

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

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Group of Negotiations on Goods (GATT)

Negotiating Group on Subsidies  
and Countervailing Measures

MEETING OF 27 APRIL 1989

Note by the Secretariat

1. The Group met on 27 April 1989 under the Chairmanship of Mr. Michael D. Cartland (Hong Kong). The Group adopted the following agenda:

- A. Continuation of the discussion of proposals made by participants;
- B. Discussion of issues contained in the framework for negotiations (MTN.TNC/7(MIN), pages 18-20) including specific drafting proposals;
- C. Other business including arrangements for the next meeting of the Negotiating Group.

Continuation of the discussion of proposals made by participants

2. The Group continued its discussion of the proposal submitted by Brazil in MTN.GNG/NG10/W/24. Many delegations shared the approach to a number of points in this proposal. They supported the need for stringent conditions for initiation of an investigation, including such issues as sufficient evidence and consultations. They also associated themselves with the demand for restrictive interpretation of the term "domestic industry" and "like product". Some participants stressed the need for strengthened injury requirements and considered that the practice of cumulative injury assessment should be abandoned. They supported the idea of excluding marginal suppliers and de minimis subsidies from any injury consideration. Strong support was also given to the general adoption of a sun-set clause. Many participants considered that this proposal helped to restore certain symmetry in approaching negotiating issues.

3. Some other participants said that the proposal was unbalanced in the sense that it focused mainly on issues relating to countervailing measures while shunning disciplines on subsidies. They considered that not only export subsidies but also other trade-distorting subsidies should be covered by the negotiations with the view of improving disciplines. Several participants considered that export subsidies on primary and non-primary products should be subjected to the same disciplines. A view was expressed that subsidies which did not have trade-distorting effects should be excluded from increased disciplines but any such exclusion should

be subjected to stringent criteria. Several participants expressed their doubts as to whether objectives of a subsidy programme were a sufficient criterion to classify it as non-actionable. A participant reiterated its position that countervailing measures were the most effective instrument to counter injurious subsidization, and therefore increased disciplines on countervailing duties could only result from increased disciplines on subsidies.

4. Some participants stressed the importance of special and more favourable treatment for developing countries with respect to both subsidies and countervailing duty proceedings. Another view was that there was a need for greater integration of more advanced developing countries and advanced industries into the subsidy disciplines.

#### Discussion of issues contained in the framework for negotiations

5. One participant commented on some issues relevant to section 2.1.2.3 of the framework, relating to actionable subsidies in third country markets. The basic question he raised in this context was whether the legal concept of "serious prejudice" could be elaborated in a manner that would provide more effective disciplines over trade distorting practices. If so, one approach would be to leave the determination of serious prejudice in the hands of a panel but to endow it with some operationally effective criteria capable of giving the panel a basis to identify clearly those subsidy programmes and their effects that were highly trade distorting. These criteria could be developed starting with such practices or concepts as open-ended subsidization programmes, export-generating subsidies, market capture, price suppression, price undercutting and special factors. If it was possible to devise effect-oriented rules using reliable criteria, it would be also desirable to give panels an appropriate guidance on a range of remedial instruments to offset seriously prejudicial effects. For example, in case of open-ended subsidy programmes, a panel could recommend a limitation to the subsidy programme; in case of export-generating subsidies, a panel could recommend a reduction in the amount of exports with discretion to set appropriate level; in case of market capture/price suppression and undercutting, a panel could recommend reducing the level of output benefitting from the subsidy or reducing the level of subsidy to eliminate a price undercutting margin. Regarding import displacement, one approach would be to take advantage of the existing concept of GATT tariff concession obliging maintenance of the conditions of competition which existed at the time of their negotiations. One could consider, in this relation, a possibility of a balancing concession for a particular undertaking on a domestic subsidy in the form of the exemption of such a subsidy from any countervailing duty action or any serious prejudice case by the principal beneficiary of that undertaking.

6. Several other delegations also referred to the issues contained in paragraph 5 above. One participant stressed the need to work out objective and verifiable criteria to discipline subsidies other than those covered by an illustrative list. He also considered that any effective approach would

need to ensure that disciplines and remedies cover the additive effect of domestic subsidies. Another participant said that one of the most important tasks of the Group was to find effective disciplines on domestic subsidies and an appropriate enforcement mechanism for these disciplines. This could include a possibility for a country to take unilateral measures against prohibited subsidies which measures could subsequently be subject to a multilateral review. He had some doubts regarding the effective use of the concept of serious prejudice which he found too weak and ambiguous. Some other participants said that in working out improved disciplines, one should not lose sight of social and economic justifications for the use of domestic subsidies. These were particularly important in the case of developing countries given their development requirements and complex questions of competition, domestic market and price distortions.

#### Arrangements for the next meeting of the Group

7. The Group agreed that, bearing in mind the objective of completing the negotiations by the end of 1990, it should intensify the negotiating process. A number of participants indicated their intention to submit shortly specific proposals on various issues in the framework. The Group will meet on 28-29 July 1989 and subsequent meetings should take place towards the end of September, in October in conjunction with the meeting of the Committee on Subsidies and Countervailing Measures, and towards the end of November.