

**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 28-29 JUNE 1989

Note by the Secretariat

1. The Group met on 28-29 June 1989 under the Chairmanship of Mr. Michael D. Cartland (Hong Kong). The Group adopted the following agenda:

- A. Discussion of specific proposals on various issues in the framework for negotiations;
- B. Other business:
 - (i) Uruguay Round and the least developed countries
MTN.GNG/W/14/Rev.1, MTN.GNG/W/15 and MTN.GNG/19;
 - (ii) Continuation of the discussion of proposals made by participants (Proposal by Brazil MTN.GNG/NG10/W/24);
 - (iii) Arrangements for the next meeting of the Group.

Discussion of specific proposals on various issues in the framework for negotiations

2. The Group had before it a substantive proposal by Canada (MTN.GNG/NG10/W/25) based on the framework for negotiations (MTN.TNC/7(MIN), pages 18-20). In introducing this proposal the representative of Canada said that it should serve a dual purpose. First it would set out Canada's initial views on the issues under negotiation, in a balanced, comprehensive way. Second, by putting forward an integrated proposal that addressed each heading of the framework, Canada expected to launch the substantive phase of the work of this Group. The proposal attempted to cover comprehensively the components set out in the framework and to establish a balance between them. On the one hand, provisions had been suggested under the heading of prohibited subsidies. Together with the proposals for integrated multilateral procedures to make these provisions effective and enforceable, this would constitute a significant enhancement of direct disciplines on the use of subsidies. On the other hand, the proposal contained specific refinements to the rules regarding conditions and procedures for the application of countervailing measures. These would reduce the scope for harassment of exporters and improve predictability of international trading conditions. The proposal also aimed at obtaining clearer multilateral understanding that certain forms of government assistance were not trade distorting and should therefore not be

subject to countervail and other remedies. Furthermore, it attempted to establish a stronger basis in the GATT to resolve disputes in a timely fashion and enforce the multilateral rules.

3. The Canadian initiative was generally welcomed by the Group. Some participants stressed that although they had problems with specific issues or had different views on them, they appreciated the balanced approach and the comprehensive nature of the proposal. They also supported the multilateral character of the system outlined in the proposal and the important role of the dispute settlement in the remedy mechanism. It was stressed that detailed elements would be appreciated in the light of their workability and political acceptability. A view was expressed that better disciplines on subsidies were conditio sine qua non improvement of disciplines in other areas.

4. A number of comments were made on proposals relating to the category of prohibited subsidies. Some participants strongly supported the proposed elimination of exemption for primary products from export subsidy prohibition. Some other participants noted that this problem involved primary agricultural products and recalled their position that they would discuss issues relating to agriculture only once the Negotiating Group on Agriculture had completed its work on those issues. Several delegations agreed with the need to prohibit other subsidies having strong direct and negative trade effects while some participants said that the objective should be to increase disciplines to avoid such effects and not to prohibit subsidies per se and that this problem would require serious discussions before any engagement could be taken. A number of questions were raised regarding the implications of converting the illustrative list into a definitive list, rationale for singling out problems relating to paragraphs (h), (i) and (j) of this list and proposed criteria for prohibiting some other subsidies. Several participants expressed their concern about creating a category of prohibited trade related subsidies since such a category could cover a range of programmes with important social and development objectives. It was also unclear to what extent such a category had already been covered by disciplines of Article III:4 and XVI:4. Some participants indicated that any prohibition of domestic subsidies should not apply to developing countries given the importance of these subsidies for their economic development. A view was expressed that as domestic subsidies were generally recognized in economic theory to be a more appropriate instrument of protection than tariffs, there was no economic justification to prohibit them when nobody had ever proposed in the GATT to prohibit the latter. Many participants welcomed the multilateral approach to the question of remedies for this category of subsidies. Some doubts were expressed regarding the modalities of compensation (who would pay whom) and the idea of taking remedial action involving other, non-subsidized products.

5. A number of delegations supported the concepts of specificity and of financial contribution by the government as a basis for defining actionable subsidies. They also welcomed the idea that predictability could further

be enhanced by agreement on the treatment of particular types of subsidies. Regarding subsidy effects, several participants endorsed a de minimis standard that would reduce the application of countervailing duties in cases where the amount of the subsidy was below certain percentage level. They also endorsed the proposal that cumulation should not be mandatory and that a country might be excluded from the scope of investigation if its market share was negligible. A number of comments were made on the concept of countervailing only the difference between the subsidy on imports and the subsidy on domestic production of the like product. Some participants welcomed it, some others were concerned that such an approach might freeze the existing level of subsidization and that it was based on a disputable concept that equal subsidies had equal effects. As to the effects of subsidies in the market of the subsidizing country or in third country markets a number of questions were raised regarding proposed criteria, e.g. how could a maximum level of subsidization be calculated, as of what level one could establish a prohibition and as of what level a simple presumption of negative trade effects. It was also pointed out that in many cases there was no causal relationship between the level of subsidization and the magnitude of trade effect. Several delegations indicated that a more effective mechanism was necessary to ensure better disciplines in this area.

6. Many participants supported proposals regarding verification of the standing of petitioners, definition of "major proportion of the domestic production", general introduction of a public interest clause and of a sunset clause. Some delegations expressed their disagreement with the proposal to expand the definition of industry to cover input producers in the case of processed agricultural products. Several delegations welcomed the proposal to subject undertakings to a review and to a sunset clause. As to the question of the calculation of the amount of a subsidy, several participants indicated their preference for the "cost to the government" approach while one participant reiterated its attachment to the "benefit to the recipient" method.

7. A number of delegations agreed that the basis for non-actionability should be the general availability concept. Several questions were raised on specific types of subsidies proposed for inclusion into the category of non-actionable subsidies. Some participants considered that this proposal was too limited and that the criteria underlying the selection of these types of subsidies were unclear. Some other participants said that the question of non-actionability required further discussions and that a balance had to be found between social and economic objectives and the need to avoid any trade distorting effects. It would also be necessary to work out precise criteria to demonstrate that a non-actionable subsidy was effectively related to a particular objective, was time limited and gradually reduced. Several participants were not clear whether the proposed safeguard procedure was limited only to a possibility to seek a prior ruling from a multilateral body on the nature of a subsidy or whether some other mechanisms were envisioned. A view was expressed that special safeguard procedures could reduce benefits resulting from the establishment of the category of non-actionable subsidies.

8. Several participants welcomed the proposal on special and differential treatment but considered that it should be expanded beyond what seemed to be generally applicable rules or benefits. It was pointed out that many subsidies were closely related to development programmes and therefore any new rules on subsidies should provide adequate flexibility for developing countries in this respect. It was also pointed out that some programmes should not be countervailable and even less prohibited. A reference was made, in this context, to such programmes as compensatory payments, export credits at rates equal or above the rates prevalent in international capital markets, rebate of prior stage cumulative indirect taxes on goods or services not physically incorporated.

9. Many delegations stressed the importance of the proposed dispute settlement mechanism and welcomed the emphasis on multilateral character of this mechanism. Some delegation recalled that this issue was under consideration in another Group and it remained to be seen to what extent these discussions would be relevant for this Group and whether there would be a need to have a special dispute settlement mechanism for subsidies/countervailing measures area. A number of comments were made on the proposal to establish a standing multilateral body for prior ruling on the nature of a subsidy programme. These comments concerned the legal nature of these rulings, the relationship between this body and a dispute settlement panel and the consistency of this new mechanism with the GATT.

10. The representative of Canada suggested that delegations which had posed specific questions, might wish to submit them in writing as this would help him in responding to these questions at an appropriate time. He recognized that certain aspects would require elaboration through discussion in the Group and that could best occur as participants get into a more detailed discussion of various elements of the framework. He stressed that one of the purposes of the proposal was to promote participants' joint thinking. He wished to associate himself with two general comments in particular. First that efforts on disciplines, both on subsidies and on countervailing duties must be both real and workable. Second, that all of the Group's agenda should be based on a balanced approach and should move forward in parallel.

Other business

(i) Uruguay Round and the least developing countries

11. The Chairman drew the Group's attention to the letter from the Chairman of the Group of Negotiations on Goods and to proposals contained in documents MTN.GNG/W/14/Rev.1 and W/15. He expressed his hope that the members of the Group would take account of these proposals while preparing their submissions under the framework.

(ii) Continuation of the discussion of proposals made by participants (Proposal by Brazil MTN.GNG/NG10/W/25)

12. One participant said that the Brazilian proposal, although relating only to countervailing duty questions, contained a number of interesting suggestions. She supported those concerning criteria for initiation of

investigation, definition of industry, sufficient evidence, burden of proof, strengthened causality and cumulation. She also stressed the need to provide for improved subsidy disciplines and referred, in particular, to subjecting export subsidies on primary products to the same disciplines as those relating to non-primary products.

(iii) Arrangements for the next meeting of the Group

13. As agreed at the meeting of 27 April 1989 the next meeting of the Group will be held on 26-27 September 1989. At that meeting the Group will continue its discussion of specific proposals on various issues in the framework for the negotiations. The Group will also revert to the Canadian submission and will discuss any new specific proposals on issues from the framework, submitted in time for that meeting. At its April meeting, the Group agreed that bearing in mind the objective of completing the negotiations by the end of 1990, it should intensify the negotiating process. At that time a number of participants indicated their intention to submit shortly specific proposals. This intention was confirmed at this meeting. Delegations which intend to submit proposals have been requested to do this in good time before the meeting so that the Group could have a good basis for its work in the autumn. The Group has scheduled, in addition to the September meeting, two more meetings in the autumn: 19-20 October and 30 November-1 December.