

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED
MTN.GNG/NG10/14
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Special Distribution

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

MEETING OF 19-20 OCTOBER 1989

Note by the Secretariat

1. The Group met on 19-20 October 1989 under the Chairmanship of Mr. Michael D. Cartland (Hong Kong). The Group adopted the following agenda:

- A. Framework for the negotiations: discussion of issues in specific proposals from participants.
- B. Arrangements for the next meeting of the Group.

A. Framework for the negotiations: discussion of issues in specific proposals from participants

2. The Group continued its discussion of various issues from the framework on the basis of proposals made in MTN.GNG/NG10/W/25, W/26 and W/27. Most participants considered that injury determination was a conditio sine qua non for countervailing measures. Some delegations expressed the view that the injury threshold should be strengthened and that the causality link between subsidized imports and injury should be clearly established. They also considered that comprehensive criteria should be worked out to ensure that injury was really material. It was pointed out that in the absence of such criteria and of detailed information on how injury had been determined, it was often impossible for the exporting country to rebut the finding of injury. A view was expressed that it should be up to the petitioner to prove that it had been suffering injury. A number of comments were made on the question of cumulation. Several participants considered that cumulation should be prohibited, some others were of the view that it should not be mandatory and that in no case marginal suppliers with a small market share or de minimis subsidy should be included in an investigation. Market shares of 3-4 per cent or 5 per cent were mentioned as possible de minimis shares below which there should be presumption of the absence of injury and, consequently, no investigation.

3. Some participants said that cumulation of subsidized imports was not a harassment but an economic necessity. Indeed, if injury was caused by subsidized imports, it was irrelevant whether these imports originated in

one or many sources. They also considered that the proposed minimum shares were not acceptable and that, in general, mechanical criteria were not workable as they did not allow to capture the reality of the dynamic environment. They further said that injury determinations should be based on various factors, which should be applied on a case by case basis. One participant explained that criteria of price suppression or lost sales and reduced profits should be considered as minimum requirements for every injury determination.

4. Some participants welcomed the idea of a "net subsidy" approach as proposed in MTN.GNG/NG10/W/25. They considered that this approach would ensure more equitable disciplines and might discourage industries from bringing frivolous cases. They also pointed out that in a situation where both the exporting and the domestic industry were subsidized, it was the difference between the respective levels of subsidies that was giving unfair advantages. Some other participants did not agree with this approach. They pointed out a number of complications for the administrative process (such as determination of the existence and nature of the domestic subsidy, calculation of its amount, lengthening of the investigation period, etc.). A view was expressed that this approach had already been to some extent present in the determination of material injury, where conditions of a domestic industry would reflect the fact that it had been receiving a subsidy. Another view was that one of the effects of the "net subsidy" approach would be to freeze the existing levels of subsidies rather than to encourage their elimination.

5. One participant explained its position that the proper method of the calculation of the amount of a subsidy was the "benefit to the recipient" approach. He considered that the injurious subsidization had to be looked at from the perspective of the industry in the importing country, i.e. the amount of benefits the competitor was receiving. For this industry the costs of the subsidizing government to obtain the funds were irrelevant; what really mattered in economic terms was the competitive benefit of the recipient. Some other participants supported the "cost to the government" approach. They pointed out that the former method could lead to abnormal results where the subsidy found would be much higher than that actually paid. It could also result in finding a subsidy where there was none. A view was expressed that although there had been, at this time, a strong difference of views, the issue was so important that the Group could not afford completing the negotiations without having an agreement on the method of calculation of the amount of a subsidy.

6. A number of participants held the view that the term "domestic industry" had been clearly defined in Article 6:5 of the Code and that this definition should be interpreted in a narrow way, i.e. not to include producers of inputs or parts and components. They also did not see any rationale for establishing different rules for producers of agricultural inputs and considered that such exceptions would constitute dangerous precedents and would lead to a significant increase in countervailing duty actions. Some other participants said that agricultural inputs were not subjected to the same disciplines as industrial inputs and if this could be

resolved it might, at least indirectly, resolve the problem of the definition of "domestic industry". They also pointed out that industries affected had a right to obtain appropriate relief, and that the practice of including, under certain strict conditions, producers of agricultural inputs into the scope of the definition was the only way to provide them with such a relief.

7. Several participants considered that the term "a major proportion of the total domestic production" in Article 6:5 of the Code should be defined in quantitative terms and suggested a threshold of 50 per cent of the value of such a production. They also considered that the investigating authority should verify that the petitioner or petitioners were actually supported by producers representing at least 50 per cent of the total domestic production and should not initiate investigation without having sufficient evidence of such a support.

8. Most participants were in favour of a sunset clause under which a countervailing duty would be terminated after five years, unless a review was requested, and in such a case the duty could be maintained for a further three years. Some participants considered that such a procedure should not prevent an earlier elimination of a countervailing duty if warranted under a periodic review, as provided for in Article 4:9 of the Code. Some other participants were of the view that, after a five-year period, any further maintenance of a countervailing duty could be possible only after a new and full investigation. A participant expressed his concern about automatic rules under a sunset clause. He said that although everybody agreed that a countervailing duty should be terminated if there was no subsidy or no injury, the reverse was also true and, therefore, as long as subsidization was causing injury, there was no reason to remove a countervailing duty.

9. The participants agreed with the proposal in MTN.GNG/NG10/W/25 concerning the question of company-specific findings for any new exporters of goods subjected to countervailing measures. There was also no objection concerning the proposal in MTN.GNG/NG10/W/25 to provide a reasonable period of time, following the initiation of any investigation, for exporters and importers to respond to any allegation and for the investigating authorities to take these responses into account. Concerning the question of undertakings, a view was expressed that the appropriate moment to propose an undertaking was after a preliminary determination of the existence of a subsidy and of injury had been made.

10. Several delegations supported the proposal in MTN.GNG/NG10/W/25 to provide procedures for formal consideration of whether the imposition of countervailing duties was in the public interest. Some other delegations voiced their concern that well-meaning attempts might have negative results, as it would be very difficult to assess what exactly public interests were and because a public interest clause might mobilize various pressure groups not necessarily acting against countervailing duties.

11. A number of participants agreed that one important aspect of strengthening the subsidy disciplines were effective remedies to adverse effects in the market of the subsidizing country and a third country market. If this mechanism was to be based on a dispute settlement procedure involving panels, there would be a need for precise criteria to be used by panels as guidelines in the determination of the existence of adverse effects and their assessment. For example, for the finding of serious prejudice these criteria could give guidance on how to determine price suppression, how to assess price undercutting, what was meant by displacement and market capture. Another view was that criteria similar to those relating to the determination of injury could be used in this context. The second important element for improved disciplines was the nature of remedies. It was proposed that if adverse effects had been found, the subsidizing country would be obliged to redress the situation. This could involve elimination or reduction of the subsidy or compensation and, finally, countermeasures affecting products traded between the subsidizing and the complaining country.

12. Some delegations said that quantitative thresholds for the existence of serious prejudice, proposed in MTN.GNG/NG10/W/25, were relatively precise and straightforward. Some other participants were against any quantitative criteria as, in their view, there was no automatic link between the level of subsidization and adverse effects, and such effects would have to be demonstrated on a case by case basis. They also considered that, if a subsidy was not prohibited, it should not be subjected to arbitrary quantitative limits and a presumption of serious prejudice. There was also some discussion of the relationship between subsidies and tariffs in the market of the subsidizing country. Some participants agreed with the concept that if a new subsidy was introduced or the existing subsidy increased after a tariff concession had been given, this would result in serious prejudice. Some other participants considered that establishing a general link between subsidies and tariffs would encounter a number of technical difficulties, in particular relating to statistical data which were often hard to obtain.

13. Some delegations were of the view that the existing experience with third country or subsidizing country market effects were very disappointing and only remedies as available as countervailing duties would be effective. Some other participants said that they objected to any unilateral remedies in this area and that a dispute settlement mechanism was the most appropriate course of action. They said that as this mechanism was under negotiation in another Group, it would be better to await the results in that Group before deciding whether this mechanism would be sufficient or would need further adaptation.

14. Some participants stressed the need for reaffirmation and maintenance of Article 14 of the Code. They said that it was often forgotten that the provisions of Article 14 had a sound economic basis, i.e. a clear recognition of the multitude of distortions faced by developing countries. Some examples of these were: inadequate exploitation of economics of scale, factor market imperfections, underdeveloped infrastructure, high

costs of inputs, fragmented capital markets, inadequate foreign exchange market and poor market infrastructure. They recognized that these distortions should be corrected as soon as possible; however, given the current level of development of a majority of developing countries, it was difficult to envisage that this could be achieved in a short span of time. They further pointed out that the existing external environment had increased uncertainty and rendered the accomplishment of certain tasks extremely risky, reducing the already low participation of the private sector. Given the lack of external financial support and the aggravated incapacity of the private sector to pursue certain goals, developing countries faced the double task of generating trade surpluses and preserving a politically and socially acceptable level of economic activity. These participants were of the view that any export promotion measures which put the exporter at par with the international norms, irrespective of the method chosen for compensation, should remain permissible for developing countries. In their view such measures merely replicated a free trade and monetary regime for the exporter, which a developing country could not, for one reason or another, adopt across the board for the entire economy. Some illustrative examples of these measures were provided: (i) the principle of providing exporters access to intermediate inputs and capital goods at international prices, net of all indirect taxes and as long as there was no excessive reimbursement; (ii) charges for internal transport and freight more favourable for exporters than for domestic shipment; (iii) grant by governments (or by specialized institutions) of export credits at rates below those which they actually had to pay for the funds so employed; (iv) compensation to overcome marketing disadvantages of new exporters.

15. Some other participants stressed the need for developing countries to participate more fully in the framework of rights and obligations in the area of subsidies and countervailing measures, and said that this would also imply proposals going in the direction of greater adherence to these disciplines by more advanced developing countries. These participants were of the opinion that the scope of special treatment would depend on the final content of the generally applicable rules and on the assessment of their appropriateness to adequately deal with special problems of developing countries. A view was expressed that such an assessment could be made on a case by case basis and if general rules would not be appropriate, then transitional rules could be applied to facilitate a fuller participation. One participant wondered whether there was anything specific for developing countries in the illustrative examples of measures given by another participant (see paragraph 14 above) and expressed his doubts as to the suitability of creating totally separate sets of rules for developed and developing countries. Many participants said that they would pay special attention to problems of the least developed countries.

B. Arrangements for the next meeting of the Group

16. As agreed at the meeting of 27 April 1989, the next meeting of the Group will be held on 30 November-1 December 1989. At that meeting the Group will continue its discussion of issues in specific drafting proposals from participants made under the framework.

17. In his concluding remarks the Chairman recalled that, as agreed by the Trade Negotiations Committee, the Group should have, by the end of this year, all positions tabled and discussed in the Group. He also recalled that, as the next meeting of the Group was to be the last in 1989, the participants which intended to submit their proposals should do so in time for that meeting.

18. The Group agreed on a calendar of its meetings for the first five months of 1990. The dates of meetings are as follows: 20-21 February, 27-28 March and 30 April and 1-2 May 1990. This calendar does not exclude additional meetings if such a need arises.