

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG10/22

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Special Distribution

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

MEETING OF 27 SEPTEMBER 1990

Note by Secretariat

1. The Group met on 27 September 1990 under the Chairmanship of Mr. Michael D. Cartland (Hong Kong). The Group discussed issues related to the draft text submitted by the Chairman (MTN.GNG/NG10/W/38/Rev.1).
2. One participant introduced his proposal circulated in MTN.GNG/NG10/W/39. He restated his delegation's view that increased discipline over domestic subsidies was imperative and proposed that, in addition to quantitative rules to define the scope of prohibited subsidies, normative rules should be used to prohibit specific practices involving, inter alia, the provision of funds at less than the cost of these funds to the subsidizing government. He also recalled his delegation's position that without a meaningful prohibited category there could hardly be any non-actionable category and that a strong actionable category, based on enforceable disciplines, was necessary before one could contemplate changes in countervailing duty rules. Some delegations, while expressing several reservations, said that they were prepared to look at normative rules. A number of participants expressed their objection to the proposal to include into the prohibited category a large number of domestic subsidies. Furthermore, they considered that the proposal came too late in the negotiating process and could not be seen as constructive and helpful at this stage. Several participants reiterated their reservation on the rationale and the workability of quantitative criteria to expand the scope of the prohibited category.
3. Another participant referred to his proposal (circulated in MTN.GNG/NG10/W/41) to amend Article 6 of the Chairman's text. He said that the purpose of this proposal was not to weaken the disciplines on actionable subsidies but to ensure that an eventual litigation process would be equitable and that its balance was not tilted towards a complaining country, leaving the subsidizing country simply with a token possibility to defend itself. This proposal was also intended to ensure that a panel could not avoid examining the issue of causality unless the subsidizing country positively demonstrated that the effects on trade had been caused by other factors than the subsidy. Several delegations

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supported this proposal. Some other delegations considered that, if adopted, it would not result in improved disciplines but, on the contrary, would make these disciplines even weaker than the existing ones which were generally considered as non-workable. They said that this proposal was based on a wrong premise because the Chairman's text did not shift the existing burden of proof but only clarified the existing GATT approach, as confirmed by the practice of GATT panels dealing with these issues. Furthermore, the Chairman's text was clearly based on economic theory and this fact also could not simply be brushed off. They considered that a proposal which amounted to weakening the actionable category and to reject, at the same time, the strengthening of the prohibited category would make the fulfilment of the negotiating mandate of the Group simply impossible.

4. The Group took note of the revised Chairman's text (MTN.GNG/NG10/W/38/Rev.1). A number of participants, while expressing reservations or disagreement with specific provisions or formulations, stated that it was the basis on which the further work should be conducted. In addition to the proposals discussed in paragraphs 1 and 2 above, several proposals were made concerning, inter alia, further improvements for the category of non-actionable subsidies, less-mandatory nature of the remedy process, level of obligations for sub-federal units, procedures for countervailing measures, special treatment for developing countries and clearer drafting of certain provisions (e.g. relationship between Article 1.1(a) and 1.1(b), definition of a subsidy, specificity). Divergent views were expressed concerning the rationale for and practicability of quantitative criteria in Article 6.1. One participant recalled his proposal regarding special treatment for the least developed countries (MTN.GNG/NG10/W/28). Some other participants recalled their interest in special transition rules for countries converting their economies into a market economy. One participant proposed that the Chairman's text should contain a footnote stating that the new agreement would apply to subsidies not subject to other multilaterally agreed specific rules. Some other participants said that they would not accept anything that would prejudge the scope of the application of this agreement.

5. The Chairman said that he intended to consider the points made but he would continue to work on the understanding that he had been requested by the Group to propose a text that would reflect his perception of a balance necessary to improve the existing disciplines. He would revise his text at an appropriate time but no delegation should expect to have its proposals fully taken into account because, in most cases, proposals coming from various participants simply cancelled themselves out. The Group agreed to hold its next and last meeting on Thursday, 8 November 1990.