

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Trade and Development

INCENTIVES FOR INDUSTRIAL EXPORTS FROM DEVELOPING COUNTRIES

Note by the Secretariat

In view of certain enquiries that have been received regarding the application of the subsidy provisions of GATT to developing countries, the secretariat has thought it might be helpful to distribute a note on the history of paragraph 4 of Article XVI, on action taken under that paragraph, and on the relevance of Part IV.

1. Section B, "Additional Provisions on Export Subsidies", was added to Article XVI by the Protocol Amending the Preamble and Parts II and III. This Protocol was drawn up in March 1955 and entered into force in October 1957, having then been accepted by two thirds of the contracting parties. These additional provisions have now been accepted by all contracting parties.
2. Paragraph 4 envisages a ban (to operate from a date to be agreed) on any form of direct or indirect subsidy on the export of any industrial product (i.e. a product other than a primary product, as defined in interpretative Note 2 to Section B), which "results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market".
3. The second sentence of paragraph 4 imposed a "standstill", until 31 December 1957, on such subsidies by prohibiting "the introduction of new, or the extension of existing, subsidies". In November 1957, the CONTRACTING PARTIES opened for acceptance a Declaration extending the standstill for one year, and this was further extended on three occasions. The Declaration was accepted by a limited number of contracting parties, as follows:

		Accepted by	
		developed countries	developing countries
Declaration	30 November 1957 (6S/24)	15	9
1st extension	22 November 1958 (7S/30)	15	8
2nd extension	19 November 1959 (8S/25)	11	3
3rd extension	19 November 1960 (9S/33)	15	1

4. At the time of the third extension, the CONTRACTING PARTIES opened for acceptance the Declaration Giving Effect to the Provisions of Paragraph 4 (9S/32). This ban on subsidies on industrial products entered into force on 14 November 1962. It has been accepted by sixteen developed contracting parties.

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5. To enable contracting parties which could not accept the ban to undertake at least a standstill, a Second Standstill Declaration was opened for acceptance on 5 March 1964 (12S/50). But it was accepted by only one contracting party and was allowed to expire on its termination date, 31 December 1967.
6. Thus paragraph 4 of Article XVI is inoperative for most contracting parties, including all those in the "less-developed" category. The CONTRACTING PARTIES have refrained in recent discussion of the matter from urging less-developed contracting parties to accept either the Declaration Giving Effect to Article XVI:4 or an extension to the standstill. The approach appears to be related to the objectives set out in Article XXXVI and, in particular to the recognition in paragraph 5 of that Article of the "need [of less-developed contracting parties] for increased access in the largest possible measure to markets for processed and manufactured products currently or potentially of particular export interest". This, of course, does not detract from the obligations of paragraph 1 of Article XVI to notify all subsidies and to consult upon request.
7. It is recognized in paragraph 2 of Article XVI that export subsidies may be harmful to the trade of other contracting parties, and the imposition of countervailing duties is authorized by Article VI in the event of injury caused by imports of subsidized products. However, in this connexion it may be recalled that paragraph 3 of Article XXVII provides that:

"The developed contracting parties shall:

.....

"(c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties".

It is clear from the drafting history of Part IV that countervailing duties are among the "measures permitted to meet particular problems" referred to in this sub-paragraph (see L/2114, page 5, section III(e)).

8. The records of the Committee on Trade and Development indicate that neither the operation of the provisions of Article XVI nor any use of countervailing duties by a contracting party to offset subsidy measures of a developing country has been raised as an issue for consideration by the Committee.
9. The CONTRACTING PARTIES have never clarified the meaning of "subsidy", but interpretative material may be found in the reports of the Working Party and Panel dealing with Article XVI in 1960 (see Ninth Supplement, page 186, paragraph 5, and page 191, paragraphs 10-13). In 1961, the Panel on the Operation of Article XVI reported that it was "neither necessary nor feasible to seek an agreed interpretation of what constituted a subsidy"; the Panel felt that "the lack of a precise definition had not, in practice, interfered with the operation of Article XVI" (10S/208, paragraph 23).