

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Goods (GATT)  
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and Countervailing Measures

ELEMENTS OF THE NEGOTIATING FRAMEWORK

Communication from the European Community

The following text is a proposal from the European Community for amendment to Article 6 of document MTN.GNG/NG10/W/38/Rev.1. The presentation of this proposal should not be taken to imply that oral suggestions on this or other issues within the negotiations have any lesser status, or that the Community in any way accepts any other elements of the document referred to above, on which the Community reserves the possibility to request further amendments in any appropriate form.

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Article 6: Serious prejudice

1. Serious prejudice within the meaning of Article 5 of this Agreement may arise through one or more of the effects on trade described in (a) through (c) below:

- (a) The effect of the subsidy is to substitute subsidized products for imports of the like product alleged to have been affected in the market of the subsidizing signatory.
- (b) The effect of the subsidy is to displace exports of the like products alleged to have been affected, in favour of the subsidized product, from the market of a third country.

In determining the existence of displacement of exports, an important factor to be considered is whether, in the absence of one of the circumstances enumerated in paragraph 3 below, the subsidy has resulted in a change in relative market shares to the disadvantage of the like product alleged to be affected.

This change has to be observed over an appropriately representative period of time, of at least one year, sufficient to demonstrate clear trends in the development of the market for the product concerned.

- (c) The effect of the subsidy is a significant price undercutting by the subsidized product as compared with the price of a like product of another signatory in the same market, and this price undercutting results in price suppression, price depression or lost sales.

Price comparison has to be made at the same level of trade and at comparable time, due account being taken of factors affecting price comparability, such as differences in physical characteristics, quantities of sales, different conditions or terms of sales.

2. A demonstration that the subsidized products are causing, through the operation of the subsidy, one or more of the effects on trade described in paragraph 1(a) through (c) above, and that serious prejudice arises through such effects on trade, shall be based on positive evidence.<sup>1</sup>

3. Import substitution or displacement of exports will not be deemed to have resulted in serious prejudice if any of the following circumstances occurred during the period when the import substitution or the displacement took place:

- (a) Prohibition or quantitative restriction on exports of the like product from the complaining signatory, or existence of other arrangements limiting exports from the complaining signatory, or (in the case of export displacement) prohibition or quantitative restriction on imports from the complaining signatory into the third market concerned (unless the complaining country shows that quantitative restriction or other arrangements are of such a nature that they do not prevent import substitution or export displacement from arising).
- (b) For the case of export displacement, decision by a government to shift, for non-commercial reasons, imports from the complaining signatory to another country or countries.
- (c) Natural disasters, strikes, transport disruptions or other force majeure substantially affecting production, qualities, quantities or prices of the product available for export from the complaining signatory.
- (d) Voluntary decrease in the availability for export of the product concerned from the complaining signatory (including, inter alia, a situation where the complaining signatory, or the exporting firms in such signatory, have been autonomously reallocating exports of the product concerned to new markets).

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<sup>1</sup>Evidentiary standards have to take into account the nature of multilateral procedures, in order to make these procedures effectively workable.

- (e) Failure to conform to standards and other regulatory requirements in the importing country.

4. Each signatory, in whose market the effects described in this Article are alleged to arise, shall make available to the parties to a dispute and to the Committee all relevant information that can reasonably be obtained as to the facts of the dispute, including prices and trade data on the product concerned.