

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG5/W/202

11 September 1990

Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Agriculture

DISCUSSION PAPER ON RULES SUBMITTED BY SWITZERLAND

Purpose of the paper

The purpose of the discussion paper is to stimulate the discussion on the rules by providing a proposal on how non-trade objectives may be taken into account in the rules governing trade in agricultural products.

The approach taken

It is presumed that the final package on agriculture would contain four parts:

- general considerations and principles;
- commitments concerning substantial and progressive reduction of agricultural support and protection as agreed upon at the Mid-Term Review;
- rules governing agricultural trade;
- an agreement on sanitary and phytosanitary measures.

The present paper limits itself to the third part of the package.

The specific commitments to be taken are introduced into the rules of GATT by reference to the "schedules of the signatories" which would contain the commitments undertaken by the contracting parties to reduce trade distorting agricultural support and protection.

The proposed approach is one of an interpretation of some Articles of the General Agreement, so as to take into account the non-trade objectives of national agricultural policies. The specific legal form of this Agreement will have to be decided at a later stage.

The general form of the Agreement is based on the structure of the Codes of the Tokyo Round. It is however presumed that all participants in the Uruguay Round negotiations will sign all the results of the fifteen Negotiating Groups as one single document.

Some parts of the Agreement are mentioned "pro memoria". We believe that these points will need to be developed in the negotiations. The present document limits itself to the integration of non-trade objectives into the rules of GATT and is thus incomplete.

GATT SECRETARIAT

UR-90-0526

The structure and content of the Agreement are based as much as possible on concepts and formulations which are on the negotiating table. The paper covers two subjects:

- the interpretation of Article XVI;
- the elaboration of a safeguard clause.

The interpretation of Article XI

Regarding Article XI the Canadian proposal appears to be a very valuable basis for the discussion of the issues involved.

The interpretation of Article XVI

The purpose of the proposed interpretation is to strengthen the discipline on agricultural subsidies by recognizing the legitimacy of non-trade objectives, while disciplining the trade effects of such measures. The objective of the proposed rules is to allow countries to achieve the non-trade objectives of their agricultural policies while minimizing the trade-distorting effects of their support instruments and by taking fully into account the interests of their trading partners.

The proposed approach follows as closely as possible the work undertaken in the Negotiating Group on Subsidies.

Safeguards

The purpose of the proposed safeguards is to enhance the political acceptance of fundamental reforms in agricultural policies by limiting the risks involved in such reforms.

The approach proposed takes into account the risks and uncertainties involved in any substantial change in the internal and/or external régime applied to agriculture.

It also takes into account the potential effects of the changes on the income of thousands of farmers and the need to limit the potential loss of income to farmers caused by the changes proposed in internal support and/or external protection.

DRAFT

Agreement¹ on Interpretation and Application of Articles XI, XVI, XIX and XXIII of the General Agreement on Tariffs and Trade with Regard to Agricultural Products²

The participants in the Uruguay Round negotiations

Have agreed as follows:

PART I

Articles 1, 2

Subsidies

1. Signatories shall take all the necessary steps to ensure that policies and measures conveying directly or indirectly a subsidy, including any form of income or price support to agricultural producers which operates to promote exports, to increase or to maintain agricultural production at certain levels and thereby affects trade, are in accordance with the provisions of Article XVI of the General Agreement and the terms of this Agreement.

2. Signatories recognize that subsidies are used by governments to promote non-trade objectives such as sovereign national objectives of social and economic policy. Signatories shall take all necessary steps to design their instruments of agricultural policies in a way to accomplish non-trade objectives with minimum trade-distorting effects.

3. Signatories recognize that direct payments, which are decoupled from production and production factors, are the least trade-distorting subsidies to support agriculture and that policies and measures, such as price support measures conveying directly or indirectly an incentive to production and trade shall be gradually limited to a multilaterally agreed level.

¹Wherever in this Agreement there is a reference to "the terms of this Agreement" or the "Articles" or provisions of this Agreement" it shall be taken to mean, as the context requires, the provisions of the General Agreement as interpreted and applied by this Agreement.

²Agricultural products to be defined.

Article 4

Subsidies - general provisions

1. Signatories agree that they shall not cause, through the use of export subsidies, or policies and measures³ conveying directly or indirectly a subsidy other than those mentioned in Article 6 of this Agreement:

- (a) injury to the domestic farming of another signatory⁴;
- (b) nullification or impairment of the benefits accruing directly or indirectly to another signatory under the General Agreement⁵ and nullification or impairment of the benefits of concessions set forth in schedules regarding the amount of budgetary outlays on export assistance, or the quantity of the product exported, or a combination thereof; and the level of internal support⁶;
- (c) serious prejudice to the interests of another signatory.⁷

2. The adverse effects to the interests of another signatory required to demonstrate nullification or impairment⁸ of the benefits accruing under the General Agreement, or serious prejudice may arise through:

³Such as market price support, including any measure which acts to maintain producer prices at levels above those prevailing in international trade for the same or comparable products as majorated by the relevant tariffs, and taking account of levies or fees paid by producers; direct payments to producers, including deficiency payments and taking account of levies or fees paid by producers; and input and marketing cost reduction measures available only in respect of agricultural production, including credit and other financial input assistance and taking account of input taxes.

⁴Injury to the domestic farming is used here in the same sense as injury to the domestic industry is used in Part IV of the note by the Chairman of the Negotiating Group on Subsidies and Countervailing Measures (MTN.GNG/NG10/W/38).

⁵Benefits accruing directly or indirectly under the General Agreement include the benefits of tariff concessions bound under Article II of the General Agreement.

⁶Expressed in terms of Aggregate Measures of Support or in terms of equivalent commitments.

⁷Serious prejudice to the interests of another signatory is used in this Agreement in the same sense as it is used in Article XVI:1 of the General Agreement and includes threat of serious prejudice.

⁸Signatories recognize that nullification or impairment of benefits may also arise through the failure to carry out its obligations under the General Agreement or this Agreement. Where such failure concerning export subsidies occurs, adverse effects are presumed to exist.

- (a) the effects of the subsidized imports in the domestic market of the importing signatory;
- (b) the effects of the subsidy in displacing or impeding the imports of like products into the market of the subsidizing country;
- (c) the effects of the subsidized exports in displacing the exports of like products of another signatory from a third country market;
- (d) the effects of significant price undercutting by the subsidized products as compared with the price of a like product of another signatory in the same market resulting in price suppression, price depression or lost sales.

3. For the purpose of paragraph 1(b) above, nullification and impairment include any case in which concessions laid down in the schedules regarding export assistance, the quantity of the product exported and internal support are withdrawn or modified without appropriate compensation. Such concessions on a specific product can only be withdrawn or modified if compensation is offered by binding equivalent commitments for other products. The Committee on Agriculture⁹ will decide about the adequacy of the compensation proposed.

4. For the purpose of paragraph 2(c) above, displacing exports shall include any case in which there has been a change of relative shares of the market to the disadvantage of the non-subsidized product (over a period of one year or more).

5.¹⁰ Whenever a signatory has reason to believe that any subsidy, referred to in this Article, granted by another signatory results in injury to its domestic industry, nullification or impairment or serious prejudice to its trade and production interests, such signatory may request consultations with such other signatory. A request for consultation shall include a statement of available evidence with regard to (a) the existence and the nature of the subsidy in question and (b) the injury caused to the domestic industry, or the nullification or impairment, or serious prejudice caused to the interests of the signatory requesting consultations and (c) the existence of a causal link between the subsidized products and the alleged injury, or the alleged nullification or impairment, or the alleged serious prejudice.

⁹ As established in Part V of this Agreement and hereinafter referred to as "the Committee".

¹⁰ Paragraphs 5 to 7 might be adapted pending the outcome of the negotiations of Article XIII.

6. If a mutually acceptable solution has not been reached within sixty days of the request for consultations, any signatory party to such consultation may refer the matter to the Committee. The Committee shall, upon request, review the matter referred to it and shall present its conclusions within 120 days.

7. In any case in which it is determined that any subsidy has resulted in injury to the domestic industry of another signatory, or adverse effects to the interests of another signatory as defined in paragraph 2 above, the signatory granting or maintaining such a subsidy shall take appropriate steps to remove such effects or shall withdraw the subsidy. If no such steps are taken within a period of [2] months, the affected signatory shall be authorized to take countermeasures, commensurate with the degree and nature of adverse effects determined to exist.

Article 5

Export subsidies

1. For the purpose of this Article, the notion of export subsidies encompasses all cases where there are financial outlays or revenue forgone in respect of:

- (a) direct financial assistance to exporters to compensate for the difference between the internal market price in the exporting country and world market prices;
- (b) payments to producers of a product which result in the price or return to the producers of that product when exported being higher than world market prices or returns;
- (c) costs related to the sale for export of publicly owned or financed stocks;
- (d) assistance to reduce the cost of transporting or marketing exports;
- (e) export credits provided by governments or their agencies on less than fully commercial terms;
- (f) the provision of financial assistance in any form by governments and their agencies to export income or price stabilization schemes operated by producers, marketing boards or other entities which play de facto a dominant rôle in the marketing and export of an agricultural product;
- (g) export performance-related taxation concessions or incentives;
- (h) subsidies on agricultural commodities incorporated in processed product exports exceeding the difference between the domestic and world market price of the input.

2. Signatories agree not to grant directly or indirectly any export subsidy referred to in paragraph 1 above in a manner:

- (i) which results in the signatory granting such subsidy having an increasing world market share in a specific product compared to a reference level equal to the average level of the immediately preceding three-year period and this increase results from a consistent trend over a period when subsidies have been granted;
- (ii) that the level of such subsidy exceeds the difference between the exporter's domestic price and the world market price of the subsidized product; furthermore, the level of such subsidy shall not exceed the tariff or duty chargeable on the same product when imported.

3. Whenever a signatory determines that any subsidy referred to in this Article is granted or maintained by another signatory, such signatory may request consultations with such other signatory. A request for consultation shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

4. If a mutually acceptable solution has not been reached within thirty days of the request for consultations, any signatory party to such consultation may refer the matter to the Committee. It shall immediately review the matter referred to it and give the other signatory an opportunity to demonstrate that the subsidy in question is in accordance with paragraph 2 above. Any review of a matter referred to the Committee shall be completed within sixty days of the request for such a review.

5. In any case in which the Committee determines that the subsidy in question is not in conformity with paragraph 2 above, the signatory granting or maintaining the subsidy shall withdraw it without delay. If no such steps are taken within a period of [2] months, the affected signatory shall be authorized to take appropriate countermeasures.

Article 6

Non-actionable subsidies

1. Signatories agree that certain types of subsidies used to accomplish the non-trade objectives of national agricultural policies shall be considered as non-actionable subsidies and shall not enter into any schedule of concessions referred to in Article 4:1(b) of this Agreement. Signatories agree that non-trade objectives and the relative weight attached to them vary from country to country and acknowledge that the achievement of non-trade objectives may require the maintenance of some agricultural activity, which aims at the following objectives:

- the maintenance of a certain coverage of the usable land area of the country (maintenance of the environment);
- the maintenance of a certain distribution of farming (e.g. maintenance of farms in economically depressed areas);

- the maintenance of a specific type of farm structure (family farm, decentralized farming);
- the promotion of a specific production methodology (ecology, plant and animal protection, etc.);
- the maintenance of a certain production potential for times of prolonged insecurity of supply (land, labour, skills, inputs, processing capacity, technology).

The subsidies necessary to accomplish such non-trade objectives include (i) all internal support measures which cover areas or farmers which demonstratively are producing only a small part of the actual national production and do not constitute, on the farm level, an incentive to intensify production, as well as (ii) other measures which are demonstrably not increasing the production of the farmers which receive the support.

2. Examples of subsidies meeting the criteria of paragraph 1 above are:

- Measures which are de jure generally available and which do not, in fact, grant a benefit to producers of specific crops.
- Payments not related to quantities or yields but to production factors such as land (unit of surface) provided they do not hamper structural adjustment through market forces, and foster reorganization and resizing of plants: and
 - (i) they are only granted to farmers using special production methods, such as integrated, organic or extensive farming, in order to partially compensate for income losses due to the application of such methods; the compensation must not exceed the income losses; conditions for eligibility should be narrowly defined in behavioural contracts assorted with penalties in case of infringement; or
 - (ii) they promote only the implementation of production methods which entail a perennial and significant reduction of total output per unit of surface;
- Payments to farmers to offset geographical disadvantages in farm activities within designated geographical areas (payments per ha. or per livestock unit provided that the number of animals per ha. is restricted).
- Payments to small farmers for specific agricultural activities not related to yields, but to the area covered by the activity (e.g. compensation for structural disadvantages of small farmers not producing more than [K] per cent of the national production).

- Structural adjustment payments which lead to the exit of farmers and farmland from agricultural production.
- Income safety-net programmes, provided they do not maintain producer incomes at more than [L] per cent of the most recent three-year average.
- Payments to farmers for products which are submitted to strict production controls.

3. Any subsidy referred to in this Article shall be notified to the Committee and signatories which use such measures shall report yearly on any modification in their subsidy schemes as well as on the fulfilment of access commitments in conformity with the guidelines established by the Committee.

PART III

Article 7

Emergency action on imports of agricultural products

1. Signatories recognize the uncertainties inherent in the agricultural reform process, the instability and seasonality of agricultural commodity markets and the income objectives of national agricultural policies and the necessity to apply specific safeguard measures to agriculture.

2. All safeguard measures will be implemented in a transparent manner and on a non-discriminatory basis.

3. Signatories which have transformed non-tariff measures into tariff equivalents may readjust their tariff equivalent, if imports under the tariff equivalent exceed those of the previous year by more than [A] per cent. The signatory concerned will notify its intention to invoke this provision to the Committee on Agriculture and consult with other signatories on the measures proposed.

4. In order to limit the risks of the liberalization and the hardship involved in extreme price fluctuations, the signatories may apply a surcharge or a decrease of the tariffs in case c.i.f. prices, expressed in national currency, fluctuate more than 20 per cent within one year. The surcharge or bonus will be limited to 80 per cent of the price decrease or increase. Signatories which intend to invoke this provision will notify - at the beginning of the year, the reference price used for the surcharge or bonus. The reference price will be based on the relevant c.i.f. price of the preceding year.

5. In case yearly imports of a product exceed the access commitment contained in the Schedule of Signatories by [B] per cent and if such an increase in imports causes or threatens to cause serious injury to the

farmers or a group of farmers, the signatory country may, without compensation, impose surcharges or, if deemed necessary, quantitative restrictions.

6. All measures taken under the provisions of this Article will be notified within ten days of the application to the Committee. The notification will include a statement of available evidence with regard to (i) the existence and nature of the emergency situation, (ii) the injury caused to the income of the domestic farmers or group of farmers, (iii) the causal link between the liberalization measures and the alleged injury and (iv) the proportionality of the measure proposed.

7. Whenever a signatory has reasons to believe that any measure, referred to in this Article and applied by another signatory results in injury to its domestic industry, nullification or impairment of serious prejudice to its trade and production interests, such signatory may request that the Committee review the matter. The Committee shall present its conclusions within 120 days.

8. In any case in which it is determined that any safeguard measure applied does not fulfil the criteria set out above and that it has resulted in injury, nullification or impairment to the trade and production interests of another signatory, the signatory maintaining such measures shall take appropriate steps to remove such effects or withdraw the measure. If no such steps are taken within a period of [2] months, the affected signatory shall be authorized to take countermeasures, commensurate with the degree and nature of adverse effects determined to exist.

PART IV

Article 8

Developing countries

pro memoria

PART V

Article 9

The Committee on Agriculture

1. There shall be established under this Agreement a Committee on Agriculture composed of representatives from each of the signatories to this Agreement. The Committee shall elect its own Chairman and shall meet no less than twice a year and otherwise as envisaged by relevant provision of this Agreement at the request of any signatory. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the

signatories and it shall afford the signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.

2. The Committee may set up subsidiary bodies as appropriate.

3. In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a signatory, it shall inform the signatory involved.

PART VI

Article 10

Conciliation

pro memoria

PART VII

Article 11

Dispute settlement

pro memoria

PART VIII

Article 12

Final provisions

pro memoria