

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Review Working Party III on
Barriers to Trade other than
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AMENDMENT TO PARAGRAPH 6 OF ARTICLE VI

Proposal by Australian and New Zealand Delegations

Because it now appears unlikely that very strict rules will apply to the use of export subsidies, the delegations of Australia and New Zealand are concerned that there should be more effective provisions in GATT to enable contracting parties, where they consider it justified, to protect one another's industries against material injury resulting from export subsidies.

For this reason they feel that the emphasis which they earlier laid upon the need for protection of industries in third countries against damaging export subsidies was entirely justified and that, consequently, Article VI should be strengthened to provide adequate means for such protection whilst still affording reasonable safeguards against abuse.

In document L/270/Add.1 the New Zealand delegation proposed that Article VI should be amended to enable a contracting party, without the requirement of a waiver as at present, to levy anti-dumping or countervailing duties to offset dumping or subsidization which causes or threatens material injury to an industry of another contracting party. This proposal was associated with a proposal that quantitative restrictions might be used in lieu of or in addition to countervailing duties.

Whilst the proposal in this form did not find sufficient support in Sub-Group III-A, the delegations of Australia and New Zealand consider that some of the elements of the New Zealand proposal should be brought into GATT, and accordingly submit an alternative proposal in the form of an amendment to paragraph 6 of Article VI for consideration by Working Party III.

Under the existing provisions of paragraph 6 of Article VI the CONTRACTING PARTIES may authorize a contracting party to levy a countervailing duty to protect the industry of a third country from export subsidization which causes or threatens material injury. In giving this authorization, the CONTRACTING PARTIES are not obliged themselves to find that injury is being done to the industry of a third country. They may rely on the advice of the contracting

parties concerned or they may form their own judgment. But even if they do find such injury being done they are not under an obligation to grant a waiver and they may, in fact, be influenced by other considerations. The proposal now put forward would require the CONTRACTING PARTIES to grant the waiver and so permit a countervailing duty to be applied to protect a third country where they found that material injury was being caused or threatened to the industry of a third country.

The proposal would also allow a contracting party without prior approval to use countervailing duties to protect the industry of a third country against subsidization in exceptional circumstances and where delay might cause damage which would be difficult to repair. However, the contracting party imposing the countervailing duty would be required immediately to report its action to the CONTRACTING PARTIES and to withdraw the countervailing duty if the CONTRACTING PARTIES disapproved it. It is considered that the existing waiver requirements may create a delay during which serious damage may be done to the industry of a third country and the suggested amendment provides a necessary flexibility whilst still carrying adequate safeguards by way of supervision by the CONTRACTING PARTIES.

It will be observed that these additional provisions do not apply to anti-dumping duties, and it would still be necessary for countries wishing to protect the industries of third countries against dumping to secure a waiver from the CONTRACTING PARTIES before taking such action.

It is also emphasised that the amendments impose no mandatory requirements on contracting parties to use countervailing duties. Their use would still be permissive.

Draft Amendment to Paragraph 6 of Article VI

- (a) No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.
- (b) The CONTRACTING PARTIES may waive the requirement of sub-paragraph (a) of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party; Provided that the CONTRACTING PARTIES shall waive the requirements of sub-paragraph (a) of this paragraph, in so far as they apply to countervailing duties, in cases in which they find that a subsidy is causing or threatening material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.

- (c) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, in exceptional circumstances, where delay might cause damage which would be difficult to repair, a contracting party may levy a countervailing duty for the purpose referred to in sub-paragraph (b) of this paragraph without the prior approval of the CONTRACTING PARTIES: Provided that such action shall be reported immediately to the CONTRACTING PARTIES and the countervailing duty shall be withdrawn promptly if the CONTRACTING PARTIES disapprove.