

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/8

2 May 1975

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## Multilateral Trade Negotiations Group "Non-Tariff Measures"

### SUBSIDIES AND COUNTERVAILING DUTIES

#### Note by the Secretariat

1. At its meeting on 4-7 March 1975 the Group agreed that "the secretariat should distribute background papers relating to each of the four non-tariff measure groupings in advance of the meetings" (MTN/NTM/1, paragraph 11).

This paper deals with:

#### Paragraphs

A. Subsidies

3-9

B. Countervailing Duties

10-14

Paragraph 2 refers to certain background notes relating to subsidies and countervailing duties.

2. The preparatory work in the field of subsidies and countervailing duties started in Working Group 1 of the Committee on Trade in Industrial Products. Two background notes distributed by the secretariat (COM.IND/W/73 on export subsidies and COM.IND/W/98 on countervailing duties and domestic subsidies that stimulate exports) should therefore be taken into consideration. A background note by the secretariat entitled "Subsidies and Countervailing Duties" (MTN/3B/10) summarizes the work undertaken in the context of the Committee on Trade in Industrial Products. A further note by the secretariat (MTN/3B/21), established in accordance with the decision taken by Group 3(b) that the secretariat should prepare notes on relevant non-tariff measures affecting the trade interests of developing countries, reviews the GATT provisions relating to subsidies and countervailing duties, the nature and scope of the problem, and the proposals for possible solutions that have been made in the past, including proposals for differentiated treatment to developing countries.

#### A. Subsidies

##### Documentation concerning existing measures

3. As far as industrial products are concerned, Part I of the Inventory of Non-Tariff Measures (MTN/3B/1 and addenda, Section A) contains notifications on government aids. Selected notifications of an illustrative nature which are of particular interest to developing countries are included in Annex III to document MTN/3B/21.

4. In regard to agriculture, information on measures and mechanisms influencing the export of the agricultural products is contained in document MTN/3E/DOC/5/Rev.1 and addenda.

5. According to the provisions of Article XVI:1, contracting parties are obliged to notify any measures which operate directly or indirectly to increase exports from, or reduce imports into, their respective territories. This information shall include the extent and nature of the subsidization, the estimated effect on the quantity of the affected product imported or exported as the case may be and the circumstances making the subsidization necessary. In accordance with the decision of the CONTRACTING PARTIES at their twentieth session (BISD, 11S/58), contracting parties are requested to submit every third year new and full responses to the questionnaire on subsidies contained in pages 193-194 of Ninth Supplement (see Annex I). New and complete notifications were to be submitted in January 1975 (see document L/4141). Subsequent notifications in 1976 and 1977 will cover changes to the basic notifications for 1975.

#### Proposed solutions

6. Working Group 1 of the Committee on Trade in Industrial Products directed its work towards the establishment of possible ad referendum solutions to the problems created by subsidies. The Group took account of the list of prohibited practices agreed in 1960 (reproduced in Annex II). The establishment of a new list was discussed. For the content of this list and the comments made thereon, see document MTN/3B/10, paragraphs 7-11; for the discussions held on domestic subsidies, see paragraphs 12-14.

7. Work was continued in Group 3(b) in May 1974 at which time a number of suggestions concerning subsidies were made. A note by the secretariat on this meeting is contained in document MTN/3B/19. The report of the Group to the Trade Negotiations Committee on subsidies is contained in document MTN/3, paragraphs 28-31 and 34-43. Both documents contain references to additional documentation before the Group.

8. Group 3(b) met again in October 1974 to consider proposals concerning differentiated treatment for developing countries in the field of subsidies. In this connexion, it considered, inter alia, a proposal submitted by the Brazilian delegation (document MTN/W/5). A report by Group 3(b) to the Trade Negotiations Committee on this meeting is contained in document MTN/9.

#### Main issues

9. The previous discussions, including the one held at the meeting of the Group "Non-Tariff Measures" from 4-7 March 1975, have related, inter alia, to the following main issues:

- (a) What connexion, if any, needs to be established between negotiations in the area of subsidies and in the area of countervailing duties?
- (b) Should work in this area begin with negotiations on subsidies or should solutions to the problems of countervailing duties be sought as a matter of priority?
- (c) Should any possible solution in this area be based on the existing provisions of the GATT or is there a need for amendment of the General Agreement? If the latter, should an amendment provide for different or additional obligations?
- (d) Should there be a general definition of subsidies which are deemed not to be in accordance with the General Agreement, or is it advisable to draw up a list of prohibited subsidy practices? If the latter, should such a list be exhaustive or illustrative?
- (e) How should domestic subsidies with trade distorting effects be dealt with in the negotiations? Should any list of prohibited practices include or exclude domestic subsidies which have trade distorting effects?
- (f) Can problems connected with subsidies be solved by an improved notification and consultation procedure, possibly reinforced by multilateral surveillance?
- (g) How could as wide an acceptance of obligations as possible in this field be secured?
- (h) Should the dual pricing criterion contained in Article XVI:4 be maintained?
- (i) Should the standstill provisions of Article XVI:4 be revived in the context of the negotiations?
- (j) What approach should be used towards competitive subsidization of exports in third country markets?
- (k) Should the distinction between the use of subsidies for exports of primary products and products other than primary products (Article XVI, paragraphs 3 and 4) be maintained or should the provisions of Article XVI:4 be extended to cover all products?

- (l) To what extent is differentiated treatment for developing countries feasible and appropriate in this area?
- (m) Should developing countries undertake any obligations in this area, consistent with their individual development, financial and trade needs?
- (n) Is it feasible and appropriate to draw up a list of subsidization practices that developing countries would be permitted to use?

B. Countervailing duties

Documentation concerning existing measures

10. Part I of the Inventory of Non-Tariff Measures (MTN/3B/1 and addenda, Section B) contains a number of notifications on problems posed by the application of countervailing duties.

Proposed solutions

11. Working Group 1 of the Committee on Trade in Industrial Products held five meetings directed to the establishment of possible ad referendum solutions to the problems created, inter alia, by countervailing duties from May 1972 to June 1973. A summary of the different proposals put forward is contained in document MTN/3B/10.

12. A number of suggestions concerning countervailing duties were made during the meeting of Group 3(b) in May 1974. These suggestions are summarized in the report of Group 3(b) to the Trade Negotiations Committee (MTN/3, paragraphs 28-39, 32-43). More details will be found in a note by the secretariat on the meeting (MTN/3B/19). Both documents contain references to working documents discussed in the Group.

13. Group 3(b) met again in October 1974. At the meeting, the Group considered, inter alia, a proposal submitted by the Brazilian delegation for differentiated treatment for developing countries (MTN/W/5). A report on this discussion is contained in document MTN/9.

Main issues

14. The previous discussions, including the one held at the meeting of the Group "Non-Tariff Measures" on 4-7 March 1975 have related, inter alia, to the following main issues:

- (a) Should any possible solution in this area be based on the existing provisions of the GATT or is there a need for amendment of the General Agreement? If the latter, should an amendment provide for different or additional obligations?

- (b) Should a declaration or an interpretative note be prepared, spelling out in more detail particular provisions of Article VI as they apply to countervailing duties, or should a code be developed governing the application of countervailing duties? If the latter, to what extent does the Anti-Dumping Code produce useful guidance?
- (c) Can the problems connected with countervailing duties be solved by an improved notification and consultation procedure, possibly reinforced by multilateral surveillance?
- (d) Should national legislation which does not contain an injury criterion be brought into line with Article VI of the General Agreement and should the Protocol of Provisional Application cease to apply to countervailing duties, or should a solution to problems created by countervailing duties be sought primarily by provisions for the elimination of the trade distorting effect of subsidies?
- (e) Are the present provisions of the GATT on countervailing duties adequate to protect exporting industries from injury caused by competition from subsidized exports in third country markets?
- (f) Is differentiated treatment to developing countries feasible and appropriate in this area? If so, how might this be accorded?
- (g) Should developing countries undertake any obligation in this area, consistent with their individual development, financial and trade needs?

ANNEX I

Notification of Subsidies Pursuant to Article XVI:1

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:

I. 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.

II. Effect of subsidy

- (a) Estimated quantitative trade effects of the subsidy; and the reason why it is considered that the subsidy will have these effects.
- (b) Statistics of production, consumption, imports and exports:
  - (i) for the three most recent years for which statistics are available;
  - (ii) for a previous representative year, which, where possible and meaningful, should be the latest period preceding the introduction of the subsidy or preceding the last major change in the subsidy.

ANNEX II

Paragraph 5 of the report of the 1960 Working Party, which considered the steps that should be taken to implement the provisions of Article XVI:4 is reproduced below.

The full text of this report, adopted by the CONTRACTING PARTIES at their seventeenth session, can be found on page 185 of the Ninth Supplement of the Basic Instruments and Selected Documents.

5. The following detailed list of measures which are considered as forms of export subsidies by a number of contracting parties was referred to in the proposal submitted by the Government of France, and the question was raised whether it was clear that these measures could not be maintained if the provisions of the first sentence of paragraph 4 of Article XVI were to become fully operative:

- (a) Currency retention schemes or any similar practices which involve a bonus on exports or re-exports;
- (b) The provision by governments of direct subsidies to exporters;
- (c) The remission, calculated in relation to exports, of direct taxes or social welfare charges on industrial or commercial enterprises;
- (d) The exemption, in respect of exported goods, of charges or taxes, other than charges in connexion with importation or indirect taxes levied at one or several stages on the same goods if sold for internal consumption, or the payment, in respect of exported goods, of amounts exceeding those effectively levied at one or several stages on these goods in the form of indirect taxes or of charges in connexion with importation or in both forms;
- (e) In respect of deliveries by governments or governmental agencies of imported raw materials for export business on different terms than for domestic business, the charging of prices below world prices;
- (f) In respect of government export credit guarantees, the charging of premiums at rates which are manifestly inadequate to cover the long-term operating costs and losses of the credit insurance institutions;
- (g) The grant by governments (or special institutions controlled by governments) of export credits at rates below those which they have to pay in order to obtain the funds so employed;
- (h) The government bearing all or part of the costs incurred by exporters in obtaining credit.

The Working party agreed that this list should not be considered exhaustive or to limit in any way the generality of the provisions of paragraph 4 of Article XVI. It noted that the governments prepared to accept the declaration contained in Annex A agreed that, for the purpose of that declaration, these practices generally are to be considered as subsidies in the sense of Article XVI:4 or are covered by the Articles of Agreement of the International Monetary Fund. The representatives of governments which were not prepared to accept that declaration were not able to subscribe at this juncture to a precise interpretation of the term "subsidies", but had no objection to the above interpretation being accepted by the future parties to that declaration for the purposes of its application.