

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Subsidies and  
Countervailing Measures

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## STATEMENT BY INDIA IN THE MEETING OF COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES ON 23 OCTOBER 1980

The delegation of India has requested that the following statement which relates to paragraph 12 of document L/5055 be circulated.

1. As the Committee is aware, India became a Party to this Agreement on 11 July 1980 and the Agreement came into force for India on 10 August 1980. Since this is the first meeting which we are attending in the capacity of a Party to the Agreement, I would, at the outset, like to stress that we consider the work of this Committee as being of crucial importance and we would be more than willing to participate in the proceedings with a spirit of co-operation and goodwill and with a view to making our contributions in a constructive spirit.
2. At this stage, we would particularly like to raise before the Committee the question and implications of the action taken by the United States authorities in invoking Article 19.9 against India. We trust that all delegations present here are already aware of the United States communication made to this effect to the Director-General, GATT, and circulated by the Director-General, GATT, to the contracting parties on 27 August 1980. It would be appreciated that the United States action is a source of deep concern for India because we consider that United States imposition of countervailing duties in respect of certain Indian exports without proof of injury to their domestic industry has resulted in an adverse impact on India's trade and the creation of an uncertain trading environment prejudicial to India's legitimate exports interests of dutiable products to the United States.
3. Apart from this aspect of the United States action, we also consider that the invocation of Article 19.9 of the Agreement by the United States constitutes, on several grounds, a contravention of United States obligations as a signatory to the Agreement on Subsidies and Countervailing Measures. It is in this context that the United States invocation of Article 19.9 detracts seriously from the credibility of multilaterally agreed codes and disciplines which have emerged from the Tokyo Round, particularly the letter and spirit of crucial, special and

differential treatment which, although modest, had been achieved by the developing countries in the tortuous process of the negotiations. My delegation believes, therefore, that the concerns we are raising today are of vital importance.

4. The Agreement on Subsidies and Countervailing Measures, bans the use of export subsidy on manufactures and minerals by countries other than developing countries. Paragraphs 1 and 2 of Article 14 of the Agreement explicitly recognize the right of developing countries to subsidise export of manufactured goods and paragraph 5 of Article 14 stipulates that these countries should endeavour to enter into a commitment to reduce or eliminate export subsidies when the use of such export subsidy is inconsistent with their competitive and development needs. It is, therefore, more than manifest that the decision for undertaking such commitments will be autonomous, voluntary and purely as a result of sovereign decisions to be taken by individual developing countries themselves. Even the United States authorities do not contest the right of any developing country to accede to the Agreement without making such commitments if they so decide as it is clear from their statement made in this Committee on 8 May.

5. Although the formal United States communication to the Director-General, GATT, which I have referred to earlier in my statement, does not contain a reason for invoking Article 19.9 the United States position of linking this action with commitments envisaged under Article 14.5 has already been clearly established in the General Policy Statement made by the United States delegation in the meeting of this Committee held on 8 May 1980 to the effect that they can extend the benefits of the injury test accruing from their new Countervailing Duty Law only to those developing countries that have undertaken commitments with regard to their export subsidy practices. As stated before, since Article 14.5 does not provide for developing countries to undertake commitments on mandatory or obligatory basis, it is our contention that the United States action contravenes the Agreement. In fact, the United States interpretation may be construed as constituting a conditional acceptance of or a reservation to the Agreement itself which the United States authorities have unilaterally chosen to make even after the conclusion of the negotiations and after the obligations accepted by them in terms of the Agreement have entered into force.

6. It is also our contention that whereas Article 19.9 may be invoked by any Party to the Agreement, we would question the validity of an invocation of this Article by a Party with the objective of obtaining concessions from another Party to the Agreement which are not envisaged in the provisions and go beyond the balance of rights and obligations contained in the Agreement. In this context, Mr. Chairman, my delegation would like to recall the report of the Working Party on the review of the operation of Article XXXV of the General Agreement with respect to Japan which was adopted by Contracting Parties on 7 December 1961 and is contained in document L/1545. Paragraph 20 of the Working Party's report states, inter alia, that "the CONTRACTING PARTIES might, however, wish to take the steps to dispel the idea that the

invocation of Article XXXV was a part of the normal practice of accession or that the invocation of Article XXXV could legitimately be used as a bargaining lever for gaining privileges or advantages over and above those provided for in the General Agreement". It is significant that in the 19th session of the CONTRACTING PARTIES, when the Working Party's report as a whole was adopted, it was the United States representative who had specifically mentioned that his Government endorsed the conclusions contained in the report. The United States representative is also on record as having stated that in the view of his delegation whatever the legal rights might be, it was never the intention of the CONTRACTING PARTIES in adopting Article XXXV to provide a bargaining device for the use of one contracting party against another. The United States Government had, on that occasion, deplored the invocation of Article XXXV for the purpose of obtaining a bargaining position from which special advantages might be obtained.

7. In terms of the technical procedures followed by the United States authorities for invoking Article 19.9 of the Agreement, my delegation feels that any communication under this Article should have been received directly by the Indian delegation within the stipulated time. We would particularly like to point out that Article 19.12 of the Agreement does not mention receipt and distribution of such communications by the depository to the Agreement. It is our contention, therefore, that since the Government of India did not receive any communication under Article 19.9 from the United States Government until much after the date on which the Agreement entered into force for India, the invocation of this Article by the United States authorities should be deemed to be ineffective.

8. We believe that these matters are of interest not only to the members of this Committee but to potential signatories of the Agreement, and more generally to the CONTRACTING PARTIES themselves. Additionally, the points of concern raised by us would undoubtedly have a bearing on the future interpretation and implementation of this Agreement which, as we are all aware, is of crucial interest and concern to developing countries. We would, therefore, like the Committee to debate on these points in an intensive manner, as early as possible. We would suggest that the Committee meet in a special session quickly to pursue these discussions and come to such findings and conclusions as may be appropriate. I would like to stress once again that we view these matters with a sense of extreme urgency and would seek the co-operation of the other Parties to this Agreement in facilitating further deliberations on these concerns in the forum of this Committee.