

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Subsidies and Countervailing Duties"

CHECKLIST OF POSITIONS ON THE VARIOUS  
ISSUES IN THE AREA OF SUBSIDIES  
AND COUNTERVAILING DUTIES

Note by the Secretariat

1. At its April 1976 meeting the Sub-Group "Subsidies and Countervailing Duties" agreed that the secretariat prepare, on its own responsibility but in consultations with delegations, a working paper containing a checklist of positions on the various issues in the area of subsidies and countervailing duties. The Sub-Group also agreed that this document would be examined by the Sub-Group at its next meeting (MIN/NTM/15 paragraph 4).
2. According to the Sub-Group's instructions, the present note has been prepared by the secretariat in consultation with delegations and is based on written submissions made in the framework of the Multilateral Trade Negotiations including additional comments submitted in writing by delegations to the secretariat.
3. The note has been prepared on the secretariat's responsibility and neither its content nor the way in which the issues have been presented commit any delegation.

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I. GENERAL OBSERVATION

AUSTRALIA

... Article VI has proven an inadequate deterrent to the use of subsidies. It does not take sufficient account of the fact that, at least in agricultural trade, subsidized competition usually occurs in third markets, where the importing country has no real interest in taking countervailing action. Moreover, subsidies are often not clearly identifiable and, even if they are, are hard to quantify.

(MTN/NTM/W/43, p. 4)

CANADA

The Canadian delegation is of the view that any examination should start with the General Agreement proper, that is, that the existing rights of contracting parties under the Agreement should not be reduced and indeed those rights and obligations which are not now being respected should be. The Protocol of Provisional Application is not, of course, one of the rights of contracting parties under the Agreement.

The Canadian delegation is of the view that any action contemplated in the MTN should avoid sanctioning new barriers to trade, i.e. contracting parties should not acquire rights to impose barriers to trade that they do not now have under the Agreement.

Any new instruments embodying agreements between contracting parties should seek to maintain the balance of rights and obligations in the General Agreement; it should be noted that given that countries differ in economic size and in their dependence on foreign trade, any addition to the rights of contracting parties will be, as a practical matter, an addition to the rights on only some contracting parties.

The relationship between subsidies and countervailing duties cannot be symmetrical. The latter are designed as a sanction against certain subsidies, e.g. subsidies causing injury to producers of like goods in the importing country paid specifically in respect of exported goods. Countervailing duties by definition cannot be used to offset the impact of subsidies to production that simply replaces imports. The provisions of Articles XXII and XXIII are relevant in this connexion.

Any system of obligations, and sanctions for any breach of such obligations, which would allow the authorities of one contracting party to determine unilaterally that its rights or the obligations of another contracting party have

been breached and then to apply a sanction unilaterally, would be entirely contrary to the GATT. Such a proposal would not be acceptable to the Canadian authorities.

(MTN/NTM/W/26/Add.1, p. 2, paras 1, 2, 3 and 5)

#### JAPAN

... The negotiation in the field of subsidies and countervailing duties should be conducted on the basis of the present GATT provisions and it should aim at placing the relevant laws and regulations of the participating countries as well as their administration in conformity with the relevant provisions of the General Agreement.

... It is of particular importance for this Sub-Group to aim at placing the participating countries on equal footing under the relevant provisions of the GATT in the field of countervailing duties.

(MTN/NTM/W/26/Add.2, p. 2)

#### MEXICO

Some delegations state that Articles VI and XVI have not been fully applied and that, furthermore, they are imperfect. In the view of my delegation it would be wise, therefore, to establish independent and compulsory rules for everyone because in the case of countries like Mexico which are not members of GATT it could be very difficult to observe a particular article of the General Agreement.

(MTN/NTM/W/43/Add.3, p. 5)

Solutions to the problems of subsidies must not be sought in relation to countervailing duties. Otherwise that could only complicate the negotiation: since these are separate matters, they must be dealt with separately, and if so desired in parallel.

(MTN/NTM/W/43/Add.3, p. 8)

#### UNITED STATES

The United States believes that an appropriate solution for the problems that countries encounter in the areas of subsidies and countervailing duties is an international code that clearly delineates rules and limitations on the use of

subsidies and sets out the rights and obligations of countries in the use of offsetting measures in response to failures to abide by those rules and limitations.

(MTN/NTM/W/26, p. 6)

VENEZUELA

... The negotiations on non-tariff measures, so far as subsidies and counter-vailing duties are concerned, should aim at the formulation of an appropriate instrument governing their application at a multilateral level, for example an international code of conduct. In the opinion of Venezuela it is of urgent necessity that the interests of the developing countries should receive appropriate consideration and should be safeguarded, through the application of differentiated and more favourable treatment, in the formulation of an instrument of that nature and in conformity with the terms of the Tokyo Declaration.

(MTN/NTM/W/43/Add.1)

## II. GENERAL COMMENTS ON SPECIAL TREATMENT OF DEVELOPING COUNTRIES

### BRAZIL

We are also somewhat puzzled by the reference, in the EEC paper, to the need for developed countries to "show the greatest possible flexibility in the application of countervailing duties to imports from developing countries". What kind of flexibility? How? Are we talking about differential measures in favour of all developing countries? We do not feel that such flexibility, if it is not clearly translated into differential measures, is sufficient. In the area of countervail, as in the area of subsidies, we feel that such differential measures are possible: the adoption of criteria relating to the impact of countervailing measures in the export market, the industry and the economy of the developing countries; commitments not to countervail against a developing country before all bilateral and multilateral procedures have been exhausted; commitments to avoid, if not in general, at least in relation to developing countries, any form of unilateral action; possibly, and this could only be seen at a later stage of negotiations, certain additional criteria.

(Not published)

### CANADA

Full account must be taken of the special interests of developing countries. The final determination of what differential measures might be appropriate should take place in the light of general solutions evolved in these negotiations. It might well be that provisions for international scrutiny of subsidies and working out of adequate understandings regarding material injury, would make unnecessary any special provisions regarding the exports of developing countries and would not inhibit them in providing necessary subsidies to achieve their legitimate development objectives.

(MTN/NTM/W/26/Add.1, p. 4)

EUROPEAN COMMUNITIES

The developed countries should show the greatest flexibility in the application of countervailing duties to imports from developing countries.

(MTN/NTM/W/26/Add.1, p. 13)

MEXICO

It is clear to us that in regard to special treatment for developing countries, new rules are needed and it will not be sufficient - and in any case not automatic - for our interests to be taken into account through an adequate definition of "material injury" and a system of international surveillance; that is why we do not accept such interpretations which, at best, seem optimistic. We are not opposed to special rules in favour of developing countries being formulated in the light of the general rules, and in this respect our position has been clearly indicated.

(MTN/NTM/W/43/Add.3, p. 7)

NORDIC COUNTRIES

The Nordic countries are of the opinion that the differentiated and more favourable treatment for the developing countries must be borne in mind when continuing the work in this field. We believe that the problems connected with the treatment of the developing countries in this field can be fruitfully discussed when the form and content of general solutions can be seen more clearly. It might well be that at least some of the specific problems of the developing countries can be solved in the context of general solutions.

(MTN/NTM/W/43/Add.2, p. 3)

UNITED STATES

... It will prove feasible and appropriate to negotiate provisions for differential treatment under prescribed conditions for developing countries in certain areas of subsidies and countervailing duty rules. Such treatment should be geared to the particular situations of developing countries and to periods linked to achieving particular development objectives.

(MTN/NTM/W/26, p. 9)

VENEZUELA

Recognition should be given, by means of concrete resolutions to be adopted, to the right of the developing countries to use subsidies as a means of promoting the expansion and diversification of their exports of manufactures and semi-manufactures, and to the right and the need to increase their relative share in world exports of these products. The resolutions embodying this recognition on the part of the international community would have to make provision for machinery designed to exempt imports originating in developing countries from the application of countervailing duties by importing developed countries. In cases of proved disruption of the domestic market caused by such imports, the developed countries affected should choose the method of reconversion or adjustment measures in the sector involved, in conformity with the provisions of Article XXXVII, paragraph 3(c), of the General Agreement.

(MTN/NTM/W/43/Add.1, para. 1)

### III. COUNTERVAILING DUTIES

#### I. Objective of the negotiations on countervailing duties

##### AUSTRALIA

..... it would be useful to examine the connexion between proof of injury and imposition of countervailing duties, both from the point of view of existing GATT provisions and proposals for new ones.

..... Australia accepts that countries may have a legitimate grievance about countervailing duties which are not applied, for whatever reason, in accordance with existing GATT provisions. In Australia's view the appropriate course for countries with such a grievance would be to seek to induce those countries to apply the present injury criteria included in the relevant GATT provisions. It seems that it would be quite incommensurate with the problem to elaborate a whole new code for the application of the GATT provisions relating to countervailing duties. Such a course of action would only be justified if, for example, it could be shown, as it was in the case of the Anti-Dumping Code, that countries were exploiting the indefiniteness of the GATT wording to apply an additional layer of protection to domestic industry. So far as Australia is aware there is no evidence that this is the case.

The code envisaged by the EEC may therefore be legislating for a problem that has not been demonstrated to exist. On the other hand, as regards a problem in this area that is well known to exist - the fact that in third country markets, where difficulties arise as a result of subsidized exports, governments are rarely willing to take countervailing action - it appears the EEC would not envisage improving on the present provisions in the GATT relating to third country subsidization. Indeed to the extent that the code would apply to such cases, a code of the kind proposed by the Community would actually make it harder for countervailing action to be taken because the injury criteria envisaged are stricter.

(Not published)

##### AUSTRIA

... The negotiations on countervailing duties should aim at the elaboration of an appropriate instrument, e.g. a code or an interpretative note to Article VI. The main purpose of such an instrument should be to ensure that all contracting parties are bound to the same obligations in their respective system of levying countervailing duties ...

(MTN/NTM/W/26, p. 1)

BRAZIL

The lack of specificity of present GATT rules on this matter, which tends to annul the differentiated treatment which can be inferred from them, has led the Brazilian Government to propose, in a constructive spirit, within the framework of the MTN, a revision of these rules, so as to be explicit, in a form which would meet the interests of both developed and developing countries, rules and special procedures which would confer a differentiated and more favourable treatment to developing countries both in relation to the application of incentives to their exports and to the imposition of countervailing duties, by developed countries, to imports from them. This attitude is based on the Tokyo Declaration, which in its paragraph 5 explicitly recognizes "the importance of the application of differential measures to developing countries in ways which will provide special and more favourable treatment for them in areas of the negotiations where this is feasible and appropriate".

Once the above procedures are negotiated for consolidating differentiated and more favourable treatment to developing countries, it would be necessary to discuss how to insert these procedures in the framework of the General Agreement. Brazil proposes that such procedures be given reality through interpretative notes and/or supplementary provisions to Articles VI and XVI, or through the negotiation in the multilateral trade negotiations of a binding code of conduct on the subject, or, finally, through any procedure or agreement aimed at conforming the present GATT rules to the special trade and development needs of developing countries.

(MTN/NTM/W/26, pp. 3-6)

CANADA

There are a number of alternatives:

1. Development of a code governing the application of countervailing duties.
2. Preparation of a Declaration or Interpretative Note expanding on particular provisions of Article VI as they apply to countervailing duties.
3. Agreement on new bilateral consultative procedures reinforced by multilateral surveillance provisions.
4. No change in the existing provisions or procedures under Article VI but perhaps a tightening up of the present provisions of Article XVI respecting subsidies.
5. A new article of the Agreement dealing with measures which may be used to offset export subsidies or subsidies for import replacement.

6. Some combination of the foregoing alternatives.

Some elements of these alternatives are examined in MTN/3B/W/6, pp. 10-14.

COLOMBIA

The basis for the solution to the problem of subsidies and countervailing duties should be as follows:

A. Re-drafting of the existing GATT rules in this respect, so as clearly to define the concept of "material injury" in Article VI. The text of Article VI should make provision for separation of the two types of measures at present covered (anti-dumping duties and countervailing duties) because in fact they are different measures and are applied in accordance with well-defined characteristics that correspond to problems of a different kind.

B. Establishment of an international surveillance system.

(Not published)

EUROPEAN COMMUNITIES

The Community proposes, to its partners that they should seek in the negotiations to formulate a code for the application of the provisions of Article VI.

-- In order to ensure the efficacy of the provisions of Article VI on countervailing duties, this code must contain definitions of certain essential ideas, make available certain criteria and provide for the establishment of certain procedures.

- It is the view of the Community that the rules agreed should be of a general nature and should ensure that all Signatory Parties be bound by the new provisions and that all the provisions should be applied in their entirety without exception or reserve. They would thus guarantee an equality and a balance between the rights and obligations of adhering countries.

- The Community considers, that Article VI must remain the basic legal instrument from which the necessary rules for application must be formulated. These rules must concern three principal subjects which are found within the general context of Article VI: the notion of subsidy, that of material injury resulting therefrom and procedures. These notions must be defined, care being taken, however, to maintain a balance between their inter-relationships and interactions. In this respect, particular attention must be given to the idea of material injury which brings to bear on the entire system organized by Article VI, a factor of moderation and of flexibility.

(MTN/NTM/W/26/Add.1, pp. 4-5)

JAPAN

... The objective of the negotiation in this field should be to put domestic laws and regulations concerning countervailing duties and their administration of participating countries in conformity with Article VI of the General Agreement. This objective would be achieved by such ways as conclusion of an internationally binding agreement, or the abolition or suspension of application of the Protocol of Provisional Application with respect to countervailing duties.

(MTN/NTM/W/26/Add.2, p. 2)

MEXICO

It is necessary to establish a set of rules in the course of these multi-lateral trade negotiations, under which countries would undertake to observe objective and internationally accepted criteria whenever the need arises to consider the possibility of applying countervailing duties; and furthermore to establish special procedures and differentiated treatment in favour of developing countries, taking into account the existing problems and designed to contribute to overcoming those problems for the benefit of those countries.

Specifically, Mexico considers that any procedure that may be adopted for the solution of problems in the field of countervailing duties should include the following elements, inter alia:

1. The basis should be the general principle of exemption for developing countries.
2. In pursuance of that principle, Article VI of the General Agreement should be amended in line with the provisions of Article XXXVII:3(c), so as to stipulate differentiated treatment in favour of developing countries.
3. The most practical solution would be to draw up a code independent of the General Agreement, reflecting the spirit and the letter of Article VI amended as indicated in paragraph 2 above. This code would be open to acceptance by all members of the Trade Negotiations Committee.
4. The code should regulate and define in detail those cases in which a countervailing duty may be applied and also, in each case and in each article establishing general rules, all relevant elements for special and differentiated treatment in favour of developing countries.

5. In parallel with the establishment of the code proposed in paragraphs 3 and 4, a multilateral surveillance body should be set up, in which there would be adequate representation of developing countries, to exercise continuing surveillance over the proper operation of the proposed code.

(MTN/NTM/W/43/Add.3, p. 3)

We want Article VI to be amended at least so as to incorporate in it the elements set forth in Article XXXVII:3(c). That is why we are not in agreement with the Community regarding the merits of Article VI.

(MTN/NTM/W/43/Add.3, p. 7)

#### NORDIC COUNTRIES

In the view of the Nordic countries solutions in the area of countervailing duties should be based on the present provisions of the General Agreement.

(MTN/NTM/W/43/Add.2, p. 1)

#### 2. Conditions for levying a countervailing duty

##### (a) Material injury

#### AUSTRIA

... levying of countervailing duties could only be taken into consideration if injury or threats of injury to domestic industries has in fact been established."

(MTN/NTM/W/26, p. 1)

#### BRAZIL

Countervailing actions against exports which benefit from incentives from developing countries could be taken only:

- (a) in the case of incentive measures not included in the positive list of export subsidies which within the framework of differentiated and more favourable treatment to developing countries would be expressly authorized for these countries, and then only
- (b) in exceptional circumstances, as a last resort, in accordance with Article VI and its basic criterion of serious injury.

(MTN/NTM/W/26, p. 4)

We have not clearly understood the concept of "market penetration". We do not understand that it is meant to be used as a preliminary set of criteria, and not as a conclusive test for countervailing action. However, we do not see how one can very clearly draw the line between such criteria and criteria for "market disruption"; neither do we see how one can effectively relate "market penetration" to subsidy measures alone. And finally, we feel that to accept such a concept as "market penetration" could lead us dangerously towards a possible corollary, that is, that trade should be stabilized and not expanded, and thus markets not be penetrated more than they have been. If anything, we feel, the recourse to criteria such as these should only be made after, and not before, certain material injury tests have been met. We would, therefore, welcome comments by the Communities on this point.

(Not published)

CANADA

It is now required in Article VI that there be material injury (or threat thereof) before countervailing duties may be levied against goods benefiting from subsidies. This provision should be examined in order to ensure that the concept "injury" is clearly defined, that the concept "material" is so defined as to ensure that material injury is not determined to exist unless it is clear that the degree of injury is substantially and significantly more than de minimis and that there is a meaningful examination or test of whether or not material injury (or threat thereof) has in fact occurred. The experience since the adoption of the Anti-Dumping Code demonstrates that important differences exist between contracting parties with respect to the application of the requirement concerning material injury or the threat of material injury.

There are no reasons why any contracting party should not subscribe to such provisions regarding material injury.

(MTN/NTM/W/26/Add.1, p. 3)

The Group of Experts was quite categorical on the injury requirement of the Article VI. In their view it was "essential" that countries should avoid the "immoderate" use of either anti-dumping or countervailing duties. They added that "these duties were to be regarded as exceptional and temporary measures to deal with specific cases of injurious dumping or subsidization".

A meaningful definition of material injury is obviously a key matter for consideration in the course of any negotiations in this area.

(MTN/3B/W/6, pp. 4-5)

Associated with the general definition of injury are questions concerning what effectively constitutes an "industry" and a "regional market". Both are important in assessing whether or not imports are injurious in a given instance. There is clearly room for improvement with respect to the application of these terms in any understandings which may be reached regarding the use of countervailing duties.

The question has been raised from time to time as to whether or not there should be quantitative thresholds or minima respecting the magnitude of the increase in imports or their impact on domestic employment or production as measured by the sorts of indices noted in the Anti-Dumping Code. It has also been suggested that there should be some ranking in importance of the various criteria set out in Article 3 of the Anti-Dumping Code. It is for consideration whether it would be advantageous to set thresholds or to provide for a ranking of criteria. If so, it would also be necessary to find some method of reaching agreement on the appropriate ranking and thresholds.

There is also a question of whether such threshold levels would come to be regarded as trigger points and, thus, the new international agreement would have the perverse effect of bringing about virtually automatic injury determinations whenever the minima were determined to be met. The question is whether greater precision will be worth the price.

(MTN/3E/W/6, pp. 6-8)

Any system of obligations, and sanctions for any breach of such obligations, which would allow the authorities of one contracting party to determine unilaterally that its rights or the obligations of another contracting party have been breached and then to apply a sanction unilaterally, would be entirely contrary to the GATT. Such a proposal would not be acceptable to the Canadian authorities.

(MTN/NTM/W/26/Add.1, p. 2 para. 5)

It has been suggested that a code might provide for virtually automatic application of countervailing duty, without a test of material injury, to goods which have benefited from a subsidy which the authorities in the importing countries deem to be prohibited under Article XVI. Such a code would not be in accord with Article VI; moreover it would involve the concept of one country determining unilaterally that another country was in breach of its obligations and unilaterally applying a sanction. Such a concept is quite foreign to the GATT, and the dangers inherent in it are obvious.

(MTN/3E/W/6, p. 11)

COLOMBIA

- Non-application of countervailing duties until such time as material injury is shown to exist, consistently with previously established criteria in which case before such a measure is taken, procedures would be established for consultations.

- In the definition of "material injury" account would be taken of the circumstances of the exporting developing country, the importance of the sector for its economy, the employment situation, the overall trade balance of the sector, and the balance of payments.

(Not published)

EUROPEAN COMMUNITIES

Determination of injury:

A. Evaluation

Separation of the examination of injury into two phases: the result of the first stage being a condition for passing onto the second stage without, however, prejudging it in any way.

(a) First phase: objective criteria; market penetration

1. Substantial increase in imports, either in absolute value or in relative value by comparison with the production of the importing country.
2. Substantial price undercutting by the subsidized product as compared with the price of like products made in the importing country.
3. A rapid increase in the market share held by the subsidized product.

Whatever the exact content of the criteria which are finally adopted it would be advisable to give them more weight by providing that they should apply cumulatively, in such a way that the absence of any one of the criteria would lead to a negative determination.

(b) Second phase: situation of the affected industry

(Article 3(b) and (c) of the Anti-Dumping Code)  
(Annex A of the MFA)

1. The development of turnover, profits and internal prices, employment etc.
2. Other factors not connected to the effects of the subsidy, such as the intensity of competition between the producers in the importing country, contraction of demand, substitution of other products, etc.

The evaluation must refer to the production of strictly similar products. (Article 3 of the Anti-Dumping Code).

#### Threat of injury

##### Minimum definition

- the objective criteria (market penetration) must be met
- the threat of injury would only concern the situation of the affected industry

that is: market penetration whose existence has been established, threatens injury to the industry concerned.

#### B. Causality

The subsidy must be the principal cause of material injury, that is, a cause more important than all other causes together.

##### Definition of the term "industry":

The expression "domestic industry" means the domestic producers as a whole of like products or those of them whose collective production constitutes a major proportion of the total domestic production of those products.

Simplification of the rules on "regional protection" in an isolated market.

(MTN/NTM/W/26/Add.1, pp. 10-11)

#### INDIA

The developed countries should contemplate countervailing action ONLY if there is material injury, directly as a result of subsidy.

The injury should be to the industry as a whole and not to certain units and the fact of injury having been caused should be subject to multilateral surveillance.

In taking action it should be examined if the advantage lies in favour of a developing country (labour intensiveness local raw materials low technologies). Such areas should be vacated by developed countries and adjustment assistance granted to their industry instead of taking protective measures.

The impact of measures taken on the economy of the developing exporting country should also be considered.

It should be examined whether subsidies have any element of discrimination.

(MTN/NTM/W/26/Add.3, pp. 4-5)

#### JAPAN

The presence of material injury should be the necessary precondition for imposition of countervailing duties. In this connexion, it is also possible to seek solutions in these cases in accordance with the procedures provided for in such provisions as Articles XXII and XXIII of the General Agreement.

It is the right recognized to importing countries under the GATT to impose countervailing duties within "an amount equal to the estimated subsidy determined to have been granted" when material injury is caused to domestic industry by subsidization measures in another country.

(MTN/NTM/W/26/Add.2, p. 2)

#### MEXICO

- Without prejudice to the definitive form of the proposed code, it should contain, in addition to the concepts and special rules corresponding to differentiated treatment an operative part providing special procedures in favour of developing countries such as, inter alia:

(a) No procedure for the application of countervailing duties may be initiated against a developing country by reason of a mere presumption of "threat of injury".

(b) Material injury must be shown to exist in an entire representative industrial sector not merely in one undertaking or group of undertakings.

.....

(MTN/NTM/W/43/Add.3, pp. 3-4)

-- In any case the existence of injury and its gravity must be determined by means of an appropriate strict examination.

(MTN/NTM/W/43/Add.3, p. 7)

With respect to injury and the criteria mentioned in section IV of the EEC document (MTN/NTM/W/26/Add.1, pp. 6-8), while we agree that prior determination of injury is necessary we do not believe that this procedure should be linked with machinery already existing, for example in the Multifibre Arrangement which is designed for other purposes. Here we must formulate rules to govern the application of subsidies and also the application of countervailing duties, not establish new formulae to restrict trade as in the case of the Multifibre Arrangement.

(MTN/NTM/W/43/Add.3, p. 8)

#### NORDIC COUNTRIES

Material injury or threat of material injury is one of the basic concepts contained in Article VI and it is important that all countries accept the injury criterion as a condition for countervailing action. Taking into account the importance of the material injury concept, we wish to stress once more that it is in the interest of all countries that uniform objective criteria for the determination of material injury should be established.

In the Nordic view the mere existence of an export or other subsidy should not be allowed to lead to countervailing action. Only when a meaningful examination has proved that the subsidy has caused material injury or threat thereof to a certain industry, the relying on countervailing action should be allowed.

Moreover the Nordic countries are of the opinion that bilateral consultation should precede every countervailing action.

(MTN/NTM/W/43/Add.2, pp. 1-2)

#### UNITED STATES

Rules and procedures would be provided for the application of countermeasures where permitted by the rules on subsidies. Such rules could provide for injury determinations where appropriate in cases involving countervailing duties or other countermeasures in response to subsidization in third markets.

(MTN/NTM/W/26, p. 9)

Under present GATT rules there is no effective means to enforce the ban on certain subsidies. In this regard, a fundamental problem, in the United States view is the failure to establish a consistent relationship between Articles VI and XVI. Article VI requires that an injury test be applied even in those cases of countervailing action where the subsidy in question is prohibited under the provision of Article XVI. The United States finds it difficult to support a set

of rules that prohibits certain subsidies on the one hand and, on the other, places conditions on responding to the use of such subsidies. The United States believes that, under the new rules, if one country adopts a prohibited subsidy, any other country should be allowed to neutralize that subsidy through the use of countervailing duties, thereby restoring the marketplace to the condition that would have prevailed in the absence of the subsidy. Prohibited subsidies should, therefore, be susceptible to countermeasures, in an amount not to exceed the amount of the subsidy, without regard to the question of injury. In third country market situations, any affected supplying country should be allowed to take appropriate countermeasures against the subsidizing country.

Other subsidies that distort international trade should be subject to offsetting measures only under certain conditions, such as an injury test. Other subsidies that have little or no impact on international trade should not be subject to offsetting measures.

(MTN/NTM/W/43/Add.6)

VENEZUELA

Recognition should be given to the right of the developing countries to apply countervailing duties to imports originating in developed countries, for which purpose more flexible criteria should be adopted than those agreed among the developed countries themselves, for example, not only the criterion of proved material injury but also that of threatened injury, in view of the fact that the economies of the developing countries are handicapped in any attempts to adjust or reconvert the industries or sectors affected.

(MTN/NTM/W/43/Add.1, p. 2)

(b) Internal investigation procedures

CANADA

In contrast to rules about dumping, which involves the pricing policies of private enterprises, rules about subsidies, and about sanctions designed to offset the trade distorting effects of subsidies, are rules about the actions of contracting parties and the offsetting actions that other contracting parties may take. Procedural rules must give due weight to this important consideration.

(MTN/NTM/W/26/Add.1 p.4 para.13)

EUROPEAN COMMUNITIES

(a) Opening of the procedure

The procedure should only be opened as a result of a formal complaint by the industry affected and the complaint should be supported by sufficient evidence regarding both the existence of a subsidy and of material injury.

(b) Simultaneity

Strictly simultaneous examination of "subsidy" and "material injury" at all stages of the procedure. Consequently, a complaint should be immediately rejected and the enquiry closed as soon as the absence or the negligible impact of a subsidy or of injury resulting therefrom, are established.

(c) Normal customs clearance

No obstacles should be placed in the way of normal customs clearance. Up to the time of imposition of a possible countervailing duty no change should take place in customs clearance procedures.

(MTN/NTM/W/26/Add.1, pp. 11-12)

3. International notifications, consultations and surveillance

BRAZIL

In relation to other measures not included in the positive list, Brazil maintained that the imposition of countervailing duties, as a last resort, and in accordance with Article VI and its basic criterion of serious injury, should respect the following special procedures:

- (a) Prior consultations between the developed importing country and the developing exporter country, at the request of the former. Procedures for such consultations should be the same as those normally adopted under Article XXII of the General Agreement;
- (b) the establishment of objective criteria to determine if the support measure caused real injury to the market of the importing country (not merely to an industry, but to an industrial sector as a whole). In other words, there should be irrefutable evidence that the injury results from a substantial increase of imports of subsidized products,

and such products are offered at prices which are substantially inferior to those which would exist if there were no support measures. Account should be taken, in such procedures, of the trade and development needs of the developing country involved, as provided for in paragraph 3(c) of Article XXVII, especially in relation to such elements as the stage of development of the country, the strategic importance of the subsidized exports to its economy and the need to increase its export revenue;

- (c) consideration of the prejudicial effects which the imposition of countervailing duties might have on the market and the economy of the developing exporting country; in other words, it is also necessary to take into account market disruption in the exporting country, in conformity with the concept already adopted in Annex A, paragraph III of the Arrangement Regarding International Trade in Textiles;
- (d) should there fail to be an agreement in the consultations mentioned in (a) above, the developing country would be free to take the question to the CONTRACTING PARTIES or to any other body to be created to administer a Code or an Agreement in this area. The multilateral examination of the question should obey the criteria indicated in items (b) and (c) above. If the CONTRACTING PARTIES find that the developed importing country is effectively suffering serious injury, they may recommend to the developing exporting country to limit the specific support measure accorded to the products in question. However, the developing country should be allowed the necessary period of time to conform to such a decision and to make the necessary internal adjustments. If the developing country, at the conclusion of the allotted time period, does not conform to the decision of the CONTRACTING PARTIES, the developed importer country would have the right to impose countervailing duties, which should not exceed the amount necessary to offset the subsidy totally or partially.

(MTN/NTM/W/26, pp. 4-6)

CANADA

Because of the danger of conflict and the escalation of commercial policy disputes between governments, provisions for mandatory bilateral consultations (and perhaps multilateral surveillance) prior to imposition of countervailing duties might well be considered by the Group. Such consultation should go beyond the 1960 recommendation of the Group of Experts that countries consult regarding the magnitude of the subsidy, and hence the level of countervailing duties to be applied. Consultation should also cover a variety of other issues, such as a review of the evidence of the degree of injury caused or threatened, the nature

of the subsidy, the planned duration of the subsidy programme, the objective of the programme and the impact on trade. The parties might also examine whether other policy devices might be found which would reduce or eliminate the trade distorting effects of the subsidies while permitting achievement of the same general policy objectives. This would be particularly important in regard to import replacing subsidies which, of course, would also have to be dealt with under any new consultative arrangements.

(MTN/3B/W/6, para. 36)

Export subsidies, (and the use of countervailing duties) domestic subsidies, subsidies that replace imports and all proposed sanctions should be subject to effective international discipline. As noted in (5), contracting parties should not be allowed to decide unilaterally whether their rights or the obligations of another contracting party have been breached, and unilaterally to apply a sanction. There should be provisions for reporting and notification procedures, for bilateral consultations, for multilateral surveillance and for dispute settlement.

(MTN/NTM/W/26/Add.1, para. 12)

#### COLOMBIA

A system must be established to ensure consultation before any corrective measure is applied against a subsidized product coming from a developing country.

(Not published)

#### EUROPEAN COMMUNITIES

##### (a) Bilateral procedure

Consultations would have to take place before the institution of any defensive measures by the importing country. All requests for consultation should be supported by a detailed factual justification regarding both the subsidy and material injury.

In the course of this consultation, the countries involved should give their mutual collaboration.

##### (b) Multilateral procedure

In the case of failure of bilateral consultations, the question would be brought before the Signatory Parties or before a more restricted body whose powers, composition and rules would require to be defined.

(MTN/NTM/W/26/Add.1, p. 12)

MEXICO

In the context of special procedures in favour of developing countries:

- (a) Consultations must be held among interested countries at the time when the existence of injury is examined.
- (b) If no agreement is reached under sub-paragraph (b) above, the matter may be brought before the multilateral surveillance body.
- (c) Where injury has been found to exist a reasonable period of time must be allowed so that the developing country that could be affected by the countervailing duty can take appropriate action to avoid application of the duty.

(MTN/NTM/W/43/Add.3, p. 4)

4. Modalities for levying countervailing duties

EUROPEAN COMMUNITIES

(a) The imposition of countervailing duties could only take place sixty days after the request for bilateral consultations referred to at VI (a) above and thirty days after the international authority referred to at VI (b) had been seized of the matter.

(b) Discretionary power

The decision to impose the countervailing duty should be optional in all the signatory countries.

(c) The amount of the duty

This should not exceed the amount of the subsidy granted by the exporting country and could be less if a lesser duty would suffice to remove the injury.

(d) Duration

A countervailing duty should only be levied to products entered for consumption after the date of the institution of the duty. It should only remain in force as long as is necessary to neutralize the subsidy or eliminate the injury.

Its maintenance in effect should be reconsidered periodically and at the request of the exporting country.

(MTN/NTM/W/26/Add.1, p. 12)

5. Domestic implementation of international rules

EUROPEAN COMMUNITIES

Every one of the Parties shall take all necessary measures to ensure that its laws, regulations and procedures conform to the Code.

The benefit of the discipline imposed by the Code should be reserved to signatory countries only.

(MTN/NTM/W/26/Add.1, p. 13)

6. Standstill Agreement

BRAZIL

As it was already pointed out by the Brazilian delegation in paragraph 12 of document MTN/W/5, the negotiating exercise on the questions of subsidies and countervailing duties, in order to consolidate differentiated and more favourable treatment to developing countries presupposes a further essential element, namely a "standstill" agreement or understanding, so as to prevent indiscriminate recourse to countervailing action against developing countries pending the final agreement on special procedures on the matter. As a result of this standstill agreement, and until new rules or interpretative notes to the present GATT rules are worked out, the developed countries should refrain from compensatory measures against exports from developing countries and should commit themselves to adopting them only after having exhausted all possibilities of agreement in previous consultations, in the course of which:

- (i) the developed importing country would have to offer irrefutable evidence of material injury to a productive sector, accruing from subsidized exports from developing countries; and
- (ii) the various aspects of the question and the eventual prejudices for the exporting developing country resulting from the envisaged countervailing measures would be duly weighted.

(MTN/NTM/W/26, p. 6)

MEXICO

We consider that the standstill must be absolute so long as no new rules are adopted, and we could not accept any exceptions in the undertakings entered into by the developed countries. This would be inconsistent with the undertaking given by the developed countries in OECD, and reaffirmed at the last two sessions of the CONTRACTING PARTIES.

(MTN/NTM/W/43/Add.3, p. 5)

IV. SUBSIDIES

7. Comments on existing rules

BRAZIL

Part IV of GATT refers, inter alia, to the need for "a rapid and sustained expansion of the export earnings of the less-developed contracting parties", and for "positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development" (Article XXXVI:2 and 3). Aside from this, Article XXXVII:3(c) affirms that developed contracting parties shall "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 the contracting parties".

It is the understanding of the Brazilian Government that the set of GATT rules on this question, albeit imperfect, together with the fact that developing countries did not subscribe to the 1960 Declaration on the implementation of Article XVI:4, ensures these countries a differentiated and more favourable treatment in relation to the application of incentives to their exports.

(MTN/NTM/W/26, para. 7 and 9)

COLOMBIA

Colombia wishes to reaffirm the general contention of the developing countries to the effect that they are not obliged to abstain from subsidizing their exports, since they have not signed the 1960 Declaration; on the contrary, the application of such subsidies is justified in terms of Part IV of the General Agreement, and in particular Article XXXVII:3(c) thereof.

(Not published)

EUROPEAN COMMUNITIES

The Community considers the viewpoints which it proposes in the field of subsidies as being complementary to the ideas set out with regard to counter-vailing duties.

(MTN/NTM/W/43/Add.5, page 1)

The Community recalls that discussions of the problems of subsidies can only be undertaken and pursued if it is accompanied by strictly parallel progress in the application of the GATT rules on countervailing duties. It recalls that it has submitted formal proposals in this regard which it only wishes to complete in the light of discussions (see document MTN/NTM/W/26/Add.1).

(MTN/NTM/W/43/Add.5, p. 7)

In spite of, but also because of, the difficulties in the application of Article XVI, the European Community is prepared to seek the necessary solutions and, in particular, a better international discipline in the context of Article XVI the general concept of which it still regards as being valid.

(MTN/NTM/W/43/Add.5, p. 4)

The provisions of Article XVI of the GATT rest on two simple observations. The first is based on a recognition of the existence, possibly regrettable but nevertheless real, of subsidies, i.e. of a certain degree of intervention by the State and by public authorities in the functioning of the modern economy and even in international trading markets. From this observation, the evidence and the universality of which have not ceased to increase since the coming into force of the GATT, the authors of the provisions drew one conclusion: the need to discipline, to limit and, in certain specified cases, to abolish the practices concerned.

The first basic observation, the existence of subsidies, is accompanied by a corollary which does not result from the provisions of Article XVI but, paradoxically, from their silence: the absence of a general judgement and, consequently, of an a priori condemnation<sup>1</sup> of subsidies, in contrast to the provisions of Article VI, paragraph 1 concerning dumping which causes material injury. Three conclusions may be drawn from this observation.

Firstly, the need to introduce some discipline into this field is given effect to, in the provisions of paragraph 1, by the obligation on contracting parties to make known periodically all subsidies which have the effect of stimulating exports or of replacing imports and to engage in consultations with the contracting parties interested or with the CONTRACTING PARTIES at their request in any case in which subsidization causes serious prejudice to the interest of any other country.

Secondly, while the GATT refrained from a judgement on subsidies, it did recognize that, because of their consequences, their impact on world trade should be limited. This over-riding idea is to be found in most of the provisions of Article XV

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<sup>1</sup>Except under the conditions specified in paragraph 4 thereof

Article XVI whether referring to subsidies in general or to export subsidies: a subsidy should not cause serious injury nor have injurious effects on other contracting parties, nor cause unjustified disruption in world trade nor, so far as primary products are concerned, result in the exports of one contracting party having more than an equitable share in world trade in such products.

The last conclusion drawn by the authors of Article XVI, i.e. the prohibition, in certain specified cases, of export subsidies is set out in paragraph 4 and requires the contracting parties to cease to grant by form of subsidy on the export of any product other than a primary product which results in the sale of such product for export at a price lower than the comparable price charged for the like product in the domestic market; this obligation is valid in respect of those countries which accepted the 1960 Declaration, and in particular the list of illicit practices drawn up for its application.

This prohibition rests on the concept that certain types of subsidy, because of their effect on the formation of export prices, particularly threaten to distort international competition and thereby to have injurious consequences for other contracting parties.

The balance and realism of Article XVI have not, however, permitted the solution of the problems posed.

Firstly, and in spite of the limitation on the effect of prohibitions in 1955 by the introduction of the double price criterion, states did not show themselves to be disposed to accept a binding discipline. Furthermore, when (in 1959 and 1960) the rules of Article XVI were re-examined by a working group of the GATT, the participating countries, whilst they established a list of prohibited practices, underlined the fact that this list should not be considered as a complete one and that the practices set out were not ipso facto, but only in general, subsidies within the meaning of Article XVI (4). Finally, this list was only signed by seventeen of the contracting parties.

Finally, the very development of the economy and of modern trade relations, characterized in many countries by the growing intervention of public authorities, has made the application of Article XVI even more difficult and has even made certain inclusions in the list of 1960 appear anachronistic. Consequently, the relevant provisions have not always been totally respected by the contracting parties. Others have been carefully circumvented.

(MTN/NTM/W/43/Add.5, chapters I and II)

JAPAN

It is the view of the Japanese Government that the negotiations in this field should be conducted on the basis of the present GATT provisions.

(MTN/NTM/W/26/Add.2, para. 1)

Japan is not in favour of the suggestion that solutions to the problems of subsidies be sought in relation to countervailing duties.

(MTN/NTM/W/26/Add.2, para. 5(1))

MEXICO

Even if developing countries are not bound by paragraph 4 because they have not signed the relevant Declaration, this paragraph should be amended so as to allow them de jure to apply any measure likely to encourage and promote their exports of manufactures and semi-manufactures; that amendment should be based on Article XXXVI:3 and 5 of the General Agreement, which already envisage special treatment in favour of less-developed economies.

(MTN/NTM/W/43/Add.3, p. 4, para. 2)

With reference to the comments presented by the Japanese delegation, in order not to be repetitive I should merely like to record our agreement with what is stated in paragraph 5(1), to the effect that solutions to the problems of subsidies must not be sought in relation to countervailing duties. That could only complicate the negotiation: since these are separate matters, they must be dealt with separately, and if so desired in parallel.

(MTN/NTM/W/43/Add.3, p. 8)..

As regards the interpretation to respond to the problems of developing countries, through general solutions, I can only reiterate what all the developing countries have stated: we demand special treatment contractually established and accepted.

(MTN/NTM/W/43/Add.3, p. 7)

NORDIC COUNTRIES

Also in the field of subsidies solutions to be sought in the MTN should be based on the present provisions of the GATT, which can be supplemented by appropriate interpretative complementary notes or by a new code if this would prove to be useful.

The present distinction between the treatment of primary and non-primary products should be maintained. In the view of the Nordic countries the Group of Agriculture and its sub-groups should concern themselves with the subsidies and countervailing duties related to agricultural products according to the decisions taken by the Group on Agriculture at its meeting of 8 May 1975.

(MTN/NTM/W/43/Add.2, p. 2)

8. General comments on improvement of subsidy rules

(a) Definition of subsidy

CANADA

Greater precision should be given to the definition of export subsidies. Such subsidies usually involve the transfer to producers of funds from the general fiscal resources (or the foregoing of revenue) for the purpose of stimulating increased exports or of maintaining exports at levels higher than would otherwise be attained. Greater precision might be given to the concept by trying to draft a general definition and/or by the enumeration of practices which are export subsidies.

..... Domestic subsidies might thus be defined as any subsidy which is designed primarily to stimulate investment, employment or production in disadvantaged regions or to achieve other socio-economic purposes, and which is unrelated to the export performance of the producers receiving such subsidies.

(MTN/NTM/W/26/Add.1, paras. 6 and 8)

EUROPEAN COMMUNITIES

It is difficult to find a satisfactory definition, other than a general one, since the term subsidy covers a great and widely varying number of practices, the nature and importance of which vary, in particular, according to the manner, the degree and the extent of state or public sector intervention in the functioning of the economy and even of society. In addition, the definition changes depending on whether one looks at it from the point of view of political economy, of financial or fiscal legislation, of international economic relations or of social and development policy.

The Community is of the opinion, therefore, that a satisfactory definition of a subsidy within the meaning of Article XVI of GATT would be difficult and that it would be better to adhere to the elements contained in Article VI which constitute, if not a definition, at least a description of a subsidy, and to rely, also, on the conclusion of the report of the Experts Group in 1960.

These elements, which could be restated, are the following:

- aid granted from public funds (Experts report)
- concerning the export, manufacture, production or transport of a product (Article VI(3))
- licit or illicit in the terms of Article XVI (Experts report)
- other than fiscal exemption within the meaning of Article VI(4).

(MTN/NTM/W/26/Add.1, Chapter III)

#### NORDIC COUNTRIES

The Nordic countries are of the opinion that the work on subsidies in the Sub-Group should mainly concentrate on subsidies related to export. We also feel that greater precision should be given to the definition of the concept of export subsidy. This could be achieved inter alia by enumerating practices which are export subsidies. In enumerating export subsidy practices, the difference between export and domestic prices as provided for in Article XVI:4 of the General Agreement should be taken into account.

(MTN/NTM/W/43/Add.2, p. 2)

#### (b) Differentiation of subsidy practices

##### AUSTRALIA

Subsidies which have an impact on world trade may be divided into two categories: domestic or internal subsidies and direct subventions on exports.

Where production benefiting from domestic subsidies is exported, such subsidies may also have trade distorting effects in third markets. However, direct export subsidies - those which reduce the price of goods for export - have caused far more disruption to international trade than domestic subsidies.

The need for them arises because production costs in the developed countries is so high that otherwise the produce could not be disposed of on commercial markets. In this way problems arising from the domestic welfare and support policies of certain countries are passed on to the international community for it to cope with as it can.

(MTN/NTM/W/43, para. 3-4)

#### BRAZIL

The Brazilian delegation recognizes that the discrepancy between the legal situation in GATT, as we see it, and the actual practice of developed countries may derive, to a great extent, from the fact that practices under Article VI, on countervailing duties are not explicitly linked to practices under Article XVI, on subsidies.

In order to remove any ambiguity on the subject, therefore, and in spite of the interpretation referred to, the Brazilian delegation is willing to explore with developed countries a further refining of the existing GATT rules, and is prepared to consider defining in more specific terms export incentive measures, which, through differentiated treatment would be explicitly allowed to developing countries.

(MTN/W/5, para. 5-6)

The objectives could be secured in the context of new trade rules or a possible code to be negotiated in the course of the multilateral trade negotiations, or, alternatively, through any procedure or agreement specifically designed to conform the present GATT provisions to the special trade and development problems of developing countries. In both procedures, the basic principle of differentiated treatment to developing countries would apply.

(MTN/W/5, para. 11)

#### EUROPEAN COMMUNITIES

A first approach, which is at present proposed by one contracting party would consist in the establishment of a list in which subsidies would be classified by category, either simply prohibited or actionable under certain conditions, the only authorized measures being those which would figure in a strictly limited positive list.

This formalistic approach would require a rearrangement of the 1960 list of export subsidies the granting of which was required to cease in application of Article XVI(4).

Experience of the 1960 list has, however, shown that a prohibition based on a list of practices strictly defined or designated by name would not be of any great efficacy in the absence of procedures which would allow of a case by case determination of the injurious nature of a measure. Furthermore, such a list would require constant amendment in order to take account of changes in the legislation and practices of contracting parties and the risk would remain that subsidies would re-appear in a disguised form or under a different presentation.

Secondly, subsidies themselves are often not a cause but rather the result of phenomena related to differences in the economic, social, regional and monetary positions and are aimed at remedying disequilibrium. In other words, a radical suppression of subsidies could not be envisaged unless the factors which make them necessary are likewise suppressed.

Furthermore, it must be observed that subsidies, in the classic sense, are only one element, and, in many cases, not the most important element in "distortion of international competition". For example, aids for research and development and price control of certain products on national markets which have not up to now been considered as export subsidies properly so-called nevertheless have similar consequences.

Such a list would also presuppose a very great harmonization of fiscal, social, monetary and other policies by the contracting parties. However, even though such a harmonization could be envisaged, and would even be desirable, in certain specific fields, it would be hopeless to expect rapid global solutions.

The Community is of the opinion, therefore, that a dogmatic enumerative approach is inadequate. More realistic solutions should be sought.

The Community proposes "the pragmatic approach" set out in section 80 below

(MTN/NTM/W/43/Add.5, Chapter III, 1)

#### INDIA

The Tokyo Declaration (paragraph 5) explicitly recognized "the importance of the application of differential measures to developing countries in ways which will provide special and more favourable treatment for them in areas of negotiations where this is feasible and appropriate". Later, in adopting its programme of work on 2 February 1974 (MTN/2), the Trade Negotiations Committee determined that each of its groups "shall in the course of its work be guided by the Ministerial Declaration as it relates to developing countries".



Articles VI and XVI of the GATT deal with Countervailing Duties and Subsidies respectively. Section A of Article XVI makes it obligatory for all contracting parties to notify all subsidies which directly or indirectly increases exports while Section B of Article XVI recognizes the harmful effects of subsidies and, therefore, stipulates that contracting parties should avoid using subsidies on the export of primary products.

(MTN/NTM/W/26/Add.3, paras. 1-2)

The General Agreement was negotiated in the post-war era when the problems of the developing countries had not received the attention of the international community. The basic elements of the GATT are based on the principles of equality, reciprocity and mutuality of benefit. Some recognition to the problems of developing countries was given when Part IV of GATT was negotiated in the early sixties, though this did not take into account all the problem areas in relation to GATT and did not go far enough. One such area which needs to be given urgent attention is that of promotional measures which the developing countries have to take to expand their exports including incentive and subsidies which they have to grant to selected sectors.

(MTN/NTM/W/26/Add.3, para. 4)

#### JAPAN

To ensure implementation of Article XVI:4 of the General Agreement, drawing up a list of export subsidies to be prohibited would be an appropriate as well as realistic means and Japan would be prepared to participate in drawing up such a list.

(MTN/NTM/W/26/Add.2, para. 3(1))

Upon drawing up the list of export subsidies to be prohibited (see below), the problem of the so-called "grey area", or export subsidies where judgement is difficult as to whether they belong to those prohibited in the list, could arise. Solutions should be sought through consultations and through building up decisions and precedents as appropriate in this regard.

(MTN/NTM/W/26/Add.2, § 3(2))

MEXICO

Mexico considers that in the present multilateral trade negotiations there should be recognition of the need of developing countries to grant subsidies in order to promote their economic development.

(MTN/NTM/W/43/Add.3, p. 4, para. 6(e))

As in the case of countervailing duties, when general rules on subsidies are drawn up, agreement should be reached simultaneously on special rules for developing countries, without separating them from the general rules. Each general principle should be accompanied by appropriate elements affording differentiated and more favourable treatment for developing countries.

(MTN/NTM/W/43/Add.3, p. 5, para. 4)

With respect to the observations presented by the Australian delegation, the Mexican delegation considers that the ideas put forward are of interest to this Sub-Group on Subsidies and Countervailing Duties and that they should be dealt with by this Sub-Group independently of any simultaneous consideration of the problem in Group "Agriculture" as is the practice in such cases.

(MTN/NTM/W/43/Add.3, p. 8-9)

We understand that the categorization of subsidies proposed by the United States is designed to establish norms for relations among developed countries and no doubt we cannot oppose this, particularly if the developing countries are to be exempted from such norms through differentiated treatment. The United States delegation itself points out that subsidies linked to socio-economic goals will require special rules, and we are in agreement. This is precisely the case for the subsidies of developing countries.

As regards the possible framework for a solution (prohibited, conditional, permitted), the Mexican delegation considers that it would be premature to express an opinion on this occasion. In any case, it must not be applicable to developing countries, and if this idea were approved as a working basis, consideration would have to be given simultaneously to a different categorization for developing countries.

(MTN/NTM/W/43/Add.3, p. 6)

As regards the definition of subsidy, that will depend on whatever this Group decides regarding the procedure to be followed.

In connexion with the comments presented by the EEC, my delegation wishes to reaffirm that Mexico can accept virtually any working hypothesis and or working basis, provided it is understood that in the basic definitions, provision must be made for the appropriate differentiations in favour of developing countries.

(MTN/NTM/W/43/Add.3, p. 7)

UNITED STATES

The United States believes that there is a need for effective international discipline on the use of subsidies that distort international trade. For this purpose, new rules reflecting the differences in subsidy practices as they relate to international trade are essential. These rules should apply equally to all products.

(MTN/NTM/W/43/Add.6 p. 2)

For discussion the United States is outlining its ideas on the broad framework of a code of rules governing subsidy practices and responses to them.

New international rules on subsidies and offsetting measures should deal with three basic problems: subsidies leading to increased exports artificially distorting normal market forces, leading to loss of sales for competitors in third-country markets; leading to loss of sales in the subsidizing country's market. The objective of these rules would be to categorize all types of subsidy practices and set forth the conditions by which offsetting measures could be taken against such practices. In particular, rules concerning subsidies are needed to:

- (1) Effectively delineate that category of subsidies that should be prohibited;
- (2) Place limits and constraints on the use of domestic subsidies that benefit exports to the detriment of other nations;
- (3) Delineate which subsidy measures should be permitted.

Subsidies and offsetting measures, including countervailing duties, are inextricably related issues, requiring co-ordinated solutions. A framework for discussion of these problems could consist of defining three categories of subsidies - prohibited practices, practices that are subject to offsetting measures only when certain conditions are met, and practices expressly permitted and defining the conditions and procedures under which offsetting measures may be taken. In addition, it can be expected that controversial or complex subsidy practices, particularly those that are in widespread use or that are closely linked to national socio-economic goals, will require special rules.

(MTN/NTM/W/26 p. 6-7)

It is possible to differentiate between subsidy practices by type and by effect. There are three types of subsidies:

- (1) Some subsidy practices are purposely designed or utilized to increase the competitiveness of a country's producers in international markets, thereby distorting international trade. For example, direct export payments or payments conditioned on export performance are clearly designed to stimulate sales in foreign markets.
- (2) Some subsidy practices are designed to achieve domestic economic, social, or political objectives but may, nevertheless, distort international trade.
- (3) Some subsidy practices have little or no impact on the flow of international trade.

If a subsidy practice in one country distorts international trade, it can have one or more effects. The subsidized product, if exported, can displace the sales of a producer in an importing country or the sales of an exporter of another country in third-country markets. Furthermore, the subsidized product can, if consumed domestically, displace the sales of an exporter of another country in the subsidizing country itself.

(MTN/NTM/W/43/Add.6 p. 1-2)

Agreement on an approach such as that outlined above will provide a common basis for discussion and negotiation. Past efforts in GATT to develop a specific definition of a subsidy have been unsuccessful. The advantage of the three-category approach is that it provides a pragmatic framework for discussing the treatment of the entire range of subsidy measures. The focus then, is not whether a particular practice is or should be within the purview of international rules on subsidies, but rather whether the category of the practice is prohibited, conditional, or permitted.

The Code should consist of three categories of subsidy practices - prohibited, conditional and permitted.

(MTN/NTM/W/26 p. 7-8)

The United States considers that a differentiation of other subsidies is appropriate in order to give recognition to the difference between those other subsidies that distort the flow of international trade and those that have little or no impact on international trade.

(MTN/NTM/W/43/Add.6 p. 4)

(c) Other comments

EUROPEAN COMMUNITIES

The approach proposed by the Community could be as follows:

- respect for the rules of the GATT, in particular Articles XVI and VI, the pragmatic basic concept of which rests on the idea of injury, should be re-affirmed;
- establishment of improved discipline by means of the institution of new international procedures.

The Community is of the opinion that the basic concept of Article XVI should be re-affirmed, particularly because of the stress it lays on the central concept of serious injury and this notion gives their sense both to the provisions on subsidies in general (Article XVI A) and to those on export subsidies (Article XVI B).

With regard to Article XVI B, the Community confirms that it adheres to the present distinction between export subsidies for primary products and export subsidies for other products. With regard to the latter, the Community's view is that the provisions of Article XVI(4) remain applicable.

(MTN/NTM/W/43/Add.5 p. 5)

The viewpoint presented by the Communities does not concern itself with subsidies granted in the agricultural sector, which will be treated in the "Agriculture" Group, where the Community reserves the right to make proposals at the appropriate time.

(MTN/NTM/W/43/Add.5 p. 2)

While a real harmonization at international level would seem to be necessary and timely, specific solutions for particular cases could be envisaged. The work being done with a view to a gentleman's agreement on export credit terms and in the OECD group on "export credits" are examples of work in progress, account of which should be taken.

(MTN/NTM/W/43/Add.5 p. 5)

9. Export subsidies (prohibited subsidies)

AUSTRALIA

There are two GATT provisions governing the use of agricultural export subsidies and neither has been effective in controlling the situation described in the preceding paragraphs. Article XVI:3 discourages but does not prohibit

countries from using agricultural subsidies. If they do, then the subsidies must not be such as to gain "more than an equitable share of world trade". The principal defect of this provision is that damage must occur to a country's markets before it can complain. Apart from that, it is virtually unworkable in practice because the only way of establishing what is "equitable" is to calculate what share of the trade countries would have in the absence of subsidies (and other distorting factors) and these are ex hypothesi present. Moreover it has nothing to say on the price effects of subsidization.

(MTN/NTM/W/43 para.11)

From MTN/NTM/W/26/Add.2 it appears that Japan's willingness to participate in an approach aimed at drawing up a list of prohibitive subsidy practices is confined to industrial products. Australia would find it impossible to accept new rules drawn up solely on this basis.

(Not published)

#### CANADA

Greater precision should be given to the definition of export subsidies. Such subsidies usually involve the transfer to producers of funds from the general fiscal resources (or the foregoing of revenue) for the purpose of stimulating increased exports or of maintaining exports at levels higher than would otherwise be attained. Greater precision might be given to the concept by trying to draft a general definition and/or by the enumeration of practices which are export subsidies.

Export subsidies, as such and as defined, should be prohibited. However, it would be for consideration whether the two-price criterion and the requirement concerning non-primary products which are now incorporated in Article XVI:4 should remain in place or be deleted. It would be important to keep in mind that subsidized exports, if exported at prices lower than comparable prices for which they sold in the domestic market, may, if injurious to producers of like goods in the importing country, be dealt with under anti-dumping systems.

(MTN/NTM/W/26/Add.1 para.6-7)

#### JAPAN

To ensure implementation of Article XVI:4 of the General Agreement, drawing up a list of export subsidies to be prohibited would be an appropriate as well as realistic means and Japan would be prepared to participate in drawing up such a list. In our view, the eight-item list of 1960

should be the basis for this negotiation and we should examine how it could further be improved upon where appropriate and within reasonable bounds. In such an examination, with a view to building upon the past works by the GATT, the list of twenty-one prohibited practices drawn up by Working Group 1 could also serve as reference material.

In drawing up a list as described above, as for the criteria upon which to decide export subsidies to be prohibited, the difference between export and domestic prices as provided for in Article XVI:4 of the General Agreement is regarded as appropriate and realistic. An attempt to list export subsidies to be prohibited on such criteria as their "trade distorting" effect, for example, could lead to ambiguity as to the scope of export subsidies to be listed through difficulties in defining what is "trade distorting". Thus it would be more appropriate to list up measures on the basis of their modalities.

Upon drawing up the list, the problem of the so-called "grey area", or export subsidies where judgment is difficult as to whether they belong to those prohibited in the list, could arise. Solutions should be sought through consultations and through building up decisions and precedents as appropriate in this regard.

(MTN/NTM/W/26/Add.2 p. 2, Part 3)

As to the nature of the list, it would not be realistic nor technically feasible to make it exhaustive, since actual modalities are in many cases complex. It is essential that the list be of binding nature and be accepted by as many countries as possible. It would also be desirable for developing countries to participate in line with the Tokyo Declaration.

Although we are ready to participate in drawing up a list of export subsidies that should be prohibited under Article XVI:4 of the General Agreement so as to cope with export subsidies, Japan is against the unconditional imposition of countervailing duties on those subsidy measures put into effect in violation of the list. We hold the view that the presence of material injury should be the necessary precondition for imposition of countervailing duties. In this connexion, it is also possible to seek solutions in those cases in accordance with the procedures provided for in such provisions as Articles XXII and XXIII of the General Agreement.

(MTN/NTM/W/26/Add.2, Part 5)

#### MEXICO

Article XVI:1 and 3 of the General Agreement should be amended so as to prohibit the grant of export subsidies by developed countries in respect of their primary products, in order that developing countries producing the same primary products may not be faced with ruinous competition.

(MTN/NTM/W/43/Add.3, p. 4)

UNITED STATES

The United States recognizes that, as a practical matter, it would be impossible to prohibit all subsidy practices that distort international trade. There are good reasons, however, to prohibit a much wider range of subsidy practices than are presently banned. These reasons include:

- (1) A subsidy given to a producer in one country artificially improves the relative competitive position of that producer in international markets.
- (2) A country undertaking the obligation under Article II of GATT not to increase a tariff that is negotiated downward and/or bound anticipates that this tariff treatment will not be undermined by another country's use of a subsidy.
- (3) A country giving reciprocity for tariff concessions from another country anticipates that the benefits of these concessions will not be undermined by a third country's use of a subsidy.
- (4) A country giving reciprocity for tariff concessions from another country anticipates that the benefits of these concessions will not be undermined by the use of a subsidy that reduces imports in the country giving the concession.
- (5) A subsidy can undermine a safeguard action taken under Article XIX.
- (6) A subsidy can undermine a tariff that has been renegotiated or modified under Article XXVIII and for which compensation has been given.
- (7) If a country's subsidy programmes distort international trade, its trading partners have to adjust to those programmes by reallocating resources, reducing production, or lowering prices.

The United States believes that new rules should prohibit a wider range of practices than those presently banned under Article XVI. The United States believes that the criteria set forth in its November submission (MTN/NTM/W/26, page 8) are a good basis for determining whether or not a subsidy should be prohibited.

(MTN/NTM/W/43/Add.6 p. 2-3)

Benefits directly or indirectly conferred upon exports that are not equally conferred upon goods produced domestically and destined for the domestic market, and benefits conditioned on export performance, would be prohibited.

(MTN/NTM/W/26 p. 8)

The United States approach of prohibiting subsidy practices on the basis of agreed criteria is far more practical than trying to list all those practices that should be prohibited. Governments could always devise subsidy programmes not included on any list that might be developed.

The criteria presently set forth in Article XVI to prohibit subsidies are far too narrow. The present prohibition applies only to non-primary products. There should be uniform criteria for all products. Furthermore, the present prohibition applies only to those subsidies that result in the sale of a product for export at a price lower than the comparable price charged for the like product in the domestic market. It excludes subsidies that are highly trade-distorting but for which no dual pricing exists, either because the subsidy has resulted in lower prices both in the domestic market and for export, or because the subsidy does not result in lower export prices. The latter situation may occur, for example, if the firm utilizes the subsidy not to lower export prices but to expand export capacity, to extend international distribution networks or to advertise more heavily abroad.

The United States is in general agreement with the Canadian statement on prohibited subsidies (MTN/NTM/W/26/Add.1, paragraphs 6-7). Furthermore, the United States believes that the Australian submission has many useful points with regard to a discussion on prohibited subsidies (MTN/NTM/W/43, paragraphs 5, 6, 7, 11, 13 and 14). Regarding the Japanese comments on prohibited subsidies (MTN/NTM/W/26/Add.2 Part 3), the United States believes that the suggested approach may be a useful technique in illustrating the kinds of subsidy practices that are to be prohibited. However, as noted earlier, this approach alone would not provide a comprehensive solution.

(MTN/NTM/W/43/Add.6 p. 3-4)

10. Other export subsidies

(a) General considerations

AUSTRALIA

How can the GATT rules be reformed? One obvious move would be to tighten up Article XVI:3. For example its provisions ought to be obligatory, just as those of Article XVI:4. This would go some way to meeting the problems of third country subsidization, and the inadequacy of existing countervailing provisions to deal with them. Again, like Article XVI:4, it should not merely aim to regulate the effects of subsidies, but rather, should categorize the general characteristics in terms of which subsidy practices ought to be prohibited. Even adoption of the simple two-price criterion of Article XVI:4 would be a major advance if it were applied to agricultural subsidization.

Australia sees this sort of general "in principle" approach as complementary to the proposal that various forms of subsidy practices be categorized as prohibited, permissible, and permissible only under certain conditions. The danger with an exclusively general regulation covering subsidies is that it will never be applied to concrete practices. On the other hand it will not do to simply list banned practices, since others can always be invented to take their place. Hence in our view these two approaches are not antipathetic, indeed could work very well in tandem.

(MTN/NTM/W/43 paras. 13-14)

(b) Conditional subsidy practices

UNITED STATES

Benefits whose application and use equally affect all production, whether destined for the domestic market or for export, would be conditional and would be subject to offsetting measures only under certain conditions, such as an injury test.

(MTN/NTM/W/26 p. 8)

The United States has indicated that it is willing to negotiate provisions for special and differential treatment for developing countries in the context of new international rules on subsidies and countervailing duties (MTN/NTM/W/26, paragraph 9). Of the ways in which differential treatment might be provided in the context of an international code on subsidies and countervailing, the United States is willing to explore, inter alia, the possibility that: Certain subsidy practices could be designated as conditional for certain developing countries when they are prohibited for developed countries.

(MTN/NTM/W/43/Add.6 p. 6)

Developing countries' comments in this respect are listed below under "Permitted subsidy practices"/"Positive list".

(c) Permitted subsidy practices - "Positive list"

BRAZIL

Brazil submitted to participants in the negotiations the suggestion of elaborating a "positive list" of export subsidies which, within the framework of differentiated and more favourable treatment to developing countries, would be expressly authorized for these countries. Measures included in the positive list could not, therefore, lead to the imposition of countervailing duties by developed countries.

Brazil proposed, furthermore, that the positive list be sufficiently flexible to take into account the trade needs of developing countries. Brazil indicated, in defending a flexible positive list, that a vast range of export incentives is already applied by developing countries within the framework of their national development plans, and that it would therefore not be reasonable to expect such countries to accept an extremely rigid and limited list.

(MTN/NTM/W/26 paras. 12-13)

Brazil has noted that the United States would be prepared to consider shifting measures applied by developing countries from their proposed "red", or prohibited, list to the "amber", or conditional list, and from the latter to the "green", or permissible list. Such an approach might, in their view, be complemented precisely by the elaboration of a "positive", or special list of measures explicitly allowed to developing countries. In this respect it is important to stress that there is a fundamental difference in concept between the Brazilian proposal for a "positive" list and the United States proposal for a "green" list. Whereas the latter would include measures with a de minimus impact on exportation and trade, the former, as proposed by Brazil, would be a list of export support measures designed to help developing countries expand and diversify their exports. Its basic objective would therefore be somewhat similar to that of the GSP.

The United States representative, while recognizing that special and differentiated treatment in subsidies and countervailing duties is both feasible and appropriate, referred to the problem of certain industries in developing countries that already are, or would become, competitive, and that such industries should relinquish advantages which they might enjoy in this area. He referred to the need to develop certain objective criteria to this effect. We do not believe that it would be possible to develop such objective criteria. Furthermore, such criteria, if developed, could inevitably be subjectively and unilaterally applied. We do believe, as has been mentioned by other delegations, that any developing country itself would suspend any assistance measures to a given industry once this country considers this industry is fully able to compete in foreign markets.

We have studied the Indian document very attentively. It contains persuasive argumentation on why developing countries should be allowed to apply incentives to their exports. We support entirely the Indian position. The only difference regards the question of elaboration of a "positive" list of export incentive measures which developing countries should be allowed to apply without being subject to countervailing action. This is not a fundamental difference of position. Brazil does, however, feel that it would not be so difficult to arrive at such a list in a serious and meaningful negotiation.

(Not published)

CANADA

Full account must be taken of the special interests of developing countries. The final determination of what differential measures might be appropriate should take place in the light of general solutions evolved in these negotiations. It might well be that adequate provisions for international scrutiny of subsidies and the working out of adequate understandings regarding material injury, would make unnecessary any special provisions regarding the exports of developing countries and would not inhibit them in providing necessary subsidies to achieve their legitimate development objectives.

(MTN/NTM/W/26/Add.1, para. 14)

COLOMBIA

Among the various factors which Colombia has proposed as forming the basis for a solution to the problem of subsidies and countervailing duties, are the following: Freedom of action in respect of the application of export subsidies in developing countries because such subsidies correspond to social and economic objectives of a general character, including subsidies with a view to import replacement.

Whatever solution is adopted, whether in the form of a code, interpretative notes, a list or additional provisions, it should include special treatment in favour of developing countries, providing in particular that: Subsidies applied by developing countries would fall within a category deemed not to adversely affect the interests of developed contracting parties.

(Not published)

INDIA

The right of the developing countries to grant subsidies taking into account the interests of other exporting developing countries should be recognized and built into the provisions of GATT.

(MTN/NTM/W/26/Add.3 para. 5)

The International Community has accepted the principle of discriminatory treatment in favour of developing countries through the acceptance and implementation of the GSP. The granting of export subsidies on manufactured items by the developing countries is merely the other side of the coin and could be construed as supplementing the efforts under GSP. Similarly, the grant of subsidies for

commodities is not altogether prohibited. The principle needs to be extended to manufactures of developing countries also.

(MTN/NTM/W/26/Add.3 para. 4(v))

The traditional objection of laissez-faire economists to export subsidies is that they tend to introduce distortions in a country's trade and production structure. On the contrary, the trade and production structures of most developing countries are already distorted because of policies pursued for compelling socio-economic reasons.

Obviously, the handicaps of already distorted production structures in developing countries are of a temporary character and are bound to disappear as development proceeds. By offsetting these distortions which are inherent in the peculiar situation of a developing country, export subsidies simply serve to correct them. Since ex hypothesi these distortions are expected to disappear over a period of time, so would the export subsidies designed to correct them.

(MTN/NTM/W/26/Add.3 para. 4(vi))

#### JAPAN

It is the right recognized to importing countries under the GATT to impose countervailing duties within "an amount equal to the estimated subsidy determined to have been granted" when material injury is caused to domestic industry by subsidization measures in another country. We therefore do not agree with the suggestion that subsidy measures should be listed which should not be subject to imposition of countervailing duties, as this would contravene the right of importing countries under the GATT. Such listing would also involve the definition of subsidy and bounty under Article VI of the General Agreement. It is, however, technically very difficult to make appropriate definition in view of the fact that those subsidy measures are complex and diverse in their modalities.

(MTN/NTM/W/26/Add.2 para. 5(3))

#### MEXICO

It would be important to establish as a general principle that developing countries can grant subsidies of any kind, whether for domestic reasons or in connexion with export promotion, in the context of their development and industrialization policy.

(MTN/NTM/W/43/Add.3 p. 4)

In connexion with the document presented by the United States, we agree with that delegation's statement that subsidies can affect normal market forces. This is certainly so in the case of equal countries but other forces and tendencies operate among unequal countries, and consequently this assertion cannot be applicable to the export trade of developing countries.

(MTN/NTM/W/43/Add.3 p. 6)

As regards the reference to treatment of developing countries, and specifically that this treatment should be geared to periods linked to achieving particular development objectives to the various statements already made by my delegation concerning what we understand by "special treatment" I shall merely add that, as the Indian representative said, what we need is not equal treatment but equitable treatment so long as we are developing countries. We must immediately reject the view of the United States delegation that a developing country will have to relinquish certain benefits when it becomes competitive in certain sectors, for two reasons inter alia: first, no criteria exist for determining the "level of competitiveness" of a country which furthermore take into account the dynamism of economies, so that at best the analysis would be partial. Second, it is ultimately the government of the developing country concerned that must determine whether its exports still need support, and it must not be obliged to observe criteria established by other countries. The day when my country reaches the level of development of the United States, we shall be perfectly in agreement with that country's observations in this respect.

(MTN/NTM/W/43/Add.3 p. 6-7)

As regards paragraph 12 of MTN/NTM/W/26 (Brazil), we do not accept the idea of a positive list because we believe it would be in the interest of the developing countries themselves to act on the basis of exemption.

(MTN/NTM/W/43/Add.3 p. 5)

#### PAKISTAN

Since many of the developed countries have taken the position that the developing countries could not assume an unlimited and unfettered right to subsidize their exports, there would be no justification for them to continue to subsidize the export of an item in which they attained a fully competitive position with the developed countries.

While reserving our position in regard to the question whether the right of the developing countries to subsidize their exports was limited or in any manner constrained by their obligations under the GATT, we would like to point out that

the developed countries show scant respect to the principles of free play of market forces and free competition wherever the developing countries do attain a competitive position. The most notable examples of this nature are of textile products and footwear. Despite their commitment in principle to restructuring their industry in the sectors in which the developing countries due to their natural endowments and simple technology etc., may be in a more competitive position, most developed countries continue to maintain quantitative and other restrictions on the import of such items from the developing countries.

(Not published)

UNITED STATES

The permitted category would consist of practices that are considered to have minimal impact on international trade. Permitted practices would be limited to those specifically agreed as falling within that category. Such practices and any practices judged to result in a de minimus subsidy, would not be subject to offsetting measures.

(MTN/NTM/W/26 p. 3)

The United States believes that any approach for dealing with developing countries must be flexible in order to deal with the particular situations and stages of growth in individual developing countries. In this regard, it has been the United States experience that some developing countries are already internationally competitive in many products. In such cases, special and differential treatment would result in unfair competition. Any rules for special and differential treatment for developing countries should be structured in such a way as to permit individual developing countries to progressively accept in full over a definite period of time the obligations incumbent upon the developed members of the world trading system.

The United States has carefully studied the submissions of Brazil (MTN/NTM/W/26), India (MTN/NTM/W/26/Add.3), and Venezuela (MTN/NTM/W/43/Add.1). An argument put forth in these submissions and by other developing countries is that developing countries are free to subsidize since they have not signed the protocol giving effect to Article XVI:4. We agree that those developing countries that did not sign this protocol have no obligation with respect to it. However, all contracting parties have obligations under Article XVI. For example, all contracting parties must notify and consult on their subsidy practices in accordance with Article XVI:1. Moreover, under Article XVI:2 all contracting parties "recognize that the granting of subsidies on the export of any product may have harmful effects for other Contracting Parties, both importing and exporting, may

cause undue disturbance of their normal commercial interests, and may hinder the achievement of the objectives of this Agreement". Finally, all contracting parties, under Article XVI:3, "should seek to avoid the use of subsidies on the export of primary products".

In conclusion, although the United States cannot agree with all the points made in the developing country submissions, it does believe that special and differential treatment for developing countries is both feasible and appropriate in certain cases in the area of subsidies and countervailing duties. The United States is prepared to negotiate such treatment in the context of a revised and more effective set of rules covering subsidies and countervailing duties.

(MTN/NTM/W/43/Add.6 p.7)

#### 11. Domestic subsidies

##### AUSTRALIA

In agriculture, domestic subsidies take various forms, e.g. deficiency payments, intervention purchasing, subsidies on inputs. They are usually operated in combination with other measures such as levies, QRs or State trading and their significance in the overall protective régime varies according to country. In cases where countries protect local production by frontier controls subsidies may not, by comparison, be a major element in the protective régime. In other cases, where e.g., governments wish to keep prices to consumers low, assistance to producers may be by direct treasury disbursement rather than frontier protection, and the subsidy element in the protective régime is proportionately higher. Hence whilst reductions in subsidies would have to be an element in any meaningful liberalization of access to developed country markets, the extent to which this is so depends on the particular régime.

(Not published)

For example it might be argued that whatever their undesirable effects, subsidies at least make available cheap produce to the consumer. But this is not the case where governments intervene to ensure that imports are not lower in price than domestic production (e.g. by use of levies or State trading operations). In such cases subsidization simply amounts to a transfer of funds from one country's treasury to another's with no benefit reaching the consumer. The distortion is compounded when import levies are used to finance export subsidies.

(MTN/NTM/W/43 para. 9)

As regards Japan's approach to the question of domestic subsidies Australia considers that these should be brought into the negotiating process and in this connexion regards the Dillon Round as a precedent.

(Not published)

#### BRAZIL

The United States expressed the need to discipline certain other (than export subsidies) practices, such as domestic subsidies that result in import substitution, foreign subsidization in third country markets, export financing and regional aid. These are all areas in which developing countries must be allowed to retain a considerable freedom of action, for they touch upon important elements of structural development policies: measures to encourage industrialization; measures to open new export markets for non-traditional export products; measures to aid new industries in their export programmes; and measures to accelerate development in depressed or lesser developed regions.

(Not published)

#### CANADA

Rules on domestic subsidies should aim at minimizing their trade-distorting effects without reducing the necessary freedom of action of contracting parties to use subsidies, direct or indirect, to reduce disparities in income and employment between different regions within their jurisdictions and for other broad socio-economic objectives. Domestic subsidies might thus be defined as any subsidy which is designed primarily to stimulate investment, employment or production in disadvantaged regions or to achieve other socio-economic purposes, and which is unrelated to the export performance of the producers receiving such subsidies.

It should be noted that the degree to which goods subsidized for socio-economic reasons enter into international trade varies significantly according to the relative importance of international trade to the subsidizing country. For a country such as Canada, which has a small domestic market and in which for certain industries economies of scale can be achieved only by exporting a significant portion of production, domestic subsidies may, for these products, incidentally influence the level of exports. For the United States, for example, which has a large domestic market or markets and which exports a relatively small share of its national production, the impact of domestic subsidies need not necessarily affect

exports but may be to displace imports or to relocate productive facilities within its customs territory. Any international rules regarding domestic subsidies must take this into consideration.

(MTN/NTM/W/26/Add.1 para. 8)

#### JAPAN

In all countries domestic subsidies are extended to meet various domestic policy objectives and their forms and natures are complex and diverse. Japan does not agree with the contention that would seek the abolition of domestic subsidies.

GATT provisions, which should be the basis of the negotiation in this field, do not provide for abolition of subsidies other than export subsidies under Article XVI:4. At the same time, there is under the GATT possibility of imposition of countervailing duties in cases of "material injury" to domestic industry caused by subsidization in another country, as well as of the use, where appropriate, of the consultation and representation procedures under Articles XXII and XXIII of the General Agreement. In light of the above, it is realistic to seek solution of the problems caused by the other subsidies through the review where necessary, of the notification and discussion mechanism of Article XVI:1 of the General Agreement.

(MTN/NTM/W/26/Add.2 para. 4)

#### NORDIC COUNTRIES

As regards the so-called domestic subsidies it will be very difficult to agree on proper definitions of such subsidies. In addition, domestic aids are generally considered to be a legitimate part of countries' internal policies aiming e.g. to stimulate investment, employment or production in underdeveloped regions or to achieve other socio-economic purposes. Most of these measures are of general character and not related particularly to exports. It would therefore be difficult to distinguish domestic subsidies with trade distorting effects from other domestic subsidies and to define the former. These are reasons why we feel that our efforts should mainly concentrate on subsidies directly related to exports.

If domestic subsidies, however, are deliberately used as instruments of competition between countries in international trade and thereby cause or threaten to cause material injury the matter could be brought up at international

level for example by using the procedures in Article XVI:1 and Articles XXII and XXIII of the General Agreement.

(MTN/NTM/W/43/Add.2 p. 3)

12. Import replacement

CANADA

There must be an effective framework of rights and obligations regarding impact on the exporting industries of a contracting party of subsidy that replaces imports in its export market. This framework of rights and obligations should be as effective as any such framework regarding export subsidies.

(MTN/NTM/W/26/Add.1 para. 11)

MEXICO

As regards the import replacement argument of the United States this runs counter to development policies in which import replacement is a first step in the industrialization process of the country concerned, and the remarks made by the United States delegations are therefore totally unacceptable.

(MTN/NTM/W/43/Add.3 p. 6)

UNITED STATES

Subsidies that result in import replacement can have a significant adverse effect on the trade of suppliers to the market in question and on suppliers in third countries into which exports previously entering the subsidizing country are deflected. Such subsidy rules should provide for obligatory consultations regarding complaints on domestic subsidy practices that could result in import replacement. In addition, signatories to the code should have a reasonable expectation that new or increased subsidies will not result in the nullification or impairment of benefits under trade agreements.

(MTN/NTM/W/26 p. 9)

13. Supplementary protocols

UNITED STATES

Certain subsidy practices pose particularly difficult problems for which special rules may be more desirable than general rules. These rules could, for example, define agreed standards or levels for those subsidy practices. The use of special rules would offer the flexibility that may be necessary to effectively deal with the economic, social, and political complexities often associated with problems that arise in the area of subsidies and countervailing duties.

(MTN/NTM/W/43/Add.6, p. 4)

The framework outlined above would establish the general rules governing subsidies and offsetting measures. In certain cases, special rules might be more desirable for particular subsidy practices. Such special rules could be incorporated in the code by supplementary protocol. For example, an agreement on export financing or regional aid might regulate the use of such practices.

(MTN/NTM/W/26, p. 8)

Of the ways in which differential treatment might be provided in the context of an international code, the United States is willing to explore, inter alia, the possibility that: if supplementary rules for certain subsidies are negotiated, different criteria or limits could be established for developing countries than for developed countries.

(MTN/NTM/W/43/Add.6, p. 6)

14. International notifications, consultations and surveillances

BRAZIL

Should there fail to be an agreement in the consultations mentioned (see chapter on countervailing duties) the developing country would be free to take the question to the CONTRACTING PARTIES or to any other body to be created to administer a Code or an Agreement in this area. If the Contracting Parties so find (see same chapter), they may recommend to the developing exporting country to limit the specific support measure accorded to the products in question. However, the developing country should be allowed the necessary period of time to conform to such a decision and to make the necessary internal adjustments.

(MTN/NTM/W/26, para. 14(d))

CANADA

Export subsidies, (and the use of countervailing duties) domestic subsidies, subsidies that replace imports and all proposed sanctions should be subject to effective international discipline. Contracting Parties should not be allowed to decide unilaterally whether their rights or the obligations of another contracting party have been breached, and unilaterally to apply a sanction. There should be provisions for reporting and notification procedures, for bilateral consultations, for multilateral surveillance and for dispute settlement.

(MTN/NTM/W/26/Add.1, para.12)

COLOMBIA

Colombia proposes the establishment of an international surveillance system as one element of the basis for the solution to the problem of subsidies and countervailing duties. A system must be established to ensure consultation before any corrective measure is applied against a subsidized product coming from a developing country.

(Not published)

EUROPEAN COMMUNITIES

The objective would be to guarantee improved international discipline with regard to the provisions contained in the General Agreement. To this end a double approach could be adopted: on the one hand, to give increased guarantees against distortions of international competition resulting from the use of subsidies; on the other hand, to exclude the unilateral application of defensive measures leading to the establishment of new protectionist barriers.

For these reasons the Community considers that improvements and innovations could be effected in the fields of notification, consultation and international surveillance of subsidies and in the remedies to be adopted for the possible injurious effects of illegal practices.

Notification procedure:

On the first point, the obligation to notify subsidies which directly or indirectly, have the effect of increasing exports or of replacing imports should be reaffirmed and an adequate international procedure should be set up to guarantee that this obligation is respected. Since the self-accusatory nature of the present notification system limits its effectiveness, a special procedure for

explanation at the request of a third country affected by any measure, could be set up.

The notification would have to include the information necessary in order to appreciate the possible impact on international trade of a subsidy.

Consultation and international surveillance procedure:

The procedure which would, of course, be based on the information gathered during the notification and explanations could be carried out in two phases:

- a first, bilateral phase during which the procedures would put in contact the two or more countries involved, i.e. the country or countries granting the subsidy and the importing country or countries and, if necessary, the other exporting country or countries which could be affected by the subsidy;
- a second, multilateral phase during which the problem would be placed before a GATT body specially created to ensure that the provisions of Article XVI were respected and to conciliate on the differences. This procedure could provide for a recourse to the forum of the CONTRACTING PARTIES.

A combination of these two approaches and of their respective advantages (the discretion of bilateralism and the guarantees of multilateralism) could be found.

At the bilateral level, it would have to be provided that consultations should commence after the introduction of a formal request by the importing country or by an affected exporting country. Such a request for consultations addressed to the contracting party granting the subsidy would require to specify the practice concerned and to include indications of the actual or foreseen trade effects resulting therefrom.

The contracting party granting the subsidy should be required to lend itself to such consultations. At the expiration of a fixed time-limit the affected party could, in the event of breakdown in the consultations, in accordance with a procedure to be defined, bring the matter before either the CONTRACTING PARTIES or a specially created GATT body, the composition and constitution of which would have to be defined in the light of the experience gained, in particular, in the Anti-Dumping Committee and the Textiles Surveillance Body. Such a body could have the power to make recommendations to the contracting party granting the subsidy.

If the contracting party in question does not, within a time-limit to be determined, declare itself to be disposed to accept such recommendations, the affected party could, under the conditions and within the limits fixed in the General Agreement for an autonomous intervention by a contracting party, and with a view to re-establishing the balance of rights and obligations of the contracting parties, apply countervailing duties or suspend concessions or other advantages resulting from the General Agreement. It follows that the affected contracting party would be required to refrain from taking unilateral action until such time as the GATT body has handed down its decision.

The rights and obligations of the new discipline would, of course, be limited to Signatory Parties, Articles XXII and XXIII remaining applicable, in particular, for non-adherent countries.

(MTN/NTM/W/43/Add.5, p. 5-7)

#### MEXICO

The Mexican delegation supports the view set forth in paragraph 12 of the Canadian delegation's submission.

(MTN/NTM/W/43/Add.3, p. 7)

The European Community's suggestions concerning internal procedures (section VI) and international procedures (section VII) seem to us to afford a constructive basis for negotiation.

(MTN/NTM/W/43/Add.3, p. 8)

#### NORDIC COUNTRIES

Export subsidies and the use of countervailing duties should be subject to international discipline. There should be provisions for improved notification and consultation procedures.

(MTN/NTM/W/43/Add.2, p. 2)

#### UNITED STATES

Agreement on an international code that lays down an improved set of rules governing subsidy practices and responses to them would strengthen the world trading system. It would do so by reducing conflict in the interpretation of what the rights and obligations of countries are in these areas. It would do so by

clarifying nations' responsibilities in the use of such measures. As a result, all countries that adhered to the code would benefit from it.

(MTN/NTM/W/26, p. 6)

The code should provide for effective notification procedures, whereby the subsidy practices of countries can be brought to the attention of the adherents of the code by a number of ways, including notifications by countries other than the one granting the subsidy.

(MTN/NTM/W/26, p. 9)

One of the weaknesses in GATT Article XVI is that notification of subsidy programmes that affect, or could affect, international trade is limited to self-notification by a country of its own programmes. The United States believes that new rules should also allow countries to notify other countries' subsidy programmes. It is of course well established that a contracting party can be required to consult concerning a subsidy, whether or not it has been notified.

(MTN/NTM/W/43/Add.6, p. 7)

Provision should be made for effective administration of the Code. Until there is general agreement on the more important substantive issues, the United States believes that consideration of these questions should be deferred.

(MTN/NTM/W/26, p. 9)

V. THIRD COUNTRY SUBSIDIZATION AND POSSIBLE COUNTER MEASURES

AUSTRALIA

The subsidy practices of certain major developed countries have been of enduring concern to Australia. They have resulted in the partial or total loss of markets in those countries themselves, and in disruption to Australia's exports to third countries. This latter disruption has included loss of market shares and reductions in the prices at which commodities are traded.

Where production benefiting from domestic subsidies is exported, such subsidies may also have trade distorting effects in third markets. However, direct export subsidies - those which reduce the price of goods for export have caused far more disruption to international trade than domestic subsidies. The need for them arises because production costs in the developed countries referred to above is so high that otherwise the produce could not be disposed of on commercial markets. In this way problems arising from the domestic welfare and support policies of certain countries are passed on to the international community for it to cope with as it can.

(MTN/NTM/W/45, paras. 2 and 4)

- The present Article VI.6 (b) could be changed so that:

(a) redress would be available not by virtue of material injury having been caused to the injured exporting country's counterpart industry, but rather because of the injury caused to its market position in any specific third country; and

(b) instead of making imposition of countervailing duties a matter of waiver granted by the CONTRACTING PARTIES (As present Article VI.6 (b) does), individual GATT members could be specifically given the right to seek adjudication from the contracting parties which could issue a recommendation to the importing (third) country to impose countervailing duties.

If new provisions were to be agreed outlawing certain specific kinds of subsidy practice, it may be argued that retaliation against proscribed subsidies should be available via imposition of countervailing duties without proof of injury. The two elements of the proposal - unilateral retaliation and absence of a material injury test - are not individually new, but they are new in combination i.e. Article VI provides for unilateral retaliation but required proof of material injury: Article XXIII requires multilateral authorization of retaliation but does

not require proof of material injury. The proposal would thus significantly extend the scope for retaliatory action allowed by the GATT at present.

(Not published)

#### INDIA

India has in its argumentation for the developing countries' need to subsidize, mentioned inter alia the necessity "to offset the subsidies given by developed countries for their exports to third markets where they compete with the exports from developing countries."

(MTN/NTM/W/26/Add.3, para.4(iv))

#### JAPAN

With respect to the question of subsidized exports by a third country to markets of another country's export interest, the desirable course of action would be to seek solutions through consultations between the countries concerned. We do not agree with the view that solutions should be sought through unilateral retaliatory or other measures by the affected competing exporting country claiming to be affected by third country subsidies.

(MTN/NTM/W/26/Add.2, para. 2(2))

#### MEXICO

With respect to sales of subsidized products to third countries, this can operate in favour of developing countries if it is applied as differential or special treatment, but not in a general form as the United States propose. It must be taken into account that one of the principal objectives of our development policies is diversification of our markets.

(MTN/NTM/W/43/Add.3, p. 6)

As regards subsidies affecting exports of third countries, the following mechanism could be adopted:

(a) developing countries should be allowed to utilize subsidies regardless of the effects that these could have on exports from developed third countries, and the latter should not take any measures or present any complaint, even if indirectly affected.

(b) Where subsidies granted by developed countries affect exports from developing third countries, the latter may request the importing country, whether developing or developed, to take measures.

(c) If, furthermore, subsidies are granted by developing countries and are shown to constitute an unfair practice under the rules established, and injury is shown to be caused thereby to the exports of another developing country, there should be provisions for consultations between these countries in order to seek satisfactory solutions.

(MTN/NTM/W/43/Add.3, p. 4-5)

On subsidized competition to third country markets, as mentioned in the United States paper: this is unacceptable where exports of developing countries are concerned. In earlier paragraphs we have indicated the criteria that should be applicable to developing countries in such cases.

(MTN/NTM/W/47/Add.3, p. 6)

The Mexican delegation wishes to express its interest in what is stated in paragraph 2(2) of the document presented by the Japanese delegation concerning sales to third countries. In this respect, it must be taken into account that the appropriate solution for developing countries is to seek to diversify their markets and not to increase their sales excessively in their traditional markets where exports are affected to a greater extent by various additional restrictions.

(MTN/NTM/W/43/Add.3, p. 8)

#### NORDIC COUNTRIES

With respect to the question of subsidized exports by a third country to markets of export interest for another country, one possible way of action could be to seek solutions through consultations between the countries concerned or/and by the use of appropriate multilateral procedures. Countries should, however, not be allowed to decide unilaterally whether to apply sanctions against subsidization on third country markets.

(MTN/NTM/W/43/Add.2, p. 2)

#### UNITED STATES

Given the inadequacies of Article VI in this regard and to ensure that countries don't use prohibited subsidy measures in third country markets, countries that are or might be adversely affected by such subsidization should be

allowed to take appropriate countermeasures. Such measures might include the withdrawal of concessions or the impositions of restrictions by the affected supplier against the subsidizing country.

(MTN/NTM/W/43/Add.2, page 2)

The United States considers that the Australian submission (MTN/NTM/W/43), in particular, offers some helpful and interesting comments (especially in paragraphs 2, 4, 12 and 15) on the problem of subsidized competition in third country markets and how to deal with it. With regard to the Australian suggestion that the importing country itself should be required to apply countervailing duties in third country markets, the United States does not believe that this is a feasible solution to the problem and suggests that the remedies outlined above offer a more practical approach.

(MTN/NTM/W/43/Add.6, p. 5)

A country giving reciprocity for tariff concessions from another country anticipates that the benefits of these concessions will not be undermined by a third country's use of a subsidy.

(MTN/NTM/W/43/Add.6, p. 2)

VI. STATE INDUSTRIES, INDUSTRIES WITH GOVERNMENT PARTICIPATION; AND NON-MARKET ECONOMIES

UNITED STATES

Governments around the world are increasingly involved in their economies, not only through the application of fiscal, monetary, and regulatory policies, but also through direct financial participation in the production and distribution of goods that enter into international trade. At times it may occur that a government owned enterprise, or an enterprise with heavy government participation, can operate without regard to profit, or even at a loss, with the government covering the loss through revenues generated elsewhere. In such cases, a subsidy element is probably involved. This is a problem that requires further attention in order to determine what provisions the new rules should incorporate to specifically deal with such cases.

(MTN/NTM/W/47/Add.6, p. 7)

The nature of non-market economies makes it difficult to determine whether a subsidy exists and in what amount. Subsidies by non-market economy countries will require different rules, perhaps in the context of safeguard provisions.

(MTN/NTM/W/26, p. 9)

VII. TAX PRACTICES

Current GATT rules on subsidies and countervailing duties have specific provisions that deal with various tax practices. The United States believes that new rules on subsidies and countervailing duties must also contain provisions that deal with the impact of varying tax practices on international trade.

(MTN/NTM/W/26, p. 8)