

**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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ELEMENTS OF THE FRAMEWORK FOR NEGOTIATIONS

Submission by Japan

In line with the Framework for Negotiations which was agreed upon by Ministers at the Montreal meeting, the Government of Japan submits the following proposal to the Negotiating Group on Subsidies and Countervailing Measures, with a view to facilitating the negotiations in the Group. Japan wishes to reserve its right to submit further proposals to the Group, at an appropriate stage, during the course of the discussions. Since Japan believes that the agricultural subsidies, including subsidies on products of forestry and fishery, should be primarily negotiated in the Negotiating Group on Agriculture, the following proposal covers subsidies other than agricultural subsidies.

I. Prohibited subsidies

A. Identification

Prohibited subsidies are identified as follows:

- (i) Export subsidies: the illustrative list of prohibited export subsidies in the Annex of the Subsidies Code should be converted to a definitive list by excluding practice in (1) of the list. This definitive list should be treated as an exhaustive one.
- (ii) Domestic subsidies: subsidies contingent upon the use of domestic over imported goods or upon production performance, which involve a financial contribution by government, should be prohibited, since these two types of subsidies are considered to have obvious, direct and serious trade-distorting effects. This prohibition does not apply to the subsidies described in III.B below.

Quantitative criteria¹ for the prohibition of subsidies shall not be adopted for the reasons that the causal link between subsidies and the trade-distorting effects cannot be always clearly established and that subsidies are legitimate instruments for the promotion of important social and economic policy objectives.

¹Quantitative criteria include the notions of a certain export percentage of production and a certain level of subsidization above which subsidies should be prohibited.

B. Remedies

- (i) When a multilateral panel established in accordance with the dispute settlement procedures of the Subsidies Code presents its affirmative rulings on the existence of prohibited subsidies, the Committee may recommend, as a solution to the dispute, the withdrawal of the prohibited subsidies. In the event that withdrawal does not occur within a reasonable period of time, the Committee may recommend the provision of compensation or other effective countermeasures.
- (ii) Apart from the above-mentioned remedies, countervailing duties can be levied against prohibited subsidies in accordance with the relevant procedures despite the provisions in II.A(i) and (iv) below.

II. Actionable subsidies

A. Conditions for countervailability

The following are conditions for countervailability. All subsidies other than non-actionable subsidies, in which the specificity and the financial contribution by government exists, can be subject to countervailing measures regardless of their policy objectives:

- (i) The existence of specificity: in determining the existence of specificity, the "Draft Guidelines for the Application of the Concept of Specificity in the Calculation of the Amount of a Subsidy other than an Export Subsidy" should be applied.
- (ii) The existence of a financial contribution by government: the existence of a financial contribution by government is defined as the existence of government expenditures or foregone revenues. (This definition should not be interpreted to amend the supplementary provisions of Article XVI of GATT.)

It is, therefore, inappropriate to extend the concept of subsidy to include measures which do not involve government expenditures, since it will extend the range of countervailing measures and may lead to their abusive application.

- (iii) Government provision of equity capital, which is mentioned in Article 11:3 of the code as a possible form of subsidies, should be considered countervailable only if the equity would not achieve an adequate long-term return. In the case of a government loan, loan guarantee or loan insurance, the existence of government expenditures should be determined based on the government's borrowing rate.
- (iv) De minimis standard: where the amount of subsidy per unit is less than X per cent of the ex-factory price of a product, the subsidy in question should be exempted from countervailing measures, since its trade-distorting effects (promotion of exports, import substitution and third-market substitution) are negligible.

B. Remedies

Article 11 of the Subsidies Code recognizes that subsidies other than export subsidies are legitimate instruments of social and economic policy, whereas these subsidies may have a trade-distorting effect. It is therefore inappropriate to prohibit subsidies across the board, except for prohibited subsidies, as specified in section I.A. above. Appropriate remedies should be elaborated according to the different types of trade effects (promotion of exports, import substitution and third-market substitution) with a view to reducing or eliminating those effects.

While difficulties faced in the market of the importing country can be addressed by imposing countervailing duties, they do not provide effective solutions in the cases of adverse effects in the market of the subsidizing country or in a third country market. In this context, the Government of Japan proposes the following remedies:

- (i) When the importation of goods receiving actionable subsidies is causing or threatening material injury, the countervailing duties may be imposed. The amount of duty should not exceed the amount of subsidy. Nevertheless, where the domestic industry in the importing country is receiving the same kind of subsidy, the investigating authority should take account of this fact in determining the amount of duties. A countervailing duty should be terminated after five years from the date of the imposition. However, the authorities concerned may review the situation and designate, if necessary, the extension of the imposition of the duty within the maximum period of three years.
- (ii) Concerning the injury suffered in a third country market or import displacement in the subsidizing country, appropriate remedies may be taken through the dispute settlement mechanism. As far as the effects in a third country market are concerned, introduction of the provisions similar to Article 12 of the Anti-Dumping Code would be considered.

III. Non-actionable subsidies

Non-actionable subsidies should be:

- (i) Generally available subsidies; and
- (ii) Specific subsidies with significant social or economic policy objectives listed in (a) through (c) in B. below.

A. The determination of general availability of a subsidy should be made in accordance with the "Draft Guidelines for the Application of the Concept of Specificity in the Calculation of the Amount of a Subsidy other than an Export Subsidy" and with the following criteria: A subsidy should be regarded as generally available, if such a subsidy is available to all

enterprises belonging to all industries, or to industries classified in such terms as manufacturing or mining sector, and determination of the eligibility of the recipient are based on neutral conditions, such as the level of employment opportunity, population or income in certain regions.

B. The following types of subsidies should also be non-actionable since they have significant social or economic policy objectives even though they are not generally available.

(a) Structural adjustment subsidies:

Subsidies provided for the purpose of optimum allocation of resources from the long-term viewpoint by means of smooth scaling-down of the industries that have lost comparative advantage. The applicable criteria are:

- Subsidies to promote exist from the business; or
- Subsidies to facilitate soft landing of industries following a definite scaling down programme with the time-limit of X years in order to deal with such problems as immobility of labour (e.g. promotion of reduction of production scale, special measures including retraining programme for the unemployed).

(b) Research and development subsidies:

Subsidies provided to promote research and development projects which cannot be expected to progress through private efforts alone. Participation to the subsidized projects and access to their results must be equally open to domestic and foreign enterprises.

(c) Regional Development Subsidies:

Subsidies provided to make efficient use of human and material resources in less developed regions. The criteria for determining whether a certain type of subsidy is covered by this category are whether it encourages new business activities to take place in a relatively less developed region of a country, and whether its amount is within the limit of offsetting the disadvantage of carrying out business activities in the region.