

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG10/10
22 November 1988

Special Distribution

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

MEETING OF 10-11 NOVEMBER 1988

Note by the Secretariat

1. The Group met on 10-11 November 1988 under the Chairmanship of Mr. Michael D. Cartland (Hong Kong). The Group adopted the following agenda:

- A. A possible framework for the negotiations
- B. Preparation of the report of the Chairman to the Ministerial Meeting
- C. Consideration of the proposal by Brazil (MTN.GNG/NG10/W/23)
- D. Arrangements for the next meeting of the Group

A possible framework for the negotiations

2. The Group continued its discussion of a possible common negotiating basis. It has been generally recognized that, at this stage, an agreed negotiating basis should not be too specific. It should rather be in the nature of a framework for further negotiations and allow sufficient flexibility. This framework should be broad enough to ensure full coverage of issues proposed so far but should, at the same time provide a sound basis for constructing comprehensive solutions to existing problems. There was agreement in the Group that this framework should be based on the following premises:

- (a) it should provide for improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade,
- (b) it should ensure balanced progress in elaborating these disciplines,
- (c) it should ensure effective enforcement of rights and obligations under Articles VI and XVI and should provide increased clarity and predictability as to the exercise of these rights and obligations.

Starting from these premises and on the basis of proposals made in this connection, the Chairman proposed a framework for negotiations in the

Group. After some discussion, the Group took note of this framework. The Group also noted the Chairman's intention to include this framework in Part B of his report to the Trade Negotiations Committee meeting at Ministerial level (see Annex).

3. In this connection a number of statements were made for the record. Some delegations stated that the framework could not prejudice any delegation's position nor prejudice any direction of the negotiations or their outcome. These delegations stressed the importance of issues relating to countervailing measures and reiterated their view that these issues should be given equal importance to those of subsidies, and that the negotiations should be balanced and proceed in parallel. Several delegations said that, in their view, the framework constituted guidelines for the negotiations. One participant emphasized that he perceived the framework as giving equal weight to all elements. Another participant, supported by several delegations, stated that it was his strong intention to prevent any development that would make the application of the future results of the negotiations depending on some conditions, not specifically provided for in the text. He said he was referring to preventing the situation that existed under the Subsidies Code where a sort of "conditional application" based on unilateral requirements was possible.

B. Preparation of the report of the Chairman to the Ministerial Meeting

4. The Group took note of the report that the Chairman would submit to the Uruguay Round Mid-Term Review. Part B of this report has been reproduced in the annex. Several delegations stated their understanding that the Ministers should only take note of the report.

C. Consideration of the proposal by Brazil MTN.GNG/NG10/W/24

5. The representative of Brazil introduced his delegation's proposal on issues to be taken up in the negotiations. He said that this proposal aimed at achieving such objectives as better protection of exporters against ill-founded complaints and investigations, elimination of existing ambiguities in the Subsidies Code, limitations on abusive imposition of countervailing measures and strengthening of special and differential treatment of developing countries. It dealt in particular with such issues as industry affected, like product, sufficient evidence, threat of injury, cumulation, review of countervailing measures. According to this proposal the negotiations on subsidy disciplines should be restricted to those subsidies which were directed to increase exports and therefore a clear definition of "domestic subsidy" was indispensable. The use of subsidies should not be condemned but they should be used in such a way as to avoid their adverse effects on other countries.

6. Several delegations expressed their interest in the proposal and wished to revert to it at the next meeting. A number of questions were raised regarding, inter alia, such issues as the consultation requirements, concept of differences between the social and private cost of production, issues relating to shares in world export trade during a previous representative period.

D. Arrangements for the next meeting of the Group

7. As agreed at the October 1988 meeting the Group will meet on 15-16 February 1989. Delegations are invited to begin the process of submitting concrete drafting proposals. Any such proposal received by the secretariat in time for the next meeting, i.e. not later than 20 January 1989, will be considered at that meeting. Delegations which would prefer to have a preliminary discussion of specific proposals which they intend to table later in the Group are requested to submit a paper or papers outlining their problems in time for the next meeting. This procedure will also apply to future meetings until the summer recess. Subsequently, the secretariat will prepare a consolidated paper containing all specific drafting proposals submitted between now and the end of June 1989, which may assist participants in the negotiation of these proposals. There is no cut-off date for submitting specific drafting proposals and the consolidated paper will be updated from time to time.

ANNEX

The framework outlined below has been developed from the discussions in the Group. It is intended to guide in a balanced way the conduct of negotiations in the Group with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade. The framework does not anticipate or prejudice any specific outcome of the negotiations and cannot prejudice the detailed negotiating positions of any participant on any issue. It is flexible and further issues may be added to it in the course of the negotiations. Further progress in the negotiations will depend on the submission of specific drafting proposals, as provided for in the Negotiating Plan.

Framework for Negotiations

1. Prohibited subsidies

1.1 Identification

1.1.1 Normative criteria (e.g. export subsidies - illustrative list)

1.1.2 Other criteria (e.g. quantitative)

1.2 Remedies (countermeasures, compensation, conditions of application, multilateral surveillance)

2. Non-prohibited but countervailable or otherwise actionable subsidies

2.1 Conditions for countervailability or actionability

2.1.1 Definition (examples of issues to be considered: charge on the public account, preferentiality, specificity, so-called new practices) and calculation of the amount of a subsidy

2.1.2 Trade effects

2.1.2.1 In the market of the importing country (examples of issues to be considered: determination of injury including the question of cumulation and of minimum market share, causal link, definition of industry)

2.1.2.2 In the market of the subsidizing country (examples of issues to be considered: nullification or impairment, other aspects of import substitution)

- 2.1.2.3 In the third country market (examples of issues to be considered: displacement, serious prejudice)
- 2.2 Remedies
 - 2.2.1 Countervailing duties (examples of issues to be considered: standing of petitioners, initiation and conduct of investigation, imposition and duration of countervailing measures, undertakings, sunset clause, amount of duty, circumvention)
 - 2.2.2 Countermeasures and/or compensation (nature, conditions of application, multilateral mechanism)
- 3. Non-countervailable, non-actionable subsidies
 - 3.1 Conditions for non-countervailability, non-actionability
 - 3.1.1 Definition (examples of issues to be considered: general availability, non-preferentiality, no trade effects)
 - 3.1.2 Other conditions (e.g. specific purpose, strict time-limits)
 - 3.2 "Special safeguard" procedures
- 4. Special and differential treatment for developing countries
- 5. Notifications and surveillance
- 6. Dispute settlement