

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Multilateral Trade Negotiations

GROUP 3(b) - EXPORT SUBSIDIES AND COUNTERVAILING DUTIES

Note by the Secretariat on the Meeting of May 1974

A. General

1. The Group met on 29-31 May 1974 to take up tasks 9 and 10 of the Programme of Work, i.e. the continuation of work already begun on export subsidies in respect of products other than primary commodities (Chapters 25-99 BTN), and the continuation of the study of a possible code regarding countervailing duties (General Aspects). The Group had before it a background note established by the secretariat (MTN/3B/10) as well as a proposal submitted by the United States delegation on the question of subsidies (MTN/3B/W/2).
2. Some delegations stated that in their view export subsidies including trade distorting domestic subsidies and countervailing duties were in reality two aspects of the same problem, and therefore the Group should work towards an overall solution which would encompass both subjects. Some other delegations, while acknowledging that there was a link between the two subjects, were of the opinion that certain contracting parties and especially one country did not conform to the express provisions of Article VI of the General Agreement in the field of countervailing duties. Some of these delegations said that as long as this situation existed it would be unwise to create new obligations for contracting parties in the field of subsidies and countervailing duties. Some other delegations, while agreeing that countervailing duties presented a major problem, felt that equal importance should be given to other barriers to trade, such as domestic subsidies with import substitution effects.
3. Some delegations stated that they were working on the assumption that any proposed solution would cover both primary and non-primary products, as had been the case with draft solutions on other topics which had been worked out in the context of the Committee on Trade in Industrial Products. Other delegations pointed out that the competence of the Group was limited to the consideration of products falling within Chapters 25-99 of the BTN.

B. Export subsidies, domestic subsidies that stimulate exports, and subsidies with import substitution effects

4. Some delegations stated that the present GATT rules on subsidies were not adequate. There was no definition of what measures constituted export subsidies. Furthermore, the Declaration of 1960, which prohibited export subsidies, was adhered to by only seventeen countries, was applied only to non-primary products, and was applicable only when subsidization resulted in dual pricing. In addition, the list of banned practices that was developed in connexion with this Declaration was only illustrative.

5. Some discussion took place on the advisability of drawing up a list of prohibited practices and, if so, whether such a list should include or exclude domestic subsidies which have trade distorting effects.

6. Some delegations were in favour of having a list of prohibited export subsidy practices and expressed the view that it should be as complete as possible. A list of domestic subsidies might also be compiled. These measures would be prohibited if they were trade distorting. Other delegations, while agreeing that a list of prohibited export subsidy measures should be compiled, felt that since domestic aids were a legitimate part of countries' internal policies and that because it is difficult to distinguish domestic subsidies with trade distorting effects from other domestic subsidies and define the former, therefore they should not be prohibited. If, however, it was found in practice that certain measures of this type were trade distorting, they should be taken up under one of the GATT consultative provisions, e.g. through the procedures of Article XVI, paragraph 1, or Articles XXII and XXIII.

7. Some delegations questioned the utility of attempting to draw up a comprehensive list of prohibited export subsidies until agreement had been reached on the characteristics of the measures to be prohibited. It was suggested that a suitable criterion for inclusion on the list might be differential treatment in favour of exports over production destined for the domestic market. These delegations stated that any attempt to work out a detailed and comprehensive list was tantamount to opening negotiations and was therefore not an appropriate approach at this time. Some of these delegations noted that the draft lists discussed by Working Group 1 of the Committee on Trade in Industrial Products contained proposed prohibitions which obviously could not be accepted by certain major trading countries and suggested that a more realistic approach would be for the major trading entities to indicate on an ad referendum basis what measures they could agree to prohibit.

8. Some delegations thought that while it might be useful to have such a list, it should be a limited one, since an extensive list of prohibited subsidies and related sanctions would seriously undermine the balance of the General Agreement. Other delegations expressed the view that the list need not be a limited one but should be of reasonable scope, and that such a list could be drawn up based on, inter alia, dual-price criterion rather than distortive effects or injury criterion. They further noted that subsidies falling within the "grey area" could be the subject of consultations.

9. Some delegations referred to the problem of competitive subsidization of exports in third country markets. In their view, this problem might be quantitatively more important than the problem of subsidies for products imported into the domestic market. These delegations pointed out that although a country whose export interests had been affected could request countervailing action to be taken by the third country under paragraph 6(b) of Article VI, there was in fact no obligation for the country concerned to respond positively to such a request, and indeed there may be no economic interest in so doing. Some delegations, while agreeing that such a problem existed, felt that there could be a differing evaluation as to its real importance. These delegations thought that the existing provisions of the GATT, especially Article XXIII, were sufficient to take care of this problem.

C. Countervailing duties

10. Some delegations considered that solutions to the problem of countervailing duties should be sought as a matter of priority because countervailing duties were an area of confrontation between governments. Commenting on this view, other delegations maintained that the problem of countervailing duties only existed because of the practice of export subsidization. Export subsidies constituted no less a source of friction between governments than countervailing duties. According to these delegations, the solution to the export subsidy problem should therefore be accorded priority.

11. Some delegations stressed that in their view one of the key issues of the negotiations was the question of the universal implementation of the principle laid down in Article VI that no countervailing duty should be applied unless it has been clearly determined that material injury has been caused to domestic industry as a result of subsidization. Unfortunately, a few countries, relying on the Protocol of Provisional Application, did not consider themselves bound by the injury provisions of Article VI. It was not clear that in all cases the imposition of such duties in one of these countries would have been justified if a material injury test had applied.

12. These delegations expressed the opinion that countervailing duties should not be imposed automatically but rather should be used as a measure of last resort after convincing evidence had shown that injury had in fact been caused to the domestic industry. In accordance with generally accepted practice of GATT, an individual contracting party should not be permitted to decide unilaterally whether another contracting party had breached its GATT obligations. Alleged breaches of Article XVI, for example, should therefore be dealt with under the consultative procedures of the GATT and not by automatic countervailing action which would be contrary to letter and spirit of GATT.

13. Other delegations considered that any major review of the material injury concept would have to tackle the whole problem, not just one side of it. It would for example be necessary to look at the range of subsidies to be covered, as well as provisions for consultations both on subsidies and on countervailing actions. It would also be necessary to consider provisions for sanctions. According to these delegations, it was not reasonable that the blame for creating a trade barrier fell upon the government which imposed countervailing duties, rather than the country which subsidized its exports.

14. One delegation stated that under the law of its country the government had complete discretion in regard to the application of countervailing duties. It could deem any kind of financial support to be a subsidy and attach any conditions, procedural or substantive, to the exercise of that discretion. It was only required to act reasonably. Because the clause was clearly discretionary, his government was fully bound by the provisions of Article VI. Therefore, if it received a request for the application of countervailing duties, it had to decide what ad hoc procedures were needed to meet its obligations to find material injury as required by the GATT.

D. Possible solutions

15. Many delegations stressed that any possible solution would have to be based on the existing provisions of the GATT and that there could be no formal amendment to the provisions of the General Agreement. Several delegations also stressed that the aim of the negotiations in the area of subsidies and countervailing duties should be to add to and not to reduce the existing obligations under the General Agreement. In this connexion some delegations emphasized that the addition of obligations should be carried out with great care, as the General Agreement was based on a delicate balance of rights and obligations.

16. Many delegations pointed out that a balance of rights and obligations of all contracting parties should be established. They said that for this reason an important aim should be the elimination of the Protocol of Provisional Application. They considered that the continued existence of the Protocol gave rise to the intolerable situation that some contracting parties had more obligations than others. This problem arose in particular in connexion with obligations arising under Article VI. Other delegations considered that the Protocol of Provisional Application covered a wide range of problems and was part of the original balance of the General Agreement. Its elimination would create an imbalance of rights and duties. These same delegations agreed, however, that one of the objectives of the MTN should be to develop new rules on subsidies and countervailing duties that would make it possible to eliminate exceptions under this Protocol.

17. Some delegations stated that a list of prohibited export subsidy practices should be devised and that this ban should not be qualified by dual pricing or other conditions. A number of these delegations expressed their willingness to work on such a list. It was also suggested that a list of domestic subsidies that stimulate exports might be devised but that these measures would be prohibited only when they had significant trade distorting effects.

18. Various delegations attached great importance to the elaboration of improved notification and consultation procedures under paragraph 1 of Article XVI. These delegations suggested that this might be the most appropriate way to deal with the problem of domestic subsidies having trade distorting effects rather than the drawing up of a list of prohibited practices. These delegations saw particular relevance of such improved notification and consultation procedures to the problem of countervailing duties and particularly the implementation of the material injury provisions of Article VI.

19. In order to express these ideas in concrete terms, a number of delegations expressed the view that a solution would be to bring national legislation into conformity with Article VI, thus creating an equality of rights and obligations of contracting parties in this field. They noted that such an objective could be secured by establishing a code governing the application of countervailing duties or alternatively by including an agreement that national legislation and its application should conform to Article VI. Such a code or agreement would provide for prior notification of imminent countervailing action and subsequent consultations between governments concerned, and procedures for investigations. Other possible solutions to the problem of countervailing duties mentioned by some delegations included the preparation of a Declaration or Interpretative Note expanding on particular provisions of Article VI as they apply to countervailing duties, or an agreement on new bilateral consultative procedures reinforced by multilateral surveillance provisions.

20. Other delegations reiterated that resort to subsidies, rather than the imposition of countervailing duties was the basic problem. Countervailing duties were only imposed in order to neutralize trade distorting effects of subsidies. Therefore, work on a countervailing code prior to the development of effective rules on subsidies was putting the cart before the horse. These delegations, however, did not rule out additional obligations relating to countervailing duties if comparable obligations were undertaken on subsidies in a comprehensive overall solution to these closely linked problems.

21. It was suggested that a possible solution to the problem of countervailing duties in cases of export subsidization to third country markets was to permit the disadvantaged exporting country to retaliate against imports of the export subsidizing country.

E. Differentiated treatment for developing countries

22. The Group had before it a working document presented by the Brazilian delegation on the question of differentiated treatment in the field of subsidies and countervailing duties for developing countries (MTN/3B/W/3).

23. Many delegations from developing countries supported the Brazilian proposal concerning differentiated treatment, and stated that this proposal, together with paragraph 17 of MTN/3B/10, summarized well the position of developing countries. These delegations said that in the special conditions existing in developing countries government aid was not only legitimate under Part IV of the GATT, but also necessary and indispensable. In support of this contention they pointed to the limited size of the home market, the keen competition from developed countries' exporters, the constant need for diversification of their exports, and the different levels of their economic and technological development. Therefore government aids provided by developing countries had to be treated differently from those of developed countries. These delegations pointed out that the area of countervailing duties was one area where differentiated treatment could be applied.

24. Several other delegations stated that they were willing to explore the possibility for differentiated treatment and would like to hear concrete proposals to this effect. They were very conscious of the fact that developing countries' interests would have to be taken fully into account throughout the negotiations. Some of these delegations said that the problem might not be so complex in practice as it appeared in theory, since developing countries' products were not likely to enter developed countries' markets in such large quantities as to cause injury. Some delegations pointed out, however, that the relevant provisions of the GATT did not give a "carte blanche" for all developing country measures in the

field of subsidies. With reference to countervailing duties, the same delegations noted that when there was proof of injury there was no question of exempting developing countries altogether.

25. Some delegations said that any general solutions to the problems of export subsidies and countervailing duties might at the same time also meet the needs of developing countries for differentiated treatment. This was, in the view of some of these delegations, especially true if appropriate consultation procedures, a meaningful test of material injury, the attribution of discretionary power in the application of countervailing duties, and possibly some other elements, were commonly adopted.

26. There was widespread support for the idea that the discussion on general rules and on differentiated treatment for developing countries should be pursued in parallel. However, several delegations stressed that it would be difficult to make progress on the question of differentiated treatment for developing countries before a clear idea of the general principles had been obtained.