

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG10/W/10/Rev.2

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Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Subsidies
and Countervailing Measures

ISSUES PROPOSED FOR NEGOTIATIONS

Note by the secretariat

Revision

1. Following the fourth revision of MTN.GNG/NG10/W/9, the secretariat has prepared a revised version of MTN.GNG/NG10/W/10. The present note 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 have had in proposing these issues, nor does it indicate the way in which they intend to approach them.

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. Furthermore the listing of issues is without prejudice to additional or new issues being raised in the course of the negotiations.

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 provisions on subsidies and countervailing measures are 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.
8. Emphasis on the law-making task of the Negotiating Group and primacy of addressing the basic and underlying issues of the present provisions.

* 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.

II. DEFINITIONS AND CONCEPTS RELATING TO SUBSIDIES

A. Definition of a subsidy

1. Criteria to determine the existence of a subsidy (e.g. financial charge incurred by a government on behalf of a beneficiary, practices that benefit specific industries).
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. Treatment of targeting and other industrial policy measures that affect trade.
5. Treatment of so-called natural resource subsidies.

B. Prohibited subsidies

1. Prohibited export subsidies.
2. Other prohibited subsidies (primary product subsidies, domestic subsidies).

C. Actionable subsidies

1. Countervailable subsidies: definition and/or criteria (e.g. specificity, trade-distorting effects).
2. Other actionable (under track II) subsidies (illustrative list?).

D. Non-actionable subsidies

1. Definition (e.g. subsidies 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, effective subsidy rate equal to zero).
2. Illustrative list (e.g. generally available measures, certain types of regional subsidies, structural adjustment subsidies and input subsidies).

III. DISCIPLINES ON SUBSIDIES

A. Prohibition

Criteria to prohibit certain subsidies (normative, e.g.: all export subsidies, all domestic subsidies affecting agriculture; other criteria

e.g.: subsidies exceeding specified size or amount, subsidies to industries that are significantly engaged in exporting).

B. Serious prejudice

1. Definition of serious prejudice and/or criteria and multilateral procedures 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. 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. Multilateral surveillance of the application of remedial measures
4. Utility of the "serious prejudice" concept as a basis for future work.

C. Subsidies other than export subsidies

Rights and obligations regarding the use of subsidies other than export subsidies, in particular concerning:

- (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 or from the domestic market of the subsidizing country,
- (d) industrial targeting,
- (e) natural resource subsidies.

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

D. Export subsidies on primary products

1. Clarification of the "more than an equitable share" rule and criteria for its effective application.
2. Application of the provisions of Article 9 of the Code to primary products.

(See also Part III:A)

E. Export subsidies on non-primary products

1. Rights and obligations under Article 9 of the Code, in particular regarding export subsidies in the case of processed products containing primary components.
2. Review of the Illustrative List (export financing, border tax adjustments for indirect taxes).

(See also Part III:A and Part IX).

F. Notifications

1. Definition or common understanding of notifiable subsidies.
2. Objectives and procedures associated with the notification requirement, in particular:
 - (a) detailed guidelines on the contents, form and frequency of notifications,
 - (b) transparency (e.g. more specific information on objectives of subsidies, type, possible conditions attached),
 - (c) procedures and mechanisms for the examination and surveillance of subsidies that affect trade.

IV. MEASUREMENT OF THE AMOUNT OF A COUNTERVAILABLE SUBSIDY

Criteria for the calculation of the amount of a countervailable subsidy ("cost to government" versus "benefit to the recipient").

V. DETERMINATION OF THE EXISTENCE OF MATERIAL INJURY

1. Definition of the term "domestic industry" (Article 6:5), in particular in countervailing duty investigations involving processed agricultural products or measures.
2. Clarification of the term "a major proportion" (Article 6:5).
3. Definition of the term "like product" (Article 6:1), in particular in the context of the treatment of parts and components of finished products subject to countervailing duty investigations or measures.
4. Criteria for the determination of the existence of material injury (e.g. minimum market share or threshold of market penetration below which there would be a presumption of absence of material injury).

5. Causal link between subsidization and injury.
6. Cumulative injury assessment within and across the Codes.
7. Threat of material injury (criteria, applicability).

VI. DEFINITION OF SALE

Definition of the expression "introduced into the commerce of another country" (Article VI:1 of the General Agreement).

VII. INITIATION AND CONDUCT OF COUNTERVAILING DUTY INVESTIGATIONS

A. Initiation of countervailing duty investigations

1. Clarification of the term "the industry affected" on whose behalf a countervailing duty investigation may be initiated (Article 2:1).
2. Verification of the standing of domestic parties to file countervailing duty petitions.
3. Evidence required for the opening of a countervailing duty investigation (Article 2:1).
4. Ways to secure the interests of exporters in cases of unfounded countervailing duty investigations.
5. Simultaneous initiation of anti-dumping and countervailing duty investigations of imports of the same product from a particular country.
6. Consultations in terms of Article 3:3.

B. Conduct of countervailing duty investigations

1. Scope of information required for the conduct of countervailing duty investigations.
2. Determinations made on the basis of the best information available (Article 2:9).

VIII. IMPOSITION AND DURATION OF COUNTERVAILING MEASURES

A. Imposition of countervailing measures

1. Principle laid down in Article 4:1 that the imposition of countervailing duties should be permissive; "public interest" clause.

2. Principle laid down in Article 4:1 that the 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. De minimis subsidies.

4. Marginal suppliers.

B. Undertakings

Criteria for the acceptance or refusal of offers of undertakings (Article 4:5).

C. Duration, review and revocation of countervailing measures

1. Rules for periodic reviews of countervailing measures and their termination when no longer warranted.

2. "Sunset" clause.

D. 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.

E. Diversory practices in the countervailing duty area

IX. DEVELOPING COUNTRIES

A. Export subsidies granted by developing countries

1. Special and more favourable treatment regarding export subsidies granted by developing countries on non-primary products.

2. Application of Article 14 to more advanced developing countries and to economic sectors in which an industry in a developing country is internationally competitive.

3. Operation of Article 14:5 and the use of Article 19:9 in relation to Article 14:5.

4. Commitments and scheduled phase outs of commitments.

5. Submission of commitments to multilateral surveillance and dispute settlement in the event of an inconsistency.

6. Special and more favourable treatment regarding export subsidies granted by developing countries on primary products. Concessions regarding the displacement effect and to new suppliers.

B. Countervailing measures on imports from developing countries

1. Treatment of subsidies subject to commitments made under Article 14:5.
2. Undertakings.

X. DISPUTE SETTLEMENT

1. Examination of possible improvements of the dispute settlement mechanism of the Code in light of the work of the Negotiating Group on Dispute Settlement.
2. Special strengthened GATT procedure for subsidies disputes including rights to compensation and no-proof of adverse effects in case of prohibited subsidies.