

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/9

14 October 1974

Special Distribution

---

## Multilateral Trade Negotiations

### GROUP 3(b) - SUBSIDIES AND COUNTERVAILING DUTIES

#### Report to the Trade Negotiations Committee

1. In conformity with the decision taken by the Trade Negotiations Committee at its July meeting, the Group met on 3-4 October 1974 in order to consider proposals concerning differentiated treatment for developing countries in the field of subsidies and countervailing duties.
2. The Group had before it a working document submitted by the delegation of Brazil on this question (MTN/W/5).<sup>1</sup> The delegate of Brazil explained that the working paper had been presented in response to requests for constructive proposals. He emphasized that the main purpose of the proposals was to present a basis for possible negotiations which should lead to a new balance of rights and obligations and the acceptance of the idea of differentiated treatment for developing countries in the field of subsidies and countervailing duties.
3. Delegations from developing countries supported the proposals made by Brazil. They stressed that the present stage of their countries' economic development necessitated the subsidization of their exports in order to compensate for the handicaps under which such exports were labouring and to penetrate foreign markets. They considered that Part IV of the General Agreement and more specifically Article XXXVII:3(c) constituted the necessary legal basis for such action. Similarly, it would be unfair for developing countries which exported mainly primary products to be restricted in the area of non-primary products when developed countries continued to subsidize their exports of primary commodities. In this connexion, some developing countries demanded that restrictions be imposed on the subsidization of primary products by developed countries in view of the harmful effects of these subsidies on the exports of the same products by developing countries. Some developed countries agreed with the view expressed by developing countries that subsidies on primary commodities should be eliminated. Some other delegations from developed countries observed that this proposal was not within the terms of reference of the Group.

---

<sup>1</sup> A secretariat Note on subsidies and countervailing duties (MTN/3B/21) was circulated shortly before the meeting. However, many delegations had not yet had time to study this Note fully and consequently were not able to comment on it during the meeting.

4. Delegations from developing countries referred to the text of a draft resolution presented by developing countries to the UNCTAD Committee on Manufactures as reproduced in the Annex.

5. One delegation from a developing country, while supporting proposals made by other delegations to refine the provisions of the General Agreement, expressed the view that until these refinements will be elaborated, the existing provisions should be strictly observed by all contracting parties. In their opinion, the General Agreement, when dealing with subsidies and countervailing duties, adopted an approach based on the trade and industrial effects of subsidization. The General Agreement accordingly divided subsidies into three categories: those which do not have any negative effect; subsidies which cause serious prejudice to the interests of other contracting parties; and subsidies which cause material injury to the industry of the importing country. The delegation in question emphasized the fact that only in the last case the General Agreement authorized the affected country to countervail.

6. Another delegation from a developing country referred to the problems that would arise from an adjustment of exchange rates for developing countries in whose case manufactures accounted for only a small proportion of total exports. Exchange rates which were appropriate for the exports of manufactures might not be appropriate for primary products, and vice-versa. The granting of subsidies to manufactures might therefore often be the only solution.

7. Some delegations from developed countries, whilst welcoming the initiative of the Brazilian delegation, said that it would be premature to comment on these proposals in detail at this stage. They felt that before one could determine whether and how differentiated treatment could be accorded to developing countries, it was necessary to formulate the main outlines for a general solution to the question of subsidies and countervailing duties. Some of these delegations were of the opinion that a general solution to the questions of subsidies and countervailing duties, for the latter especially by introducing a meaningful test of material injury, might make it unnecessary to formulate special provisions for the developing countries. Some other delegations stated that the question of countervailing duties had a certain link with measures of a general safeguard nature.

8. Some delegations from developed countries raised the question of whether the area of subsidies and countervailing duties was in fact one which was suitable for the application of differentiated treatment to developing countries. They stressed that developing countries should have a great interest in an effective solution of the problem of subsidies under which any adverse effects of subsidies on their exports would be eliminated. These same delegations also expressed doubt as to the advisability of encouraging developing countries to grant

unlimited subsidies to their exports and wondered whether such subsidies were in all cases in the interest of developing countries. They also drew attention to the dangers of competition in export subsidization between the developing countries themselves, bearing in mind their different levels of development.

9. Some delegations from developed countries stated that they could not accept the Brazilian interpretation of the legal situation in GATT as expressed in paragraphs 3 and 4 of document MTN/W/5. While it was true that developing countries had not acceded to the Declaration giving effect to the provisions of Article XVI:4, this did not mean that countervailing action could not be taken in response to subsidies granted by these same countries. These delegations also stated that the provision of Article XXXVII:3(c) was in fact operative for them and consequently they could not accept the contention that this provision was a "dead letter".

10. Some delegations from developed countries posed a number of questions in regard to the nature of the proposed "positive list" of subsidy practices referred to in paragraph 9 of the Brazilian paper. For example, did the drawing up of such a list imply that there would be no limit to the level of subsidies which might be granted by developing countries? Which subsidies would be included in such a list? Was it intended that all practices included in such a "positive list" would invariably be permitted, even if they caused injury to industries in importing countries? Would such subsidies be granted for products included in the Generalized System of Preferences? Some delegations from developed countries stated that for them it would be out of the question to give a "carte blanche" for the granting of export subsidies in cases where such subsidies caused injury to their industry; they could not accept the link between such a "positive list" and the banning of countervailing action. Some of these delegations said that the Brazilian approach which categorizes subsidies and countervailing measures accordingly may not be the only approach for differentiated treatment for developing countries.

11. One delegation from a developed country wondered whether in place of a positive list of subsidization practices that might, if the case arose, be considered admissible, it would not be more appropriate to agree on criteria that could justify the introduction of a subsidy scheme with a view not to improving artificially a country's competitiveness in relation to its competitors, but for example to compensate for certain structural handicaps for a given period. It expressed the view that the Group could study the possibility of establishing at international level a procedure for prior examination of particular cases of subsidization according to those criteria. Such a mechanism could contribute to avoiding recourse to countervailing duties. Nevertheless, it might prove desirable to envisage within the same framework consultations prior to any recourse to countervailing duties.

12. One developing country expressed interest in the idea of a multilateral surveillance mechanism in the field of subsidies and countervailing duties.

13. On the question of the proposed standstill on countervailing action against exports from developing countries referred to in paragraph 12 of the Brazilian paper, some delegations stated that whilst they were prepared to consider this suggestion in a positive spirit, they did not feel that there were many great practical difficulties facing the developing countries in this field at the present time. A number of delegations stated, however, that they could give their support to this idea. One delegation stated, however, that a standstill on countervailing duties would not resolve the problem of competitive export subsidization. A standstill on subsidies, on the other hand, would not only resolve this problem, but would also obviate the necessity for a standstill on countervailing duties. Some other delegations indicated that they could support the view that no countervailing action would be taken without prior consultation and the application of a meaningful test of injury.

14. Delegations from developing countries could not agree that it was premature to discuss the question of differentiated treatment for developing countries. They felt that the Tokyo Declaration gave the Group a clear mandate to take up this question and that the developing countries could not be expected to wait until problems had been solved between the developed countries before solutions were found to their own urgent problems. They maintained that in the area of subsidies and countervailing duties differentiated treatment for developing countries was feasible and appropriate. Subsidies were crucial for the marketing of many of their exports to other countries. They also referred to the fact that in many cases subsidies were required in order to attract foreign capital and technology.

15. Delegations from developing countries stated that in their view developing countries would have to apply subsidies to products included in the Generalized System of Preferences bearing in mind the need to compensate their exporting industries for any erosion which might take place in the preferential margins of the Generalized System of Preferences as a result of the tariff concessions which may be granted in the context of the multilateral trade negotiations.

16. The delegate of Brazil, in commenting on some of the remarks made, stated that the real problem in the legal sphere was the absence of an explicit link between Article VI and Article XVI. The main thrust of the proposals that had been put forward by his delegation was the establishment of the right of developing countries to subsidize their exports free from the threat of the imposition of countervailing duties. He admitted, however, that there might be limitations to this principle, and this would be one of the points to be determined in the negotiations. He stressed that the "positive list" had been

put forward as a working hypothesis and all the related questions such as the contents of the list or the level of subsidization to be permitted should be the subject of negotiations. He thought that the main area to which such a "positive list" of subsidy practices would apply would be that of manufactures and semi-manufactures. Another delegation from a developing country expressed the view that differentiated treatment should likewise be extended to exports of agricultural products.

17. It was generally agreed that consideration of the question of differentiated treatment for developing countries in the field of subsidies and countervailing duties should proceed in parallel with the general discussion. It was also agreed that the Brazilian proposals should remain on the table for further discussion, clarification and refinement.

ANNEX

Texts of Draft Resolutions Submitted to the Committee  
on Manufactures at the Second Part of its Sixth Session

A. Export incentives and countervailing duties:  
Draft resolution submitted by Pakistan on  
behalf of the Group of 77 members of the  
Committee on Manufactures

TD/B/C.2/L.60<sup>1/</sup>

The Committee on Manufactures,

Noting with concern that the share of developing countries, particularly those of the least developed among them, in the world export of manufactures and semi-manufactures has remained low and that its growth has not been commensurate with the development needs of those countries,

Bearing in mind that the developing countries are nascent exporters of manufactures and semi-manufactures,

Bearing in mind also Conference resolutions 62 (III) and 63 (III),

Recognizing that the early stages of industrialization imply high production costs that may adversely affect the competitiveness of exported products in the international market,

Reaffirms its recognition of the need for a thorough reformulation of the norms on export incentives and countervailing duties, to provide for a differentiated treatment for developing countries, particularly for the least developed among them in accordance with the operative paragraphs 1 and 2 of Conference resolution 62 (III),

Affirms that the interests of the developing countries relating to export incentives and countervailing duties should be fully reflected in any code or codes of conduct being evolved or to be perfected. Any code for regulating the use of export incentives and countervailing duties should, inter alia, take into account the following guidelines:

---

<sup>1/</sup>This draft resolution was also before the Committee at the first part of its sixth session.

- (a) extend the existing prohibitions to cover the subsidization of both primary and non-primary products in the trade among developed countries in order to prevent trade-diverting or -distorting effects detrimental to exports of developing countries;
- (b) clearly recognize the right of developing countries to apply export subsidies as a means for promoting diversification and increasing the rate of growth of their exports of manufactures and semi-manufactures;
- (c) exempt imports from developing countries from the application of countervailing duties by developed countries;
- (d) precisely define those exceptional circumstances which can be effectively verified in which the application of countervailing duties to imports from developing countries would be admissible and determine special procedures for such application;
- (e) recognize the right of developing countries to apply countervailing duties to imports from developed countries on the basis of more flexible criteria than those evolved for the latter, to allow for the application of compensatory measures by developing countries both in the case of injury to their industries and of an existing threat to their nascent industries,

Requests the Secretary-General of UNCTAD to transmit this resolution to the Director-General of GATT requesting him to submit it to the appropriate bodies of the GATT.