

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/220

22 February 1955

Special Distribution

CONTRACTING PARTIES

Ninth Session

Review Working Party III on Barriers to Trade other than Restrictions or Tariffs

FINAL REPORT OF SUB-GROUP III-A

1. The terms of reference of the Sub-Group required that it consider the various proposals submitted with respect to direct export subsidies, other export incentives, domestic subsidies, and countervailing measures and anti-dumping duties.
2. All amendments that were referred to the Sub-Group as well as a number of proposals submitted during the course of its work were considered. In the following discussion and recommendations, the Sub-Group will deal with these proposals in the order of the Articles in the Agreement which they would affect.

Countervailing Measures and Anti-Dumping Duties (Article VI)

Paragraph 1

3. The Sub-Group examined a proposal by New Zealand (L/270/Add.1) to amend paragraph 1 to include a specific obligation on the part of contracting parties to refrain from action which would cause or encourage dumping. The Sub-Group decided not to recommend this amendment, believing that in practice such an obligation would have little value unless accompanied by an obligation to prevent dumping on the part of private commercial enterprises, and it was believed that the governments of many contracting parties would not have the legal authority to implement such an obligation. The Sub-Group wishes, however, to record its view that contracting parties should, within the framework of their legislation, refrain from encouraging dumping by private commercial enterprises, as the term is defined in paragraph 1. In this connection, the Sub-Group has recommended in Annex B the inclusion of a similar statement in the report of the Working Party.

Paragraph 1(a)

4. The Group considered a proposal by the United Kingdom (W.9/68) that sub-paragraph (a) be amended to cover the case of dumping when the product is re-exported. The Sub-Group considered that an amendment would not be necessary for this purpose, but has recommended that a note be included in the report of the Working Party to cover the case. The proposed text is included in Annex B.

Paragraph 1(b)

5. The Sub-Group considered a proposal by Czechoslovakia (W.9/86/Rev.1) for amending sub-paragraph 1(b) to deal with the special problem of finding comparable prices for the application of that sub-paragraph to the case of a country all, or substantially all, of whose trade is operated by a state monopoly. The Sub-Group was not prepared to recommend the amendment of the Article in this respect, but agreed to an interpretative note to meet the case. This note is recorded in Annex A.

Paragraph 3

6. The Sub-Group considered a proposal by New Zealand for the amendment of paragraph 3 (L/270/Add.1). Sub-paragraphs (a) and (b) of the New Zealand proposal represented primarily a re-arrangement and re-drafting of the present paragraph 3. These amendments were not supported by the Sub-Group. The proposed paragraph 3(c) accorded to an importing country the right to impose quantitative restrictions in lieu of a countervailing duty in cases where such a duty would be difficult to apply or would be inadequate to offset the effects of a bounty or subsidy, provided that the imposition of such a quantitative restriction should be promptly reported to the CONTRACTING PARTIES and the affected exporting country. This amendment was not supported by the majority of the Sub-Group, but the representative of New Zealand has reserved his right to raise the question in the Working Party.

Paragraph 4

7. Two amendments and an interpretative note were proposed to this paragraph. The first was an identical proposal by Denmark, Norway and Sweden (L/273, L/276 and L/275). The second amendment was proposed by Germany (L/261/Add.1). The interpretative note was proposed by the United Kingdom (W.9/68). All of these proposals were designed to clarify the meaning of the present text. The Sub-Group agreed, however, that they did not alter the meaning of the present text, and have therefore not recommended their insertion. The Sub-Group, however, recommends that the reason why these proposals were not adopted be recorded in the Working Party's report (see Annex B).

Paragraph 6

8. The Sub-Group considered a proposal by New Zealand (L/270/Add.1) to amend paragraph 6 in such a way as to remove the requirement of prior approval by the CONTRACTING PARTIES before the imposition of a countervailing or anti-dumping measure in order to protect the industry of another exporting country which is suffering from or threatened with material injury because of dumping or subsidization by another exporting country. This proposal did not receive sufficient support in the Sub-Group, but the representatives of New Zealand and the United Kingdom reserved their right to re-open the matter in the Working Party.

Additional paragraph

9. The Working Party considered an additional paragraph proposed by Denmark (L/273), Norway (L/276) and Sweden (L/275) which was referred to Working Party III by Working Party II, involving inter alia a requirement to report to the Organization on any measures taken under Article VI. This proposal did not receive sufficient support, and is not recommended by the Sub-Group.

Article XVI

10. The Sub-Group recommends that the existing text of Article XVI be retained. Some representatives considered that its language should be re-drafted as in some of the proposals considered by the Working Party, so as to make clear the intention of the present text, viz., that consultations can be initiated by a contracting party which considers that serious prejudice to its interests are being caused or threatened, without the necessity for prior action by the CONTRACTING PARTIES. (See page 52, paragraph 6 of the Analytical Index). It was not possible to obtain agreement on this proposal.

11. The representative of Canada expressed the view that reports submitted to the CONTRACTING PARTIES in accordance with the provisions of Article XVI are frequently insufficient to serve the purpose for which they were intended. A number of members agreed that improvement was desirable, and the Sub-Group agreed to recommend that the Working Party report should include recommendations designed to accomplish this purpose. The text of the proposed recommendation is included in Annex B.

Domestic Subsidies

12. The Sub-Group considered an Australian proposal (set out in W.9/113 and W.9/67). This proposal related to

- (a) negotiations on domestic subsidies in the same way as on tariffs, and
- (b) recourse to action under Article XKIII in respect of the impairment of tariff concessions by the subsequent application of domestic subsidies.

DIRECT EXPORT SUBSIDIES AND OTHER EXPORT INCENTIVES

13. Both of the above subjects were included in the terms of reference of the Sub-Group, and in the draft finally suggested the two subjects are combined in the text of a proposed new Article, or additional section to be added to the present Article XVI.

14. In arriving at this recommendation the Sub-Group considered not only the proposals originally referred to it, which are enumerated in W.9/20 and in the Progress Report of the Chairman (W.9/102, of 15 December 1954), but also a formal proposal by the delegation of Italy (W.9/139) and a number of informal proposals for compromise submitted by various delegations.

The first aspect was not discussed by the Sub-Group, but the New Zealand delegate reserved his right to raise the question in the Working Party. The second aspect was discussed in the Sub-Group, and the Sub-Group recommends that the following be incorporated in the Working Party report:

"A contracting party which has negotiated a concession under Article II may be assumed, for the purpose of Article XXIII, to have a reasonable expectation, failing evidence to the contrary, that the value of the concession will not be nullified or impaired by the contracting party which granted the concession by the subsequent introduction of a domestic subsidy on the product concerned."

The New Zealand representative preferred that the final line read

"... introduction or increase of a domestic subsidy ... etc"

and reserved his right to raise this question in the Working Party. The representative of Brazil also reserved his position with respect to the note as a whole.

15. In presenting the proposed draft for Additional Provisions on Export Subsidies (see Annex A), the Sub-Group has not attempted to decide whether it should be a new article or a separate section of Article XVI. Preferences were about equally divided on this point, but the Sub-Group suggests that a decision might be made later in the light of any changes being made in the structure of the Agreement as a whole.

Paragraph 2

16. In paragraph 2 of the proposed draft, a proposal had been made by the representatives of France and Uruguay to add "or individual markets for" after the words "world export trade in". They did not insist upon the inclusion of this phrase in the text proposed by the Sub-Group, but reserved their right to raise the matter at a later stage.

Paragraph 5(b)

17. Two versions of this sub-paragraph are included in Annex A. The first is substantially as drafted in the compromise proposal on which the final deliberations of the Working Group were based. The second was proposed by the representative of France, supported by the representative of Uruguay, if the text of paragraph 2 remains substantially in the form presented by the Sub-Group.

Interpretative Note

18. An interpretative note was presented by the representative of Brazil making special reference to the needs of under-developed countries. It was not possible to reach agreement on this proposal but the text of the note is included in the Annex in brackets.

Other Considerations

19. The Sub-Group wishes to record certain other considerations that arose during the discussion of this draft, and has suggested in Annex B topics which should be covered in the report of the Working Party regarding these matters.

20. It was possible to reach agreement on the draft text only after it was clear that these provisions would not prevent a contracting party from using multiple exchange rates or other exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund. The Sub-Group was of the opinion, therefore, that if Article XV:9 of the present Agreement should be altered, the proposed text would have to be reconsidered.

21. The Sub-Group also proposes that the Working Party report should include references to the question of the lack of previous export history for the purpose of determining an equitable share, the question of tax exemptions on exported products, and the meaning of "primary product" as used in the Article.

ANNEX A

AMENDMENTS AND INTERPRETATIVE NOTES PROPOSED
BY THE SUB-GROUP

Article VI - Interpretative Note to paragraph 1.

It is recognized that in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purpose of this paragraph, and in such cases importing countries may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

Article XVI

(As in present Agreement).

Additional provisions on Export Subsidies
(proposed new Article, or Section B of Article XVI)

1. The CONTRACTING PARTIES recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, cause undue disturbance to their normal commercial interests and may hinder the achievement of the objectives of this Agreement.
2. Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.
3. A system for the stabilization of the domestic price or of the return to domestic producers of a primary product, independently of the movements of export prices, which results at times in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, shall be considered not to involve a subsidy on exports within the meaning of paragraph 2 of this Article if the CONTRACTING PARTIES determine that

- (a) the system has also resulted, or is so designed as to result, in the sale of the product for export at a price higher than the comparable price charged for the like product to buyers in the domestic market; and
- (b) the system is so operated, or is designed so to operate, either because of the effective regulation of production or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties.

4. Furthermore, no contracting party shall grant directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in 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. Subject to the provisions of paragraph 5(b) below, contracting parties shall give effect to the provisions of this paragraph at the earliest practicable date but not later than 1 January 1958.

5. (a) No contracting party shall extend the scope of any subsidization of the kind described in paragraph 4 beyond the scope existing on 1 January 1955, by the introduction of new or the extension of existing subsidies.

(b) If any contracting party considers itself unable to give effect to the provisions of paragraph 4 in respect of any particular product or products by 1 January 1958 it shall, not later than 1 October 1957, give notice in writing to the CONTRACTING PARTIES. Such notice shall be accompanied by a full analysis of the subsidies in question and the circumstances justifying them. The CONTRACTING PARTIES shall thereupon decide whether any temporary adjustments should appropriately be made in the application to the contracting party of the provisions of paragraph 4. In reaching their decision the CONTRACTING PARTIES shall give due consideration to the needs of economic development and to any special problems of a temporary nature of the contracting party and also to any injury that might be caused to the trade of other contracting parties.]

OR (b) If any contracting party considers itself unable to give effect to the provisions of paragraph 4 in respect of any particular product or products by 1 January 1958 it shall, not later than 1 October 1957, give notice in writing to the CONTRACTING PARTIES of the circumstances requiring their continuation on a temporary basis. Such notice shall be accompanied by a full analysis of the subsidies in question. The CONTRACTING PARTIES shall review annually any subsidies thus maintained and may make recommendations to the contracting

party with a view to their progressive elimination. In making their recommendation, the CONTRACTING PARTIES shall give due consideration to the needs of economic development and to any special problems of a temporary nature of the contracting party and also to any injury that might be caused to the trade of other contracting parties.]

6. The CONTRACTING PARTIES shall review the operation of the provisions of this Article from time to time with a view to examining its effectiveness, in the light of actual experience, in promoting the objectives of this Agreement and avoiding subsidization seriously prejudicial to the trade of contracting parties.

Interpretative Note proposed by the representative of Brazil:

In considering cases under this Article, the CONTRACTING PARTIES would take due account of the needs for economic development and of any specific temporary problems in under-developed countries.]

ANNEX BNOTES RECOMMENDED FOR INCLUSION IN THE REPORT
OF THE WORKING PARTYArticle VI

It follows from Paragraph 1 of Article VI that contracting parties should, within the framework of their legislation, refrain from encouraging dumping, as defined in that paragraph, by private commercial enterprises.

Paragraph 1(a)

In the case where goods are not imported directly from the country of origin but are consigned to the country of importation from an intermediate territory, it would be in accordance with the terms of Article VI to determine the margin of dumping by comparing the price at which the goods are sold from the country of consignment to the country of importation with the comparable price (as defined in paragraph 1 of Article VI) in either the country of consignment or the country of origin of the goods.

Paragraph 4

Certain proposals for amending or interpreting the text of paragraph 4 have not been adopted because it was agreed that they were unnecessary since they did not alter the meaning of the present text (Denmark, Norway and Sweden - L/273, L/276 and L/275) (United Kingdom - W.9/68) (Germany - L/261/Add.1).

Article XVI

With reference to the notification of subsidies under Article XVI, the Working Party recommends that contracting parties, in so far as practicable, conform to the following standards in their reports:

Reports should be made in writing for individual commodities and under the headings listed below. A suggestion of the type of information which might be included under each heading is shown within brackets:

1. Nature and extent of the subsidy.

(a) Background and authority.

(The reason for the subsidy and the legislation under which it is granted.)

(b) Incidence.

(Whether paid to producers, to exporters, or in some other way; whether a fixed amount per unit, or fluctuating; if the latter, how determined.)

(c) Amount of subsidy.

(Total cost estimated or budgeted or, when this is not feasible, cost in preceding year.)

(d) Estimated amount per unit.

2. Effect of subsidy.

(Estimated effect on the quantity produced or exported in relation to a previous representative period.)

Domestic Subsidies

A contracting party which has negotiated a concession under Article II may be assumed, for the purpose of Article XXIII, to have a reasonable expectation, failing evidence to the contrary, that the value of the concession will not be nullified or impaired by the contracting party which granted the concession by the subsequent introduction of a domestic subsidy on the product concerned.

Additional provisions on Export Subsidies

1. It was possible to reach agreement on the draft only if it is clear that these provisions would not prevent a contracting party from using multiple exchange rates or other exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund. The Working Party was of the opinion, therefore, that if Article XV:9 of the present Agreement should be altered, the proposed text would have to be reconsidered.

2. The Working Party report should also contain appropriate reference to:

- (a) the interpretation of "equitable share" in cases where there is no previous export history;
- (b) the effect of exemption from domestic taxes in determining whether export subsidies exist;
- (c) the definition of "primary product" for the purpose of the additional provisions on export subsidies. Subject to whatever recommendation may be made by Review Working Party IV concerning such a definition, the Working Party recommends that this definition be based on Article 56 of the Havana Charter.

