COMMUNICATION FROM THE EEC

INTRODUCTION

The directives set out in the Ministerial declaration launching the Uruguay Round specify that:

"Negotiations on subsidies and countervailing measures shall be based on a review of Articles VI and XVI and the MFN Agreement on subsidies and countervailing measures with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade" (emphasis added).

By virtue of agreeing to negotiations in the field of subsidies and countervailing measures and outlining the objectives to be achieved GATT contracting parties and Code Signatories have acknowledged that attention needs to be given to the operation and content of existing disciplines. These rules constitute a framework for dealing with matters relating to subsidies and countervailing duties but, like all such structures, cannot be considered as covering all eventualities which can arise in this complex trade field.

The European Community has taken note of the fact that certain contracting parties consider that existing rules are, in some respects, unsatisfactory on account of the fact that they are imprecise and contain inconsistencies. This, it is argued has prevented the existing rules from performing an efficient regulatory role. With contracting parties' and signatories' rights and obligations defined so imprecisely, it is argued
further that the disciplines of the system have broken down and, with them, the uniformity of application of GATT-conforming countermeasures. To resolve these difficulties, these countries propose the adoption of new disciplines on subsidies and countervailing measures.

Whilst acknowledging that the objective of the negotiations is to improve GATT disciplines and that the outcome of the review process may demonstrate the need to reinforce existing measures, the European Community considers that prior to the possible establishment of new disciplines it is necessary to ensure that the basic principles underlying Articles VI and XVI and the Code on Subsidies and Countervailing Measures are applied fully. In addition the European Community considers that before contemplating a reinforcement of, as some contracting parties suggest, an extension of the rules, there should be agreement on fundamental conceptual and definitional issues left unresolved in the Tokyo Round negotiations. In the absence of consensus on such basic matters, an attempt to establish a more elaborate edifice of rules and disciplines is bound to founder.

It is the European Community's contention, therefore, that at this stage the negotiations should focus on the need to:

- ensure that certain key principles already agreed upon in the Tokyo Round but which have been discarded by certain Code signatories should be fully implemented;

- agree on basic definitions and concepts relating to subsidies and countervailing measures such as the definition of a subsidy and its measurement.

With regard to the first set of issues highlighted above, the European Community considers in particular that there should be full application of the basic principles that

- the implementation of countervailing duties should never be mandatory under national legislations and, therefore, should be subject to a public interest clause;
- in cases where the conditions for applying countervailing duties are met, duties should be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry.

The scope of the domestic industry petitioning for relief from allegedly injurious subsidisation and on which material injury should be assessed must be limited strictly to the domestic producers of the like product.

As to the second set of issues on definitions and concepts, the European Community notes that despite continuous discussions in the Experts Group and the Committee on Subsidies and Countervailing Measures since the conclusion of the Tokyo Round, no agreement has been reached by signatories and no uniform application achieved on the following:-

- the definition of a subsidy and how to distinguish between subsidies and other measures having trade distorting effects;

- when subsidies are potentially trade distorting and hence potentially actionable under Track I or Track II of the Code;

- in cases where subsidies are actionable, how they should be measured and spread over time.

From this partial list of open questions it is evident that in order to arrive at a situation where a set of rules on subsidies and countervailing measures is applied uniformly and fairly by all interested GATT parties then agreement must be reached on these basic concepts.

In the view of the European Community the key issue upon which the resolution of all other open questions is predicated is the definition of a subsidy since without agreement on this matter any framework for dealing with subsidies in international trade cannot be solidly based. As to the definition itself, the European Community considers that the guidance given in the Code should be followed and confirmed, i.e. subsidies in international trade exist only when a financial charge has been incurred by a government or administrative authority on behalf of a beneficiary.
As regards the trade distortive nature of certain subsidies and the range of remedies available to counter their effects, the Community notes that the Code contains a list of prohibited export subsidies which are the subsidies most evidently troublesome and trade distortive. Against such practices, signatories can pursue remedies under Parts I and II of the Code.

The prohibited list covers only one part of the whole range of subsidies leaving open the entire range of subsidies other than export subsidies which, as the Code expressly recognises in Article 11, are "... widely used as important instruments for the promotion of social and economic policy objectives". It is these non-prohibited subsidies on which difficulties of interpretation and debate on the appropriateness of trade remedies under the Code have arisen. Evidently a large number of these non-export subsidies do not distort trade by causing material injury, serious prejudice or nullification or impairment of the benefits to another signatory under the General Agreement.

An approach aimed at identifying these subsidies would parallel the work on prohibited subsidies already undertaken and could constitute a major step towards erecting a stable set of rules for dealing with subsidies in international trade.

With regard to the types of subsidies which may be excluded, within the context of international trade, from the scope of actionable trade-distorting subsidies, the European Community considers that attention should be given, inter alia, to the following types of subsidies:

i) Generally available subsidies:

Generally available measures such as, for example, tax concessions or other such measures taken by governments to which all enterprises have access (possibly after fulfilling certain general conditions) should not be considered to be subsidies under the Code since they are not the result of sector-specific government intervention and thus do not benefit particular industries. These measures tend to be

1 It is understood that in an eventual list of non-actionable subsidies, more precise descriptions will be necessary.
counterbalanced by other macro-economic factors, such as, for example, the variation in exchange rates or the level of taxation influenced by the measures in question.

ii) Regional subsidies:

These subsidies should not be considered to be trade distorting and actionable if their objective is to achieve a better structural balance by overcoming dislocation disadvantages.

iii) Structural adjustment subsidies:

These are aids which are given to companies to assist them to positively restructure their business, for example, by reducing capacity. The very purpose of such subsidies is to restore economically justified activities and to generally facilitate the structural adjustment of production and export operations. They should therefore be exonerated from trade protective measures provided that the measures do genuinely lead to a reduction in trade distortions in international markets.

iv) Indirect subsidies:

These are subsidies given on inputs which are subsequently incorporated into a product traded internationally. In circumstances where the subsidy conferred on the input product is generally available or where the input itself is generally available to a wider range of users, the downstream product should be considered not to have benefitted from actionable trade-distorting subsidies.

Finally, the European Community considers that attention should be given to how to measure the degree of subsidisation inherent in any actionable subsidy. In this context the European Community considers that agreement should be reached that the basis for measuring the degree of subsidisation should be the effective cost of the measure to the government concerned.
The above ideas are applicable to matters to be negotiated within the framework of the negotiating group on subsidies and countervailing measures. In this context the European Community recalls that in accordance with the Ministerial Declaration, the primary responsibility for negotiations on agriculture rests with the Negotiating Group on Agriculture.