

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Negotiating Group on Subsidies
and Countervailing Measures

ELEMENTS OF THE FRAMEWORK FOR NEGOTIATIONS

Submission by the Nordic Countries
(Finland, Iceland, Norway, Sweden)

1. INTRODUCTION

The objective of the Nordic countries in the negotiations is to achieve more clear and stricter disciplines both on subsidies and countervailing measures in the 1979 MTN Agreement (the SCM Agreement). This should lead to a substantial reduction of trade distorting subsidies.

The Nordic countries consider that the achievement of the desired results would necessitate, in the first place, an essential strengthening as well as clarification of the disciplines both on domestic and export subsidies. The basic precondition for this is an effective transparency regarding the subsidy programmes and practices of various signatory countries. That purpose could be achieved through a more efficient notification and multilateral surveillance procedure.

The Nordic countries consider that two areas where the present disciplines are not sufficient are subsidization on third country markets and in cases of import displacement. The new rules should offer effective disciplines as well as remedies in those cases.

As regards the countervailing side a central problem is how to define the cases where unilateral countervailing action can be taken. The interpretation of the provisions of the SCM Agreement has caused difficulties and led to disputes in a number of cases. Practical subsidization situations have appeared where the SCM Agreement does not contain relevant and effective provisions. The Nordic countries propose to clarify, to supplement and to amend the rules of the SCM Agreement in order to eliminate the causes of the disagreements and to provide rules for the unsolved situations.

Despite such clarification it must be assumed that all possible disputable cases cannot be foreseen in the Agreement. To achieve speedy and reliable solutions in cases where clear GATT rules are missing, as well as in other disputes an increased rôle and more responsibility should be given to the dispute settlement procedure, which needs to be made more effective.

The present submission contains the Nordic countries' comprehensive proposals on these fundamental issues, as well as on a number of other questions.

As agricultural subsidies are negotiated in the Negotiating Group on agriculture the Nordic countries will not address those subsidies in this paper. This submission does not prejudice the Nordic position on agricultural subsidies.

2. THE THREE CATEGORIES

The MTR framework for negotiations contains the classification of subsidies into the three subsidy categories: prohibited, actionable and non-actionable. As for criteria for the classification of various kinds of subsidies in these three categories and as for remedies against subsidies within different categories the Nordic countries' proposals are set out below.

2.1 Prohibited subsidies

Subsidies should be considered as prohibited if their direct or main purpose in practice is to create unfair competitive advantages for export products of the subsidizing country. Such prohibited export subsidies could be e.g. direct subsidies to export products, remission of indirect taxes above the level charged on domestic sales of like products, remission of direct taxes or social welfare charges calculated in relation to export products and export credit guarantees at charges manifestly below cost.

An improvement of the present subsidy discipline would require that countervailing measures without an injury test would be permitted in the case of prohibited subsidies. However, the provisions of Article 2 should continue to apply insofar that there should be an investigation to establish the existence of a subsidy. The investigation should normally be initiated on request by the industry affected and supported by evidence of the existence of a subsidy. Also Article 3 regarding consultations should apply in respect of prohibited subsidies.

Countervailing without an injury test would however require stricter disciplines and safeguard mechanisms. The Nordic countries propose that the provision in Article 3 regarding consultation should be strengthened. The proposal is further elaborated in chapter 6 below.

The Nordic countries also see the development of more effective dispute settlement mechanisms as a precondition for abolishing the injury test for prohibited subsidies. The Nordic countries' ideas and proposals regarding dispute settlement are contained in chapter 12 below.

The criterion regarding a net transfer of funds, as set out on page 6 below, would apply.

The Nordic countries consider that the illustrative list of export subsidies should form the basis for a list of prohibited subsidies. This list would not contain any domestic subsidies, because the prohibited subsidies would give the right to countervail without injury test. The list of prohibited subsidies should be exhaustive and not open ended, therefore item 1) should be deleted from the illustrative list.

The list of prohibited subsidies should be dynamic, in the sense that the SCM Committee should review it regularly and be authorized to amend it.

2.2 Non-actionable subsidies

Subsidies should be considered as non-actionable i.a. provided that they are generally available. The Nordic countries support the draft recommendation on the concept of specificity in the calculation of the amount of a subsidy other than that of an export subsidy, which has been presented by the Group of Experts on the Calculation of the Amount of a Subsidy to the SCM Committee.

Examples of generally available, non-actionable subsidies would be aid in the form of general public services to trade and industry on terms and conditions not favouring certain sectors and enterprises, general aid to export promotion such as national weeks, store promotion and industrial fairs, provided that such aid is not company specific, and tax measures that are a part of the national tax legislation, available to all enterprises and uniformly applied by the country concerned.

The Nordic countries propose that a provision of the non-actionable character of generally available subsidies be included in the SCM Agreement.

Further non-actionable subsidies could also be such specific subsidies as e.g. R&D aid at pre-competitive level, aid to rationalization, provided it is accompanied by an adjustment programme, regional development aid, provided it does not interfere with conditions of fair competition, and aid for protection of the environment.

A list of non-actionable subsidies and more precise conditions for their qualifications is set out in the Annex.

2.3 Actionable subsidies

Permitted, but actionable subsidies would be the residue, not fulfilling the criteria for neither prohibited, nor non-actionable subsidies. A main criterion of actionable subsidies would be their specificity in relation to certain companies, groups of companies or sectors. The present provisions of the SCM Agreement regarding material injury and a proved causal relationship between the subsidy and the

material injury as preconditions for countervailing action would continue to apply to this category. Some examples of actionable subsidies could be aid to set against the operating losses of enterprises or injection of equity capital if it has the same effect, aid to production in sectors suffering from global overcapacity and aid as a rescue measure to individual firms.

2.4 Further proposals

The Nordic countries consider that classifying subsidies to the prohibited category logically contains the presumption of nullification and impairment, including material injury. This presumption is the basis for abandoning the injury test. However, as a counterweight the Nordic countries propose that the subsidizing country should be permitted recourse to a more effective dispute settlement procedure to prove that the subsidy in fact is not of a prohibited type.

Secondly, by the category of non-actionable subsidies it should be understood that even if Contracting Parties are negatively affected by such subsidies they are under a mutual obligation of GATT to tolerate such effects. Also in this case a certain "safety valve" may be appropriate. A Signatory or Contracting Party negatively affected should have recourse to a more effective dispute settlement procedure to demonstrate that the subsidy in fact is not of a non-actionable type. In the dispute settlement procedure it could also be assessed if the negative effects of a non-actionable subsidy in a particular case are unreasonable and if countermeasures or other compensation is appropriate.

The Nordic countries agree with a number of other countries that the normative criteria in the SCM Agreement for avoiding trade distorting subsidy programmes and for taking countervailing measures have been ambiguous and insufficient. Therefore those criteria need to be clarified and strengthened.

Furthermore the Nordic countries find very interesting the proposal to apply also quantitative criteria e.g. for classifying subsidies in the three categories, in addition and as a supplement to normative criteria. It is logical and natural that a subsidy is subject to more stringent rules, the heavier its effects in distorting international competition. However, the idea still needs a further study and elaboration in order to demonstrate the possible operability of quantitative criteria as an important element in the subsidy and countervailing disciplines. One question is if the fulfilment of the quantitative criteria would give automatic right to countervailing measures, or if the fulfilment would trigger a multilateral investigation of the case in order to decide on the appropriate remedies.

Annexes 1 and 2 to the Agreement would contain exhaustive lists of prohibited and non-actionable subsidies. Subsidies not listed in either annex would be actionable, however bearing in mind the requirement concerning material injury and a net transfer of funds from public sources

to the recipient, as set out in chapter 2.5 below. The distinction between prohibited, actionable and non-actionable subsidies would require amendments of the provisions concerning injury and causality as prerequisites for countervailing action to the effect that those provisions relate only to subsidies other than the prohibited and non-actionable subsidies.

2.5 Definition of a subsidy

In view of the difficulties inherent in defining a subsidy, it may be more fruitful to establish rules on the appropriate countermeasures against various trade distorting practices, instead of drawing in the abstract the borderline between subsidies and other measures. It may be appropriate to adapt the nature of the remedies to the nature of the trade distorting measures. The Nordic countries deem it appropriate to reserve the right to unilateral countervailing action for cases where there is no doubt that the measures in question can be qualified as subsidies. As to other measures remedies should be sought for through dispute settlement procedures.

The Nordic countries support the proposals that unilateral countervailing action under Article 4:1 of the Agreement be made conditional upon a government practice which involves a net transfer of funds from public sources to the recipient through direct subsidies or which result in tax revenues foregone through tax concessions.

Apart from the measures mentioned above there are a variety of government measures, i.e. some of the so called "new practices" with the purpose or effect of giving domestic industry a competitive edge, either on its home market or in export competition. It seems difficult to find unequivocal criteria for determining which of such measures could be qualified as subsidies and thus be countervailable.

An alternative to defining a subsidy may be to prescribe in the Agreement that unilateral countervailing action should be conditional upon a government practice involving a net transfer of funds as set out above. Other government measures, which may (or may not) have similar purposes or effects should not give the right to unilateral countervailing action. However, remedies under the multilateral procedure should be available in those cases too. Such other government measures could be made subject to the dispute settlement procedure. A further discussion of that proposal and of a more effective dispute procedure suggested in this paper is in chapter 12 below.

The introduction of those principles in the SCM Agreement would require a provision that the request for initiating a countervailing investigation shall include prima facie evidence of a subsidy, which involves a net transfer of funds from the public sources to the recipient, and if possible the amount of the subsidy.

3. MEASUREMENT OF THE AMOUNT OF A SUBSIDY

There seem to be two basic alternatives for measuring the amount of a subsidy, either the cost to the treasury or the benefit to the recipient.

It would be reasonable to presume that a subsidy cannot be bigger than the cost it causes to the public treasury. If the benefit to the recipient is bigger than the subsidy due to spillover effects, it seems doubtful if such spillover effects could be countervailable.

The Nordic countries consider the concept "the benefit to the beneficent" as such would be very ambiguous as a basis for measuring the subsidy element. In most cases such a measurement would be very difficult or impossible to implement and it would only lead to controversies. Thus it would be counterproductive to achieving improved subsidy disciplines.

The cost to the treasury of a subsidy programme is in most cases easy to calculate from the books of the treasury. If the recipient has to pay a fee to benefit from a subsidy programme the cost to the treasury is the net expenditure. The cost to the treasury of a loan programme would be the difference between the cost of government borrowing and the interest paid by the recipient. The main advantage of the cost to the treasury method is the availability of data. Therefore the Nordic countries propose that the amount of a subsidy should be calculated on the basis of its net cost to the treasury.

Furthermore the Nordic countries support the net subsidy concept, i.e. the principle that when the domestic industry in a countervailing duty investigation receives a subsidy the amount of the countervailing measures should be based on the difference between the amount of the subsidy per unit of production in the exporting and in the importing country. The Nordic countries are of the opinion that subsidies received by the industry in the importing country reduce the material injury and that such subsidies ought to result in a reduction of the countervailing measures also under the provisions of the existing SCM Agreement. However, it is important to have in the Agreement a clear provision to that effect.

4. DEFINITION OF DOMESTIC PRODUCERS AND LIKE PRODUCT

In some instances signatory countries have taken countervailing measures against imported end products at the request of domestic producers of input products. These problems have occurred even though two panels have come to the conclusion that producers of input products cannot be granted countervailing protection aimed at imports of the final product.

Therefore the Nordic countries propose introducing a provision to the effect that the concept "domestic industry" shall not be construed so as to include manufacturers of products used as inputs in the domestic manufacture of products, which are like products in comparison with the subsidized imports.

The words "on behalf of the industry affected" in Article 2:1 seem to permit different interpretations regarding the complainant's standing and authorization. In order to avoid ambiguities it may be appropriate to set out in the Agreement those who are authorized to lodge a complaint, e.g. the industry affected, a federation representing that industry, or its duly authorized representative.

Also the words "a major proportion" in Article 6:5 are ambiguous. To avoid differing understandings regarding its correct interpretation the Nordic countries propose to introduce a more than 50 per cent provision in Article 6:5.

5. CRITERIA FOR THE DETERMINATION OF THE EXISTENCE OF MATERIAL INJURY

The question of a minimum market share of subsidized imports to constitute material injury is important. This issue should be considered in connection with the first sentence in Article 6:2 and with Article 6:3. It seems difficult to establish any "hard and fast" and unconditional market share limites, because of the varying situations in different investigations. Nevertheless, the Nordic countries propose to introduce a presumptive rule that a small market share of a country, e.g. not greater than X per cent of the volume ought not to be presumed to create injury, unless the circumstances in the particular case warrant a different conclusion. Such circumstances could be e.g. a large number of exporters of subsidized products each having approximately similar market shares below the minimum limit, but whose collective market share is injurious. The countervailing country should demonstrate why a market share smaller than the general rule is considered injurious.

As de minimis subsidization would not have injurious effects, the Nordic countries also propose provisions on such subsidies under chapter 7 below.

The Nordic countries attach great importance to the question of cumulation. Assessment of material injury should be applied in a restrictive manner. When imports of subsidized products from a country have no discernible effect on the market in the importing country, then that country should be excluded from the countervailing investigation at any stage.

Article 6:4 of the present Agreement stipulates that other injurious factors must not be attributed to subsidized imports. Footnote 20 to that Article gives some examples of such other factors and mentions i.a. the volume and prices of non-subsidized imports of the product in question. Despite this provision cumulative injury assessment in respect of subsidized and dumped imports is applied. In order to clarify and strengthen GATT-disciplines a more clear rule is warranted.

Threat of injury resulting from subsidized imports is dealt with very superficially in the SCM Agreement. Only footnote 17 to Article 6:1 deals briefly with the matter. The Nordic countries propose to introduce in the

SCM Agreement a provision similar or identical to that of Article 3:6 of the Anti-Dumping Code regarding determination of threat of injury. That Article stipulates that "a determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent". The example in footnote 6 to that Article in the Anti-Dumping Code could also be transferred to the SCM Agreement. The example, which is not exclusive is that there is convincing reason to believe that there will be in the immediate future substantially increased importations of the product at dumped prices.

6. INITIATION AND CONDUCT OF COUNTERVAILING INVESTIGATIONS

An important aspect of the discipline regarding countervailing measures is the consultation provisions in Article 3 of the SCM Agreement. The Nordic countries think that also this discipline should be strengthened, e.g. by providing a moratorium for consultations. After a subsidies complaint and request for countervailing measures has been filed by domestic producers a countervailing investigation could not be initiated before an agreed time period has lapsed. That time period would allow consultations to be initiated between the countries concerned. The moratorium could of course be prolonged by mutual agreement if the consultations seem to lead to a mutually acceptable solution.

The practice of filing subsidies complaints for harassment purposes and of requesting the authorities to initiate countervailing investigations as a weapon in economic competition is not uncommon. For internal political reasons the authorities may feel compelled to comply with the request, although the GATT-legal prerequisites may be doubtful. In the present SCM Agreement there are no provisions regarding the consequences of manifestly unfounded harassment investigations. Therefore the Nordic countries are prepared to consider compensation requirements for a country initiating or pursuing countervailing investigations even when the preconditions therefor are manifestly missing according to the provisions in paragraphs 1 and 12 of Article 2.

One possibility might be to stipulate that the question of compensation to the country or to the enterprises having been made subject to unfounded countervailing investigations or other measures could be addressed in the dispute settlement procedure, if the country concerned so requests. The relevant panel reports could also contain recommendations on this matter.

The requirement in Article 2:1 that the complainant shall present "sufficient evidence" of a subsidy, of material injury and of causality has in practice been interpreted so as to permit a low threshold for initiating countervailing investigations. Obstacles to international trade are created already by the initiation of investigations, even if in the end the complaint is rejected. Therefore the Nordic countries propose to strengthen the "sufficient evidence" criterion through more precise

drafting. The evidence should enable the investigating authorities to establish a prima facie case of a subsidy and in respect of actionable subsidies also of material injury and causality.

7. IMPOSITION AND DURATION OF COUNTERVAILING MEASURES

Article 4:1 of the present SCM Agreement contains a permissive clause regarding the imposition of countervailing measures. The wording of that clause is rather vague, but it may permit taking account of the public interest. Article 2 dealing with procedures for initiating and conducting countervailing investigations does not address the question if such initiation is in the public interest. In the importing country there is mostly someone benefiting from cheap imports. In many cases there may be good reasons for comparing the users' and other interests to the opposite interests of the domestic producers adversely affected by subsidized imports. The Nordic countries propose a recommendation that the investigating authorities should consider if the initiation and further conduct of countervailing investigations or the imposition of countervailing duties is in the public interest.

The permissive clause in Article 4:1 may enable the disregard of de minimis subsidies. Nevertheless, countervailing practices have evolved in such a direction that more explicit provisions concerning the disregard of de minimis subsidies are warranted. The question is relevant in the case of actionable subsidies. Prohibited subsidies should not be disregarded, irrespective of their amount. An actionable subsidy could be considered as de minimis if its amount does not exceed X per cent of the ex works price per unit of the subsidized product.

The Nordic countries fully agree that the principle of time-limits on the application of countervailing duties could be more firmly established by requiring that countervailing duty findings lapse automatically unless a review is conducted within X years, in which case findings would be renewable for a maximum of another X years. Any interested party should be entitled to an annual review of the amount of the subsidy and of the material injury, if the party so requests and submits information substantiating the need for such a review.

8. SUBSIDIES ON THIRD COUNTRY MARKETS AND IMPORT DISPLACEMENT

Subsidization has become an increasingly distorting factor in international export competition on third country markets. The SCM Agreement does not contain any provision similar to Article 12 of the Anti-Dumping Code and Article 8 of the SCM Agreement is too vague. Furthermore, Article 12 of the Anti-Dumping Code has not had any practical importance. It could hardly be envisaged that any third country would be favourable to proposals that it should increase its own import prices by taking countervailing action, unless that third country has domestic producers to protect. Therefore remedies other than countervailing action on behalf of other exporting countries are called for.

Another situation where countervailing measures are not a practical remedy to injury caused by subsidization is when imports into a country are held off by domestic subsidies in that country and industry in other countries suffer injury through foregone export opportunities.

The Nordic countries find very interesting the proposals that quantitative criteria for actionable subsidies could be applied also in these situations to the effect that subsidies above an agreed maximum level of subsidization would create a prima facie presumption of nullification or impairment, which would trigger a multilateral examination of the matter.

Another possible approach to these problems might be to introduce in the SCM Agreement an explicit provision that compensation may be awarded by the subsidizing country to the country whose exports have been displaced through the subsidies. If such displacement can be demonstrated the prohibited or actionable character of the subsidy would be of secondary importance.

It would have to be established in the dispute settlement procedure that such displacement has taken place, that the subsidy is the reason, or at least the principal reason therefor and that the industry whose exports have been displaced has suffered material injury.

9. DEFINITION OF SALE

The Negotiating Group on MTN Agreements and Arrangements is discussing the interpretation of the expression "introduced into the commerce" in Article VI:1 of the General Agreement and Article 2:1 of the Anti-Dumping Code. That expression is not contained in Article VI:3 of the General Agreement or in the SCM Agreement. In the view of the Nordic countries the provision in that Article of the General Agreement that countervailing duties can be levied on products "... imported into the territory of another contracting party ..." also provides a clear answer to the question of the earliest stage in a sales process when countervailing investigations can be initiated. Nevertheless, the national legislation of some countries gives the possibility to initiate countervailing investigations at the offer stage. Because the provision of Article VI:3 of the General Agreement has been interpreted in different ways the Nordic countries propose that the matter should be considered also in the context of SCM negotiations.

A problem is that in respect of large investment goods, offered for sale at long intervals on the basis of tenders it may be too late to take remedial action against subsidized or dumped imports when a definitive sales contract has been concluded or when the piece of equipment has been brought into the country. The loss of one contract may constitute material injury to domestic producers. However permitting the initiation of anti-dumping or countervailing investigations already at the stage when the presumptive customer is considering and comparing different tenders from home and abroad would open an avenue for harassment complaints and constitute an obstacle to international trade.

On request of domestic producers anti-dumping investigations have been initiated against foreign tenderers of large investment goods. It is not excluded that competing tenderers in the country asking for tenders may request the initiation also of countervailing investigations against foreign competitors because of alleged subsidization.

The Nordic proposal to solve the problem is not to permit countervailing investigations or action at the tendering stage, before a sales contract has been concluded. Instead the Nordic countries propose compensation by the subsidizing country to the country whose offer has been displaced through the subsidy in case it is established that such displacement has taken place, that the subsidy is the reason, or at least the principal reason therefor and that the losing tenderer has suffered material injury. The question whether there have been subsidized tenders, whether the subsidies have had a decisive effect on the award of the contract and which remedy would be appropriate should be examined in the dispute settlement procedure.

10. SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

The Nordic countries consider that the developing countries would certainly benefit from the greater clarity and precision of new disciplines as to which subsidies are prohibited, non-actionable and actionable. Like others they would also benefit from several other clarifications and improvements to current subsidy and countervailing rules.

Both the Punta del Este Declaration and the MTR framework for negotiations on subsidies and countervailing measures recognize the need to grant a special and differential treatment (S&D) for developing countries. However, such a treatment should be of a dynamic nature. Its application to individual countries should be under continuous review so that the progressive development of their economy and trade and the aim of their fuller participation in the multilateral trading system will be taken into account. The Nordic countries are prepared to consider that countries, whose economies are less developed are given a transition period for necessary adjustments to take place.

Contents and scope for a special and differential treatment in new subsidy and countervailing disciplines will certainly depend on general rules to be agreed upon. As the Nordic countries recognize the legitimacy of a special and differential treatment, they are fully aware that subsidies do not always offer a lasting solution to problems in economic development. Due to the importance that the developing countries attach to the special and differential treatment the Nordic countries look forward to detailed proposals from the developing countries themselves.

11. NOTIFICATION AND SURVEILLANCE

Already in the introductory chapter the Nordic countries emphasized firstly the importance of improved transparency as a means to achieve better GATT discipline and secondly the rôle of the notification system to

create better transparency. Naturally, the notification system would to a large extent depend on the content of the other provisions of the SCM Agreement. The proposals in this chapter are to be seen in the context of the other Nordic proposals in the present document. In this chapter the Nordic countries concentrate on the subsidy notifications, because they think that the notification procedure regarding countervailing measures under Article 2:16 of the SCM Agreement has functioned satisfactorily and is not in need of revision.

The present provisions concerning notification of subsidies in Article XVI:1 of the General Agreement are rather general in nature. They do not give very detailed guidance on the information required on contents, form and nature of subsidies. The Nordic countries believe that there is a real need for increased transparency and discipline regarding the notification of subsidies, as a corollary to an increased discipline regarding countervailing measures and their notification. The notifications should give Signatories and the relevant GATT bodies a real opportunity to assess and judge a subsidy in the light of the obligations stipulated in the SCM Agreement and the General Agreement.

The present Article 7 of the SCM Agreement, which deals only with counter-notifications could be supplemented with sufficiently detailed provisions regarding notifications by the subsidizing country. Those provisions should concern both the content and the form of notifications. It may be appropriate to stipulate that the notifications should give information concerning the category of the subsidy and the reasons for that classification. Although it is unlikely that any signatory would notify a subsidy as prohibited, there does not seem to be any reason to exempt any subsidy programme from the obligation to notify. If the notifying country considers a subsidy programme as non-actionable, it has to justify its view.

The notifications should also indicate whether the subsidy is granted in the form of a grant, loan, guarantee, equity, export credit or guarantee, interest rate reduction, tax concession or in other form.

Further the policy objectives and purposes of the subsidy should be indicated, together with an explanation of how it is envisaged that the subsidy would work to attain those objectives or purpose.

The annual or the total amount i.e. the cost to the treasury of the subsidy should be indicated. An assessment should also be made of the possible trade distorting effects. If it is estimated that the subsidy has no trade distorting effects, the reasons for that conclusion should be explained.

The Nordic countries propose that not only already decided subsidies, but also planned subsidy measures should be notified. The revision of a subsidy decision once taken is always difficult and such advance notification would facilitate for the signatory planning the subsidy to take into account any observations by other signatories in the final

decision making. Notifications of planned subsidies could take place at the latest when the subsidy has been proposed by Government to Parliament. The obligation to notify planned subsidies would cover both those contained in the annual budget and those presented separately during the current budget year.

The Nordic countries also propose to introduce an obligation to notify, as far as possible proposals for subsidies made to the Government, either by a publicly appointed committee or other similar body, or after a hearing among authorities, interested circles, etc. The notifications should be made as soon as the proposals to government are public documents in the signatory contemplating the subsidy.

Subsidies granted by regional or local authorities should be notified to the extent possible, i.e. to the extent that the government of the signatory state has the legal or practical means to receive information on the local or regional subsidies and is not legally prevented from making the information public.

It could be spelled out in the SCM Agreement that full notifications should be made every three years and an updating the intermediate two years.

The Nordic countries do not envisage that public measures not involving a net transfer of funds from public sources to the recipient, but possibly having trade distorting effects should be notified. However, it should be stipulated explicitly also in the revised SCM Agreement that such practices could be the subject of counter-notifications by any signatory who feels that they imply nullification or impairment of or serious prejudice to its interests.

The Nordic countries envisage that also non-actionable subsidies should be notified in order to permit signatories to examine whether the subsidy really fulfils the criteria for non-actionable subsidies. Therefore the provisions of the SCM Agreement would be more stringent than those of Article XVI:1 of the General Agreement, which provides that only subsidies "which operate directly or indirectly to increased exports of any product from, or to reduce imports of any products into its territory" should be notified. the more stringent Code provisions would obviously apply only to signatories.

Obviously, the notification procedure outlined above would require an additional input of work and time both from the signatories and from the secretariat. However, that seems unavoidable if the objectives of increased discipline and transparency are to be achieved.

12. DISPUTE SETTLEMENT

Subsidization has taken an increasing rôle as a means to give domestic producers a competitive edge in international competition. Subsidization has led to an alarming degree of distortion of competition.

Countervailing measures have been taken in situations where their justification and appropriateness have sometimes been questionably determined. The present dispute settlement procedure has not always been sufficient to deal with difficult cases. It has even been said that the credibility of the GATT mechanism in this respect is in danger. For those reasons the Nordic countries believe that there is an urgent need for strengthening the dispute settlement procedures and mechanisms under the SCM Agreement.

In chapter 2.5 above on the definition of a subsidy the Nordic countries have proposed that only government practices, which involve a net transfer of funds from public sources to the recipient would entitle a signatory to take unilateral countervailing action.

However, it should be recognized that there are a number of other government practices and policies whose purpose or effect it is to create artificial competitive advantages for domestic industry and to distort competition, either on the export markets or in competition with imports. In the MTR framework text these are referred to as "new practices". Because of the variety of forms and substance such practices could have it would be difficult to establish general GATT rules for assessing if such practices are subsidies and therefore give the right to unilateral countervailing action. The Nordic countries suggest that a country whose domestic producers suffer material injury from such practices can invoke the dispute settlement procedure.

Apart from the criteria for non-actionable subsidies it seems difficult to establish clear and generally applicable GATT-rules for determining when a government practice is distorting or when it results in unfair trading advantages. However, guidance may be found in the criteria for determination of injury in Article 6 of the SCM Agreement. Such determinations in individual cases must in practice be the task of the respective dispute settlement body.

The dispute settlement bodies could recommend appropriate remedies. Countervailing duties could be one form of remedial action, if the dispute settlement bodies find it appropriate.

The Nordic countries support to a large extent the proposals of the Canadian delegation regarding the development of the dispute settlement process. That paper contains a good and clear outline of the functioning of a more effective dispute settlement procedure. The Nordic countries share the view that a more expeditious and effective dispute settlement procedure is required.

However as regards remedies against prohibited subsidies, the Nordic countries propose in chapters 2.1 and 2.4 that unilateral countervailing measures against prohibited subsidies be permitted without an injury test. The subsidizing country would have the possibility ex post to invoke the dispute settlement mechanism in order to have the justification for the countervailing measures examined. The Nordic countries deem it highly

important to strengthen the dispute settlement procedures and mechanisms as a corollary to permitting countervailing without injury test for prohibited subsidies.

The Canadian delegation also envisages very strict time limits in order to render the dispute settlement process as expeditious as possible. It is i.a. suggested that panels should give a ruling or an opinion within 60 days from their establishment. The Nordic countries fully share the view that a quick dispute settlement has obvious advantages both for the parties involved and from the point of view of general GATT interest. However, very strict time limits for rulings or opinions may in certain cases involve the risk that parties will not have sufficient time to prepare and present their arguments and evidence and that the panel will not be able to examine the matter so thoroughly as it would merit and to formulate a well considered ruling or opinion. Therefore some flexibility in the time limits may sometimes be called for, although 60 days should be the main rule for a panel to give its ruling or opinion.

The Nordic countries also support an idea of an Advisory Panel to give opinions on whether potential programmes are prohibited, actionable or non-actionable. It should also be considered whether existing subsidy programmes could be examined by an Advisory Panel.

However, the Nordic countries believe that there ought to be a certain parallelism between the work and progress in the Negotiating Groups on the general dispute settlement procedure and on the SCM Code. The dispute settlement procedures introduced in the Code would to a large extent depend on the solutions reached in the Dispute Settlement NG.

13. TRANSITIONAL ARRANGEMENTS

The subsidy regimes and policies of various signatory countries may not initially be in total conformity with the new rules and disciplines ultimately to be agreed upon in a possible revised SCM Agreement. There would thus be a need for transitional arrangements to permit the adaptation of national policies and systems to the new provisions. The length of the transitional periods will obviously be a matter for negotiation and their length might have to be adapted to the particular situations of individual countries.

14. REVIEW OF THE REVISED SCM AGREEMENT

As suggested earlier the exhaustive lists of prohibited and non-actionable subsidies be reviewed regularly after X years. Furthermore the SCM Agreement as a whole should also be reviewed simultaneously.

ANNEX

EXHAUSTIVE LIST OF NON-ACTIONABLE SUBSIDIES

- (a) Aid to research, development and innovation, provided it is clearly intended for the stimulation of such activities and that such activities are at a precompetitive level; the precompetitive level is understood to include applied research and development up to and including the development of a first prototype; such aid may be awarded up to a rate of 50 per cent of project costs or at differentiated tax rates of equivalent effect; basic research may be aided to a greater extent; the closer to the market place a project is, the lower the degree of subsidization should be;
- (b) Aid given to sectors with problems of overcapacity to rationalize the structure of industry by ensuring an orderly downscaling of production and employment; such measures should be strictly limited in duration and be accompanied by an adjustment programme; when evaluating problems of overcapacity the international situation as a whole and not merely in the country in question is to be taken into account;
- (c) Regional development aid to the extent that it does not interfere with conditions of fair competition; its purpose must be to put industries in regional development areas on an equal economic footing with industries in other parts of the country and not to increase capacity in sectors already suffering from problems of overcapacity; at present the definition of regional development areas, including areas in industrial decline, lies within the sole competence of signatory states, which may be requested to furnish statistics detailing the reasons for the designation of such areas;
- (d) Environmental policies should be based on the polluter-pays-principle. If this principle is complemented by government aid specifically designed to reduce pollution, investments may be supported by a subsidy up to a rate of X per cent or by differentiating tax rates to the equivalent effect.

The signatories recognize that the legislation or standards in different countries may have potential impact on trade and competition. To the extent that environmental requirements going beyond internationally accepted standards have a distortive effect on trade patterns, the degree of support to a specific industry shall be allowed to compensate for this effect. Such support shall be subjected to regular multilateral review.

- (e) Equity injection by governments or government agencies if the rate of return on such investments in the mid or long term can reasonably be expected to be at least equal to the cost of government borrowing.