives of developing countries.

3. Implications for right to use remedies where subsidies that do not meet conditions of agreed disciplines are maintained.

#### IV. Improvement and clarification of countervailing duty rules

##### Problem:

Without common understanding on the concept of subsidy, unilateral interpretations have resulted in uncertainty, conflict, expanded range of actionable practices, and opened door to protectionist effects. The dispute settlement process is also greatly complicated by the lack of agreed parameters for application of countervailing duties.

##### Issues to be addressed:

1. Need to define more clearly reasonable parameters for application of countervail, so as to avoid conflict over what practices can be considered countervailable subsidies.
  - Approach that would permit any and all government practices to be subject to countervail would act as barrier to legitimate trade; a narrow approach, on the other hand, would permit governments to undertake trade distorting subsidies which adversely affect interests of other Contracting Parties without fear of legitimate countervail action.
  - Countervail parameters must be consistent with form and scope of agreed subsidy disciplines, for example as regards the question of whether certain subsidy practices can be recognized a priori as having no distortive trade effects and hence excluded from application of countervail.
2. Clarification of certain other criteria used in countervail investigations, e.g. initiation procedures, definitions of key concepts, quantitative indicators, level of duty, sunset clause, public interest, standard of evidence.

#### V. Dispute settlement and Institutional Provisions

##### Problem:

More precise rules on subsidy disciplines, countervailing duties and other remedies should reduce incidence of disputes, but confidence in the system of obligations cannot be assured without a fair, transparent and effective dispute settlement mechanism and other institutional provisions. Without such confidence, the incentive for countries to abide by the agreed rules and disciplines is diminished.

Issues to be addressed<sup>1</sup>

1. Need to improve the functioning of the current dispute settlement mechanism in the area of subsidies and countervailing measures.
2. Possible establishment of multilateral mechanism, depending on agreed subsidy disciplines, to determine consistency of subsidy practices with criteria.
  - How mechanism would be triggered, i.e. complaint, self-notification.
  - Role and importance of multilateral process with respect to disciplines on third-country or import replacement subsidies, where, since countervail is not available, question of compensation/retaliation or other remedies arises.
4. Notification requirements (including role of reverse notification) in light of subsidy/countervail disciplines, including review mechanism.

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<sup>1</sup>The work being carried on and any agreement which might be reached in the Negotiating Group on Dispute Settlement will be directly relevant to this issue. This should not preclude the Negotiating Group on Subsidies and Countervailing Measures from considering aspects of dispute settlement of particular relevance to its work.