

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/3B/21

30 September 1974

Special Distribution

## SUBSIDIES AND COUNTERVAILING DUTIES

### Note by the Secretariat

#### Introduction

1. This note on "Subsidies and Countervailing Duties" has been prepared in accordance with the decision taken by Group 3(b) that the secretariat should prepare notes on relevant non-tariff measures affecting the trade interests of developing countries to bring out the problems facing these countries and ways in which these problems might be solved.<sup>1</sup> The note is divided into four sections. Section I states the main provisions in the General Agreement relating to subsidies and countervailing duties and deals with the applicability of these provisions to developing countries. In Section II an attempt has been made to describe the nature of the problems with special reference to the trade of developing countries. Section III summarizes the various proposals for solutions to the problems in this area that are under consideration. Section IV is devoted to a synthesis of the various proposals for extending differential treatment to developing countries that have been made by delegations during the discussions in Group 3(b) and elsewhere.<sup>2</sup>

---

<sup>1</sup>The secretariat has prepared background notes analyzing the impact on developing country trade of non-tariff measures arising in the field of standards (COM.TE/W/191), customs valuation (COM.TD/W/195) and health and sanitary regulations (COM.TD/W/190).

<sup>2</sup>At its meeting held on 17 and 18 July, the Trade Negotiations Committee decided that Group 3(b) should hold a meeting in the month of October to consider questions of differential treatment to developing countries in the field of subsidies and countervailing duties, taking into account the concrete proposals made by the delegation of Brazil, (MTN/3B/W/3; MTN/W/5). It is expected that the background information contained in this note on the provisions in the General Agreement, the nature of the problems and the various proposals for solutions would be of help in considering the Brazilian proposal for differential treatment to developing countries. It should be, however, noted that the brief summary contained herein may not fully reflect all the views expressed by delegations. For a more detailed account, reference should be made to the basic documentation and the main reports which have been listed in the Annex.

I

GATT provisions

2. The main provisions in the General Agreement relating to subsidies and countervailing duties are contained in Articles XVI and VI respectively.<sup>1</sup>

A. Subsidies

3. The GATT provisions relating to subsidies may be viewed in the context of historical developments in the evolution of Article XVI. Until the 1955 Review Session of the CONTRACTING PARTIES, the Article consisted of only one paragraph (present Section A) which required the contracting parties maintaining "any subsidy", "which operates directly or indirectly to increase exports - or to reduce imports" of any product, to notify periodically to GATT the "extent - nature - estimated effect - and circumstances" of the measure. It also imposed an obligation on the contracting party maintaining a subsidy to consult with the other contracting parties concerned and discuss "the possibility of limiting the subsidization" where it is determined that such subsidization measures cause "serious prejudice to the interests" of other countries.

4. Additional provisions (Section B) dealing specifically with "export subsidies" were added to the Article during the 1955 Review Session. Paragraph 2 of the Section contains the recognition by the CONTRACTING PARTIES that the granting of a "subsidy on exports" of any product "may have harmful effects for other contracting parties, both importing and exporting" and thus may cause undue disturbance to their normal commercial interests. Paragraph 3 of the Article further states that contracting parties should "accordingly seek to avoid the use of subsidies on their export of primary products"<sup>2</sup> and that in cases where a country grants a subsidy, it should not be applied in a manner which results in that country "having more than an equitable share of world export trade in that product". As regards "non-primary products" paragraph 4 visualizes that

---

<sup>1</sup>For a more detailed analysis of the GATT provisions, see secretariat Background Notes on Export Subsidies (COM.IND/W/73), Countervailing Duties and Subsidies (COM.IND/W/98), and Subsidies and Countervailing Duties (MTN/3B/10).

<sup>2</sup>An interpretative note to Article XVI states that "for the purpose of Section B, a primary product, is understood to be any product of farm, forest or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade".

contracting parties should cease to grant either directly or indirectly any form of export subsidy "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 paragraph however, did not contain any firm date for the implementation of these provisions and in order to provide for a definite target date, the CONTRACTING PARTIES in 1960, adopted a Declaration on the prohibition of subsidies on non-primary products. This Declaration has become effective in respect of sixteen developed countries which have so far accepted it.<sup>1</sup>

5. Thus the main obligations which Article XVI imposes in the field of subsidies are the following:

- (a) to notify periodically all subsidies having export stimulating or import substitution effects and to consult<sup>2</sup> on request with the contracting parties concerned or CONTRACTING PARTIES (acting jointly) in cases where such subsidization measures cause serious prejudice to the interests of other countries. The procedure for notifications under Article XVI which was adopted in 1962 provides for a new and full notification every third year and, in other years, for a notification of the changes that have occurred.

---

<sup>1</sup>The countries which have accepted the Declaration include Austria, Belgium, Canada, Denmark, France, Federal Republic of Germany, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Sweden, Switzerland, United Kingdom and United States.

It may be mentioned that the United States has accepted the Declaration with the understanding that it shall not prevent the United States, as part of its subsidization of exports of a primary product, from making a payment on an exported processed product (not itself a primary product), which has been produced from such primary product, if such payment is essentially limited to the amount of the subsidy which would have been payable on the quantity of such primary product, if exported in primary form, consumed in the production of the processed product.

<sup>2</sup>If the bilateral consultations do not produce adequate results, a party can, under the provisions of Article XVI:1, request consultations with the CONTRACTING PARTIES (acting jointly). The results of the six consultations in GATT under the provisions of Article XVI:1 have been summarized in the 1961 Report of the Panel on Subsidies. Since that time no further cases have been brought to the CONTRACTING PARTIES under the provisions of this paragraph. It should be noted that consultations on subsidy matters can also be held under the provisions of Article XXII or Article XXIII as the case may be.

- (b) to avoid the use of export subsidies on primary products and if such a subsidy is granted not to apply it in a way that results in that country having more than an equitable share of world export trade in that product.
- (c) not to grant any export subsidy to non-primary products which results in export prices being lower than the prices charged in the domestic market for the like product; this obligation applies to those countries which have accepted the 1960 Declaration.

6. The General Agreement, as such, does not contain any definition of the term "subsidy" but an interpretative note to Article XVI states that an exemption or remission of indirect taxes on goods exported, would not constitute a subsidy.<sup>1</sup> In addition, the Working Party on Subsidies in 1960 drew up a list of practices which could be considered as export subsidies and should therefore be prohibited by countries accepting the Declaration under paragraph 4 of Article XVI.

#### B. Countervailing duties

7. The General Agreement permits, subject to the fulfilment of certain conditions, the levy by an importing country of a countervailing duty on products receiving an export subsidy. The term "countervailing duty" has been defined in Article VI to mean "a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise".<sup>2</sup> The conditions relating to the levying of such a duty are firstly that the amount of countervailing duty should in no case exceed "an amount equal to the estimated bounty or subsidy

---

<sup>1</sup>The interpretative note reads as follows:

"The exemption of an exported product from duties or taxes borne by the like product, when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy".

<sup>2</sup>An interpretative note to the Article states that "multiple currency practices can in certain circumstances constitute a subsidy to export which may be met by countervailing duties".

determined to have been granted - - - including any special subsidy to the transportation of a particular product".<sup>1</sup> The second condition which is contained in paragraph 6(a) of the Article, requires that no such countervailing duty should be levied unless the effect of subsidization "is such as to cause, or threaten, material injury to an established domestic industry or is such as to retard materially the establishment of a domestic industry".

8. The Article also permits the levying of a countervailing duty to protect the interests of third countries, particularly in situations where subsidized imports are causing material injury to an industry in another exporting country. In particular, it states that the CONTRACTING PARTIES shall waive the requirements of paragraph 6(a) so as to permit the levying of a countervailing duty in cases in which they find that a subsidy is causing or threatening material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.<sup>2</sup>

9. One of the essential prerequisites for the levying of a countervailing duty is the determination of "material injury" to the "domestic industry". Though these terms have not been specifically defined in the General Agreement, it may be relevant to note that the Code on Anti-Dumping Duties which was elaborated by the CONTRACTING PARTIES during the Kennedy Round of Trade Negotiations, enumerates the various factors that should be taken into account in determining material injury and domestic industry. Article 3 of the Code, for instance, states that "a determination of injury should be made only when authorities are satisfied that the dumped imports are demonstratively the principal cause of

---

<sup>1</sup>An interpretative note to the Article states that a contracting party may require, as in other cases of customs administration, "reasonable security (bond or cash deposit) for the payment of an anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization".

<sup>2</sup>The Article further states that in order to protect the interests of third countries "in exceptional circumstances where delay may cause damage which would be difficult to repair, a contracting party may levy countervailing duties without the prior approval of the CONTRACTING PARTIES provided that such action shall be reported immediately to the CONTRACTING PARTIES, and that the countervailing duty shall be withdrawn promptly if the CONTRACTING PARTIES disapprove".

material injury or material retardation of the establishment of such industry" and that such a determination should in all cases be based on positive findings and not on mere allegations or hypothetical possibilities. The various factors that should be taken into account in evaluating the effects of the dumped imports on industry are: developments and prospects in regard to turnover, market share, profits, prices, export performance, employment, volume of dumping and other imports, utilization and capacity of domestic industry and productivity, and restrictive trade practices.<sup>1</sup>

10. As regards domestic industry, it may be mentioned that the 1959 Group of Experts on Anti-Dumping and Countervailing Duties recommended that a single firm within a large industry would generally not be an "industry" and that off-setting duties because of injury to only a single firm would be "protectionist in character and the proper remedy in such situations lay in other directions". Article 4 of the Anti-Dumping Code states that the term "domestic industry" should, barring certain exceptional circumstances, be interpreted as referring to the domestic firms that produce all of a product or to those whose collective output of the product constitutes a major portion of the total domestic production. The Code also notes that industries of two or more countries may be considered as a single industry when a certain level of integration has been reached.<sup>2</sup>

---

<sup>1</sup>It may be mentioned in this context that related to the concept of "material injury" is the concept of "market disruption". In Annex A of the Arrangement Regarding International Trade in Textiles, the various criteria that should be taken into account in determining whether imports from a particular source are such as to cause or threaten to cause market disruption are listed. For the sake of convenience the relevant extracts have been reproduced in Annex II to this document.

<sup>2</sup>For text of Articles 3 and 4 of the Anti-Dumping Code, see Annex I.

C. Special provisions in the General Agreement relating to developing countries

(i) Subsidies

11. As developing countries have not accepted the Declaration under paragraph 4 of Article XVI, they are not bound by requirements not to grant subsidies on their exports of manufactured products.<sup>1</sup> They are, however, bound by the other provisions in Article XVI, including the obligation to notify periodically to GATT subsidies maintained by them which operate directly or indirectly to increase exports or to reduce imports and to consult on request with contracting parties.

(ii) Countervailing duties

12. As regards countervailing duties it may be relevant to note that paragraph 3 of Article XXVII in Part IV requires that developed contracting parties should 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". The drafting history of Part IV shows that countervailing duties are amongst "the measures" mentioned in relation to the above paragraph, and as such there would appear to be an obligation on countries contemplating countervailing action to "explore all possibilities of constructive remedies before applying such measures" on imports from developing countries.

II

Nature and Scope of the Problem

13. In this section an attempt has been made to describe briefly the points made in the relevant notifications on non-tariff measures and the views expressed by delegations in regard to the nature and scope of the problems that arise in the field of subsidies and countervailing duties.

---

<sup>1</sup>When the Declaration was being adopted these countries had explained that because of their stage of economic and industrial development, they would not be in a position to accept any commitment which would restrain their freedom to resort to subsidization, in cases where this was considered economically justifiable and necessary for promotion of exports. They had also pointed out that it would be unfair for developing countries which exported mainly primary products to bind themselves in the non-primary goods area, while developed countries continued their use of subsidies for primary goods.

A. Notifications in the Inventory

14. Notifications contained in the Inventory which are illustrative of the nature of the problems in the field of subsidies and countervailing duties have been reproduced in Annex III. The practices in the field of subsidies which have been notified as constituting barriers to trade can be divided into two categories. The first category would include such practices as "exemption in respect of exported goods of direct taxes" which clearly constitute export subsidies under the GATT rules as at present adopted and which are applied by some contracting parties not accepting the Declaration giving effect to Article XVI:4. In the second category would fall those practices which are in the grey area and for which there is at present no agreed interpretation of GATT rules. Examples from the notifications of such practices are the accordance by governments of special advantages to exports in obtaining credit, transport and freight subsidies on export shipments, etc.

15. In the notifications relating to countervailing duties, the notifying countries have pointed out that certain countries did not in practice follow the rules in Article VI and countervailing duties were sometimes levied without determination of "material injury to the domestic industry" from subsidized imports. One of these countries has legislation in the field of countervailing duties, pre-dating GATT and covered by its Protocol of Provisional Accession, according to which countervailing duties could be levied on the basis of evidence of subsidization, without having to establish that subsidized imports were causing or threatened to cause material injury to the domestic industry.

B. Summary of the views expressed by delegations

(i) Export subsidies

16. In the discussions in Working Group 1 of the Committee on Trade in Industrial Products, and later in Group 3(b), some delegations have pointed out that the problems in this area arose as the present GATT rules on subsidies were not adequate, particularly as there was no agreed interpretation of measures which constituted export subsidies. In addition the 1960 Declaration had not been subscribed to by all developed countries; the prohibition on use of export subsidies under the Declaration was also applicable only in cases where such subsidies resulted in dual pricing, i.e. where export prices were lower than the domestic prices for the like product. In addition, the list of banned practices which had been elaborated in connexion with the Declaration was only illustrative and did not cover all practices that should be prohibited.



(ii) Domestic subsidies which stimulate export and subsidies with import substitution effects

17. A number of delegations have pointed out that in recent years the governments of all countries were adopting a wide variety of domestic subsidy programmes for the attainment of various policy objectives. The policy objectives of such programmes included overall industrial development, assistance for the development of depressed industries, encouragement of development of industries in backward regions, the development of agriculture, the development of national transportation, etc. Most of these incentive programmes were not related to export performance and as such did not constitute export subsidies in terms of the provisions of Section B of Article XVI. Some of these programmes however could have, in practice, an indirect effect on international trade, whether it be through a reduction in imports or an increase in exports. Such measures would appear to be covered by the notification and consultation procedures under Article XVI:1; in practice, however, very few of such practices were notified to GATT. Some other delegations have taken the view that the granting of a domestic subsidy constituted a purely internal measure which fell outside the notification procedure. However, cases with possible trade distorting effects would be subject to consultation under the relevant provisions.

(iii) Countervailing duties

18. The view has been expressed by some delegations that the major problem in regard to countervailing duties was the fact that some contracting parties relying on the Protocol of Provisional Application did not consider themselves bound by the injury provisions of Article VI:6(a). Other delegations have referred to the link which existed between subsidies and countervailing duties and have pointed out that export subsidies rather than countervailing duties were the real problem as they were primarily responsible for creating trade distortions. In their view, the question of levying countervailing duties would not arise if the use of all export subsidies was prohibited, including those which did not result in dual prices, and if all countries accepted and implemented the Declaration on prohibition of export subsidies under Article XVI:4.

19. Reference has been made by some delegations to the problem of competitive subsidization of exports in third country markets. These delegations have pointed out that although a country whose export interests had been affected could request countervailing action to be taken by a 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, however, considered that the existing provisions of the GATT, especially Article XXIII, were sufficient to take care of such problems.

Special problems of developing countries

(1) Export subsidies

20. In the discussions in Group 3(b) and elsewhere, many delegations from developing countries have stated that their governments have found it necessary to adopt various incentive schemes for the promotion and development of exports of manufactured products to assist their exporting industries in overcoming some of the disadvantages and handicaps from which they suffer because of the special conditions prevailing in their countries. The incentive schemes are sometimes intended to enable their industries to market their products at prices charged by competing firms from developed countries as, in the case of a number of products produced in developing countries, domestic prices tend to be high because of the small scale of production, inability of the producing industries to adopt the latest technology, under-utilization of capacity and other factors. Some of the incentive schemes, such as those providing assistance for advertising abroad, for carrying out market research and training of personnel in export promotion techniques, are intended to enable exporting firms to penetrate and develop new markets for their products. A number of incentive schemes are intended to reimburse to exporters amounts equal to the indirect taxes levied on inputs in the exported products by public authorities. Such incentive schemes would not, generally speaking, constitute subsidies in terms of Article XVI. These countries have therefore explained that properly formulated and implemented incentive schemes were not only economically justifiable in their case but were also necessary and indispensable for the development of their exports. These measures were also in accordance with the provisions of Part IV of the General Agreement and were legitimate as the developing countries had not subscribed to the Declaration on prohibition of export subsidies under Article XVI:4.

21. While recognizing that incentive schemes may have a rôle to play in the promotion and development of exports of manufactures from developing countries, some delegations have pointed out that incentive schemes which resulted in indiscriminate use of export subsidies may lead to the establishment of uneconomic and inefficient industries in the developing countries; this could also encourage damaging competition between developing countries themselves. In this connexion a point has been made that the Treaties establishing free-trade

areas and common markets among developing countries<sup>1</sup>, provide for greater discipline in the use of subsidies and for their gradual abolition in regard to products traded intra-regionally.

(ii) Countervailing duties

22. As regards countervailing duties, it has been explained by some delegations from developing countries that problems in this field arose as the authorities in the importing countries did not always fully recognize and accept the need of the developing countries to adopt incentive schemes for the development of their exports. Consequently these countries were facing increasing threats of countervailing duties being levied in some of the industrialized countries, particularly in those countries not requiring evidence of material injury to domestic industries before the commencement of investigation procedures. Other delegations have pointed out that with a few exceptions, legislation in most of the industrialized countries gives discretionary authority to the enforcement agencies in regard to the levying of countervailing duties. In practice, the discretion would appear to have been used in such a way that only very rarely, or in exceptional cases, countervailing duties had been imposed on imports from developing countries. Developing countries have explained that, in such cases,

---

<sup>1</sup>In this context, it may be relevant to note that Article 52 of the Montevideo Treaty establishing the Latin American Free Trade Area (LAFTA) provides as follows:

"No Contracting Party shall promote its exports by means of subsidies or other measures likely to disrupt normal competitive conditions in the Area."

Article 25 of the Treaty establishing the Caribbean Community, states that a member State shall not maintain or introduce:

- 1(a) the forms of aid to export of goods to any other part of the Common Market of the kinds which are described in Schedule VI;
- (b) any other forms of aid, the main purpose or effect of which is to frustrate the benefits expected from the removal or absence of duties and quantitative restrictions.

The practices included in Schedule VI referred to above are generally those included in the GATT 1960 List of Prohibited Practices in the field of export subsidies. It should be noted, however, that Article 57 of the Treaty states that paragraph 1(a) shall not apply to exports from less developed countries in the Common Market, except where such exports are consigned to Barbados.

it was not so much the levying of a countervailing duty, but the threat that such a duty might be imposed and the investigations for this purpose might be commenced, that posed problems for their trade. As there was general reluctance to import from peripheral countries, the mere possibility that investigations could be started for the levying of countervailing duties could act as a deterrent to further imports being made and thus frustrate efforts for the promotion of trade.

### III

#### Proposals for Solutions

##### General<sup>1</sup>

23. In the discussion on possible solutions that could be found to the problems that arise in the field of subsidies and countervailing duties, different views have been expressed as to the priorities that should be attached to the two subjects. Some delegations were of the opinion that solutions to the problems relating to countervailing duties should be sought as a matter of priority as practices of certain countries in this field were in contradiction of the provisions of Article VI of GATT; countervailing duties were often also an area of confrontation between governments. Other delegations have 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.

(i) Export subsidies, subsidies having export stimulating effects and subsidies having import substitution effects

24. As solutions to the problems in this area, it has been suggested that those developed countries which have not subscribed to the 1960 Declaration on the prohibition of subsidies on non-primary products, should accept it. Working Group 1 of the Committee on Trade in Industrial Products also proceeded to draw up a draft list of prohibited practices in the field of export subsidies on the basis of a working hypothesis that as a general principle countries should not institute or maintain export subsidy measures which distort trade. This list, which is under examination, has been reproduced in annex IV.

---

<sup>1</sup>Some delegations have stated that in the search for solutions they were working on the assumption that any proposed solution would cover both primary and non-primary products. Other delegations have pointed out that the competence of the Group was limited to the consideration of products falling within Chapters 25 to 99 of the BTN.

25, In the discussions in Group 3(b), there has been a considerable measure of support for the proposal that a list should be devised of export subsidy practices which should be prohibited. There have been, however, some differences of views among delegations as to whether such a list should be exhaustive or illustrative. In the view of some delegations any such list of prohibited practices should be as complete as possible and the prohibition should apply to all subsidy measures which were trade distorting and should not be qualified by dual pricing and other conditions.

26. Some delegations have expressed the view that the list should be a limited one, since an extensive list of prohibited subsidies and related sanctions would undermine the existing balance in the General Agreement. Other delegations were of the opinion that the list need not be a limited one but should be of reasonable scope, and that such a list should be based on, "dual price criterion" rather than "trade distortive effects" or "injury" criteria.

27. In regard to domestic subsidies that stimulate exports, some delegations have suggested that a list of such measures might also be devised but such measures should be prohibited only when they had significant trade-distorting effects. Other delegations felt that since domestic aids were a legitimate part of a country's internal policies and as in practice it would be difficult to distinguish domestic subsidies with trade-distorting effects from other types of domestic subsidies, it would be difficult to define and determine practices in this area which should be prohibited. In this context, a number of delegations have attached great importance to the elaboration of improved notification and consultation procedures under paragraph 1 of Article XVI. These delegations considered that this might be the most appropriate way to deal with the problem of domestic subsidies having trade distorting effects rather than drawing up a list of prohibited practices. These delegations also felt that such improved notification and consultation procedures would be of particular relevance to the problems in the field of countervailing duties and particularly for the implementation of the material injury provisions of Article VI.

(ii) Countervailing duties

28. As regards countervailing duties, some delegations have stated that one of the key issues in 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 had been clearly determined that material injury had been caused to domestic industry as a result of subsidization. These delegations have also 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 been shown that injury had in fact been caused to the domestic industry. In this context, they have pointed out that Article VI did

not specifically provide for consultations between interested governments prior to the imposition of countervailing duties. However, it may be desirable to agree that before imposing countervailing duties or other off-setting measures, governments should be required to consult with the government of the country alleged to be granting the subsidy. Such consultations could cover the magnitude of the alleged subsidy, its impact on international trade, the objectives of the government concerned, and the possibility of other methods less damaging to trade being found to achieve the intended objectives.

29. A number of delegations have expressed the view that it may be possible to give concrete shape to these ideas by adopting a code governing the application of countervailing duties. Such a code could require countries to bring their national regulations into conformity with Article VI thus creating an equality of rights and obligations of contracting parties in this field. The code could provide for prior notification of imminent countervailing action and subsequent consultations between governments concerned, lay down procedures for investigations and provide for multilateral surveillance of countervailing actions. Other possible solutions to the problem of countervailing duties mentioned by some delegations include the preparation of a Declaration or an 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 procedures.

#### IV

#### Differential treatment to developing countries

30. Delegations from developing countries have stated that subsidies and countervailing duties would appear to be an area where, in elaborating solutions, it was both technically feasible and economically justifiable to extend special and more favourable treatment to developing countries by the application of differential measures. They have suggested that in the field of subsidies developed countries should undertake not to subsidize their exports and that there should be a stricter definition of export subsidies. At the same time, it had to be recognized that developing countries might need to adopt suitable incentive schemes for the promotion and development of exports of their manufactures. Some of these representatives have pointed out that as exports under these incentive schemes were not in breach of GATT rules and as the growth in exports from developing countries was a recognized objective of the GATT, measures in the form of countervailing action should not be taken against their exports.

31. Some delegations have suggested that in the field of subsidies and countervailing duties it may be possible to make a distinction in the rights and obligations that should govern the relations in trade among developed countries,

between developing and developed countries and among developing countries themselves. Some other delegations, however, have pointed out that the relevant provisions of the GATT did not give developing countries "carte blanche" in the field of subsidies. These delegations also considered that when there was proof of injury, there could not be any question of exempting altogether imports from developing countries from the levying of a countervailing duty.

32. Other delegations, while recognizing that the discussion on general rules and on differential treatment should be pursued in parallel, considered that the various proposals for general solutions which were under examination had elements which may adequately take care of the special situation of developing countries. In the view of these delegations differential treatment for developing countries may not be necessary if certain elements including consultation procedures, a meaningful test of material injury, the attribution of discretionary power in the application of countervailing duties and possibly a multilateral surveillance of countervailing action, were included in the general solutions that were adopted in this field. A number of delegations have explained that the problem may not be as complex as it appeared in theory, since developing countries' products were not likely to enter developed country markets in such large quantities as to cause injury.

33. Taking into account the points made in the meetings of Group 3(b) and in response to the request for concrete proposals, the Brazilian delegation has recently presented a Working Paper, indicating their preliminary views as to how differential treatment could be extended to developing countries (MTN/W/5). The paper states that it may be possible to remove the present anomalous and ambiguous situation in relation to the use of subsidies by developing countries, if consideration could be given to the preparation of a 'positive list' of export incentive measures, which in accordance with the principle of differential and more favourable treatment to developing countries, could be explicitly permitted.<sup>1</sup> Such incentive schemes would be deemed to be legal and accepted measures under the GATT and the products benefiting under the schemes should in no case be subjected to countervailing action by developed importing countries. In the case of other measures, falling outside the scope of the 'positive list' a countervailing duty may be levied in exceptional cases provided certain conditions in regard to determination of material injury and procedure for consultations are fulfilled. Any such procedure should include the following elements:

---

<sup>1</sup>Such a list would be drawn up with the necessary flexibility to allow the present trade and development needs of developing countries to be fully taken into account; its nature would have regard to the fact that many developing countries are experimenting with several domestic policy measures designed to carry forward their development plans. They should not, lest these plans be seriously hindered, be asked to accept stringent commitments or limitations resulting in resort to a static set of incentive measures.

(i) prior consultations between the developed importing country and the developing exporting country, at the request of the former; such consultations might be envisaged to take place under the procedures normally followed under GATT Article XXII;

(ii) the drawing up of objective criteria for determining whether subsidization practices have caused material injury to the importing country market (not simply to a single firm, but to a whole industrial sector or branch). In any case, evidence would be required to demonstrate that such injury resulted from a substantial increase in imports of particular products from a particular source as a result of the subsidy and that these products were being offered at prices substantially below those that would prevail in the absence of the subsidy. The trade and development needs of developing countries concerned should be taken fully into account, as required under paragraph 3(c) of Article XXXVII, especially as regards such factors as their stage of development, the strategic importance of the subsidized exports to their economies or the need for increasing their export earnings;

(iii) consideration of the harmful effects of the imposition of countervailing duties on the market and the economy of the developing exporting country; in other words, consideration of market disruption also in the exporting country, along the lines of the concept inserted in the Arrangement Regarding International Trade in Textiles<sup>1</sup>;

(iv) in the case of disagreement between the parties to the consultations, the developing country would have recourse to the contracting parties or any other body set up to administer any code or arrangement that may be negotiated in this field. Such multilateral consideration of the matter would also respond to the criteria referred to in (i) and (ii) above. If the contracting parties find that material injury is being caused to the importing country's market, recommendations could be made to the developing country concerned to limit or withdraw the specific subsidization measure on the products in question. A grace period would be granted, however, for compliance with the recommendations, in order to allow the country concerned to make the necessary domestic adjustments. If, then, it had failed to do so, the importing country would be free to impose a countervailing duty not exceeding an amount necessary to offset in part or in whole the extent of the subsidization.

---

<sup>1</sup>See Annex II for relevant extracts from the Arrangement Regarding International Trade in Textiles.



34. The paper suggests, that until the existing GATT rules are modified on the lines suggested above, there should be a "standstill" and no countervailing action should be taken or threatened against exports from developing countries, or as a minimum no such action should be taken without previous consultations and the application of the test of material injury.

ANNEXES

- I Extracts from the provisions in the Anti-Dumping Code: Material Injury: Article 3; Domestic Industry: Article 4
- II Extracts from the Arrangement Regarding International Trade in Textiles: Determination of Market Disruption
- III Notifications in the Inventory of Non-Tariff Measures which are illustrative of the problems that arise in the field of subsidies and countervailing duties
- IV Extracts from the Report of Working Group 1 of the Committee on Trade in Industrial Products relating to the elaboration of a list of prohibited practices in the field of subsidies
- V List of GATT background documentation and reports on discussions on subsidies and countervailing duties

ANNEX I

Extracts from the Provisions in the Anti-Dumping Code:  
Material Injury: Article 3; Domestic Industry: Article 4

B. Determination of material injury, threat of  
material injury, and material retardation

Article 3

Determination of Injury<sup>1</sup>

(a) A determination of injury shall be made only when the authorities concerned are satisfied that the dumped imports are demonstrably the principal cause of material injury or of threat of material injury to a domestic industry or the principal cause of material retardation of the establishment of such an industry. In reaching their decision the authorities shall weigh, on one hand, the effect of the dumping and, on the other hand, all other factors taken together which may be adversely affecting the industry. The determination shall in all cases be based on positive findings and not on mere allegations or hypothetical possibilities. In the case of retarding the establishment of a new industry in the country of importation, convincing evidence of the forthcoming establishment of an industry must be shown, for example that the plans for a new industry have reached a fairly advanced stage, a factory is being constructed or machinery has been ordered.

(b) The valuation of injury - that is the evaluation of the effects of the dumped imports on the industry in question - shall be based on examination of all factors having a bearing on the state of the industry in question, such as: development and prospects with regard to turnover, market share, profits, price (including the extent to which the delivered, duty-paid price is lower or higher than the comparable price for the like product prevailing in the course of normal commercial transactions in the importing country), export performance, employment, volume of dumped and other imports, utilization of capacity of domestic industry, and productivity; and restrictive trade practices. No one or several of these factors can necessarily give decisive guidance.

(c) In order to establish whether dumped imports have caused injury, all other factors which, individually or in combination, may be adversely affecting the industry shall be examined, for example: the volume and prices of undumped

---

<sup>1</sup>When in this Code the term "injury" is used, it shall, unless otherwise specified, be interpreted as covering cause of material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

imports of the product in question, competition between the domestic producers themselves, contraction in demand due to substitution of other products or to changes in consumer tastes.

(d) The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production in terms of such criteria as: the production process, the producers' realizations, profits. When the domestic production of the like product has no separate identity in these terms the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

(e) A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause material injury must be clearly foreseen and imminent.

(f) With respect to cases where material injury is threatened by dumped imports, the application of anti-dumping measures shall be studied and decided with special care.

#### Article 4

##### Definition of Industry

(a) In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products except that

(i) when producers are importers of the allegedly dumped product the industry may be interpreted as referring to the rest of the producers;

(ii) in exceptional circumstances a country may, for the production in question, be divided into two or more competitive markets and the producers within each market regarded as a separate industry, if, because of transport costs, all the producers within such a market sell all or almost all of their production of the product in question in that market, and none, or almost none, of the product in question produced

---

<sup>1</sup>One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices.

elsewhere in the country is sold in that market or if there exist special regional marketing conditions (for example, traditional patterns of distribution or consumer tastes) which result in an equal degree of isolation of the producers in such a market from the rest of the industry, provided, however, that injury may be found in such circumstances only if there is injury to all or almost all of the total production of the product in the market as defined.

(b) Where two or more countries have reached such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the industry referred to in Article 4(a).

(c) The provisions of Article 3(d) shall be applicable to this Article.

ANNEX II

Extracts from the Arrangement Regarding International  
Trade in Textiles: Determination of Market Disruption

I. The determination of a situation of "market disruption", as referred to in this Arrangement, shall be based on the existence of serious damage to domestic producers or actual threat thereof. Such damage must demonstrably be caused by the factors set out in paragraph II below and not by factors such as technological changes or changes in consumer preference which are instrumental in switches to like and/or directly competitive products made by the same industry, or similar factors. The existence of damage shall be determined on the basis of an examination of the appropriate factors having a bearing on the evolution of the state of the industry in question such as: turnover, market share, profits, export performance, employment, volume of disruptive and other imports, production, utilization of capacity, productivity and investments. No one or several of these factors can necessarily give decisive guidance.

II. The factors causing market disruption referred to in paragraph I above and which generally appear in combination are as follows:

(i) a sharp and substantial increase or imminent increase of imports of particular products from particular sources. Such an imminent increase shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries;

(ii) these products are offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country. Such prices shall be compared both with the price for the domestic product at comparable stage of commercial transaction, and with the prices which normally prevail for such products sold in the ordinary course of trade and under open market conditions by other exporting countries in the importing country.

III. In considering questions of "market disruption" account shall be taken of the interests of the exporting country, especially in regard to its stage of development, the importance of the textile sector to the economy, the employment situation, overall balance of trade in textiles, trade balance with the importing country concerned and overall balance of payments.

ANNEX III

Notifications in the Inventory of Non-Tariff Measures  
Which are Illustrative of the Problems that Arise in  
the Field of Subsidies and Countervailing Duties

The notifications included in the Annex are the following:

Export subsidies on industrial products

Payroll tax rebate and market development allowance

Tax incentive

Tax reliefs for expenditure on development of export markets

Trade diverting investment

Investment grants to aluminium

Countervailing duties

Levy of countervailing duties without taking into account whether subsidized imports were causing material injury

| <u>Notification<br/>No.</u> | <u>Country main-<br/>taining the<br/>measure</u> | <u>Nature of the<br/>non-tariff<br/>measure</u>             | <u>Notifying<br/>countries</u> |
|-----------------------------|--|---|--------------------------------|
| 4                           | Australia  | Payroll tax rebate<br>and market develop-<br>ment allowance | EEC<br>Canada                  |

Type

Aids (Australia classes these as "incentives") to exports through two direct tax rebates.

Method

(i) Payroll tax at the rate of  $2\frac{1}{2}$  per cent is payable on the amount of a firm's payroll in excess of \$A 20,800 per annum. Payroll tax to the extent of  $10\frac{1}{2}$  per cent of a firm's increase in exports over the average for the three years ending five years previously may be rebated to an exporter, and any excess of rebate entitlement over payroll tax liability may be carried forward for up to three years. This is not a direct subsidy on the price of the goods, but relieves the exporter of a cost and is related, in amount, to the increase in exports. Cost of exports is reduced and this has a bearing on prices. Therefore, in the notifying countries' view, the measure is in effect a subsidy on exports. Australia contests this view.

(ii) Market development allowance which is a straight taxation rebate of 42.5 cents for each dollar expended on market development. This rebate is an addition to the normal deduction from the exporter's taxable income in respect of expenses incurred in deriving income. The total tax saving by way of normal deduction from taxable income plus the rebate may not exceed  $82\frac{1}{2}$  cents in the Australian dollar of eligible expenditure for private companies, or  $87\frac{1}{2}$  cents in the Australian dollar for public companies. The scheme is current until July 1973 when consideration will be given to its extension.

Effects

(i) Payroll rebate applies to manufactured goods and some primary products exported (not including minerals, petroleum, alumina). Not possible to quantify effect on exports. As the measure operates on a whole range of products, it is hard to measure effects.



| <u>Notification<br/>No.</u> | <u>Country main-<br/>taining the<br/>measure</u> | <u>Nature of the<br/>non-tariff<br/>measure</u>             | <u>Notifying<br/>countries</u> |
|-----------------------------|--|---|--------------------------------|
| 4                           | Australia  | Payroll tax rebate<br>and market develop-<br>ment allowance | EEC<br>Canada                  |

(ii) Market development allowances, in the view of the notifying countries, amount to a double deduction from assessable income for income tax purposes of \$A 2 for every \$A 1 spent on specified export promotion, subject to an 80 per cent limit. The scope of the allowance was notified as having been extended on 1 July 1968. Notifying countries felt that although the measure was not a direct subsidy, since the amount of subsidy is not related to quantity of exports, but to expenses in promoting sales, nevertheless, it reduced costs which normally are included in export prices and therefore constituted an indirect subsidy. Australia contests this view and accepts only that it is an incentive working as described under "Method".

#### GATT relevance

The notifying country pointed out that Australia has not subscribed to the Declaration Giving Effect to Article XVI:4, creating a gap in present obligations of different contracting parties, as non-signatories are freer than others. The Committee was urged to consider this sector even if the operation of the measures was considered relevant to the Border Tax Adjustment Working Party. The notifying country also noted that while all countries practise export development schemes, assisting in trade fairs, missions, representations, etc., such measures should be distinguished from direct aids, and assistance should not extend to tax rebates.

Australia reiterated its view that the measures are not in fact barriers to trade, nor, in its view, export subsidies.

| <u>Notification<br/>No.</u> | <u>Country main-<br/>taining the<br/>measure</u> | <u>Nature of the<br/>non-tariff<br/>measure</u> | <u>Notifying<br/>countries</u> |
|-----------------------------|--|---|--------------------------------|
| 33                          | Japan  | Tax incentive                                   | Canada<br>EEC<br>United States |

Type

Direct tax deferral in relation to exports.

Method

1. Tax deferral is to be allowed for a percentage of gross export proceeds if set aside as reserve for market development, to be spent in equal instalments over five years. Percentage which may be set aside depends on whether exports are increasing as a percentage of gross sales.

2. Special depreciation allowances permit accelerated depreciation rates on equipment depending in amount on the export ratio. Some accelerated rates run as much as 96 per cent above normal.

The representative of Japan stated that the allowances for special accelerated depreciation were abolished at the end of March 1972, and overseas market development reserve system has been no longer applied to corporations capitalized at more than a billion yen since November 1972.

Origin

Special Taxation Measures Law, April 1964.

Effects

No assessment was offered of the quantitative impact of these measures. Japan stated tax allowances do not materially affect the volume of trade in the commodities but are granted to take account of the reality of need to update plant especially fast in Japan's range of exports.

Note: Japan suggested these problems might better be dealt with in the Working Party on Border Tax Adjustments, though it was recognized that these are not problems of border tax adjustments. An expert was expected for that meeting where questions could be answered.

| <u>Notification<br/>No.</u> | <u>Country main-<br/>taining the<br/>measure</u> | <u>Nature of the<br/>non-tariff<br/>measure</u>                       | <u>Notifying<br/>countries</u> |
|-----------------------------|--|---|--------------------------------|
| 38                          | South Africa                                     | Tax reliefs for<br>expenditure on<br>development of<br>export markets | EEC                            |

---

Type

Aid to exports through direct tax rebates.

Method

Export incentives take the form of tax reliefs in respect of expenditure on development of export markets.

EffectsGATT relevance

The point was made that it is unfair for South Africa, among others, to have a lesser obligation with respect to use of export subsidies from not having accepted the Declaration Giving Effect to Article XVI:4. It was felt that this question should remain in this Committee, even if operation of the scheme were referred to the Working Party on Border Tax Adjustments as had been suggested. The representative of South Africa felt that these "incentives" were neither subsidies nor border tax adjustments but had no objection to their referral to the Working Party on Border Tax Adjustments.

| <u>Notification No.</u> | <u>Country maintaining the measure</u> | <u>Nature of the non-tariff measure</u> | <u>Notifying countries</u>                  |
|-------------------------|--|---|---|
| 44                      | United Kingdom                         | Investment grants to aluminium          | Australia<br>Canada<br>Norway<br>Yugoslavia |

Effects

The representative of Canada made the points that the aluminium programme (1) represented government aid on an unusually large scale; (2) involved a programme for shifting the location of an industry from possible location elsewhere to the United Kingdom where in the past absence of cheap electric power had made such a programme questionable from an economic point of view; (3) involved a shift in industry location which appeared likely to be prejudicial to the interests of developing countries where location of smelters and alumina producing plants might otherwise be more economic; (4) seemed certain to effect large-scale import replacement prejudicing the interests of countries now furnishing the bulk of the United Kingdom requirements, and (5) threatened to initiate a competitive race between national treasuries to subsidize industrial development without due regard to international trading interests. His full statement is appended.

The representative of the United Kingdom did not accept that the scale of aid involved could be characterized as unusually large, although he had no detailed information on levels of assistance in other countries at this stage. Domestic interests in the United Kingdom had criticized the scale of the investment assistance, which was available, broadly speaking, to all manufacturing industries (with a higher rate of grant available in the Development Areas), as less generous than the scheme which it had replaced. It was important to appreciate that the grant system introduced in 1966 had merely replaced former provisions of a different kind but for a similar purpose. It should be noted also that the grants were available for the purchase of plant and equipment from any source, including imported goods. He suggested that the facts could not be properly established without a full examination of other countries' practices, a study in which the United Kingdom would be willing to participate if it were generalized to include all fiscal measures and other schemes of industrial assistance employed by other major industrial countries.

2. In any event it was questionable whether the system had had much effect on industry decisions regarding the siting of new facilities as between one country and another. Aluminium production was controlled by a few very large international

| <u>Notification<br/>No.</u> | <u>Country main-<br/>taining the<br/>measure</u> | <u>Nature of the<br/>non-tariff<br/>measure</u> | <u>Notifying<br/>countries</u>              |
|-----------------------------|--|---|---|
| 44                          | United Kingdom                                   | Investment grants<br>to aluminium               | Australia<br>Canada<br>Norway<br>Yugoslavia |

---

enterprises, and it was likely that the major considerations in their decision where to locate new facilities related to the case of supplying growing markets at competitive prices. In fact the recent trend of imports of aluminium into the United Kingdom showed that changes in the pattern of supply had already been taking place before the new projects were announced. Their decision to embark on new production capacity in the United Kingdom certainly implied that they had every confidence that production there would be fully economic, and it should also be remembered that the new capacity was only a small proportion of the total world capacity for producing primary aluminium.

The representative of Norway supported Canada and indicated his Government's view that the grants constitute a non-tariff barrier distorting international trade in a significant way.

Yugoslavia notified that in its view this direct subsidy to the establishment of domestic production capacity had import inhibiting effects.

#### GATT relevance

The representative of Canada, though not questioning the propriety of aid as such, felt that the scale of aid in this case suggested the need for the Committee to consider, at an appropriate stage, the adoption of a code of good conduct embodying the principle that area development programmes should concern themselves with location of industry within the area and not give assistance to shifts of industry from one country to another. The representatives of Israel and the United States also expressed interest in this general problem and felt that a study of the question of the rôle of Government in displacing imports and/or increasing exports would be useful and should not be confined to the aluminium case. The representative of Chile also expressed interest in this problem because of his country's interest that copper refining be located in areas with favourable natural conditions.

#### Statement by Canada

"As regards the notification in respect of investment grants, with particular reference to aluminium, since this matter had not previously been discussed in the GATT I would propose to go into rather more detail than on some of the others.

| <u>Notification<br/>No.</u> | <u>Country main-<br/>taining the<br/>measure</u> | <u>Nature of the<br/>non-tariff<br/>measure</u> | <u>Notifying<br/>countries</u>              |
|-----------------------------|--|---|---|
| 44                          | United Kingdom                                   | Investment grants<br>to aluminium               | Australia<br>Canada<br>Norway<br>Yugoslavia |

Traditionally the United Kingdom has been one of the world's largest importers of aluminium, with Canada as the largest supplier and Norway the second largest. Imports are duty free for primary aluminium ingot and are bound under the GATT. This situation reflected the fact that British industrial power costs were substantially higher - the estimates are some three to four times higher - than in some other countries such as Canada. The National Plan the British Government presented to Parliament in September 1965 stated, and I quote 'absence of cheap electric power on a large scale makes the future expansion of virgin aluminium production in the UK uneconomic'.

"Despite the earlier statement, in October 1967 the British Government announced a programme for the construction of aluminium smelters with Government assistance and indicated that the programme could be extended to other power-intensive industries. As finally adopted the programme called for three smelters with a total capacity of 260,000 tons by 1972 and 320,000 tons by 1974. By way of comparison, these figures relate to consumption of primary aluminium in the United Kingdom for 1967 of 361,000 tons. Of the three smelters, one is to be powered by coal under a special contract with the National Coal Board, the other two by nuclear-generated power under special contract with the Central Electrical Generating Board.

"The key element in the British programme is one of non-recoverable grants of up to 45 per cent of the cost of equipment used for production purposes, estimated to range from \$35 to \$45 million for a 120,000 ton smelter. The magnitude of this assistance is much greater than is usual for development grants in other countries. In addition, the British Government recently announced that it would loan two of the companies participating in the programme up to \$163 million to finance the capital cost of nuclear power generating capacity. These loans would be repaid over a period of approximately thirty to thirty-five years at an interest rate of 7 per cent. The British Government has indicated that the grants are part of its established area development programme and are available to any industry that meets the conditions of the programme. Although many industrial countries including Canada provide financial assistance to companies locating in development areas, and the principle of such assistance is not at issue, the United Kingdom assistance goes well beyond that provided by any other country. The effect of the grants is not merely to influence the location of smelters as between developed and development areas in the United Kingdom, but to shift the location of new production facilities as between countries and bring about large-scale import replacement. More generally, we are concerned that financial assistance of this magnitude could be an unfortunate precedent which, if applied in other fields and by other countries, could initiate a competitive race between national treasuries to subsidize industrial development without due regard to international trading interests."

| <u>Notification<br/>No.</u> | <u>Country main-<br/>taining the<br/>measure</u> | <u>Nature of the<br/>non-tariff<br/>measure</u> | <u>Notifying<br/>countries</u>              |
|-----------------------------|--|---|---|
| 44                          | United Kingdom                                   | Investment grants<br>to aluminium               | Australia<br>Canada<br>Norway<br>Yugoslavia |

Turning to specific effects on trade, the smelters under this programme would pre-empt all the growth in the United Kingdom market until the later 1970's and reduce imports below the 1967 level, even if consumption were to rise by 5 per cent a year, that is to say by double the average rate of the past ten years. In any event, the smelters operating at capacity would pre-empt as from 1972 260,000 tons of world demand for primary aluminium and necessitate compensating adjustments in sales and production by other countries. It is feared that over two thirds of Canadian aluminium exports to the United Kingdom, which in 1967 had a total value of \$74 million, will be lost as a result of this programme. I might mention here, Mr. Chairman, that in response to a parliamentary question in the House of Commons the President of the British Board of Trade indicated that he judged that by the early 1970's the savings on the United Kingdom balance of payments from the contribution of these three plants would be in the region of £30 million a year.

While I have spoken particularly of the implications of this programme as far as aluminium is concerned for the exports of my own country, it is clear that it could also have adverse consequences for developing countries that have the potential to produce aluminium or alumina on an economic basis. I might mention in passing in this connexion that one of the companies participating in the programme has decided to build an alumina plant with an annual capacity of 240,000 tons beside its planned smelter in Britain rather than locating it at the bauxite mine. It is estimated that this alumina plant would result in a net loss of export earnings, for some developing country with bauxite resources, of approximately \$12 million per year.

In these circumstances, Mr. Chairman, I would like to suggest that at an appropriate stage of the Committee's deliberations in this general area of industrial development incentives, consideration might be given to the possibility of a code of good conduct which perhaps might give effect to the principle that area development programmes should be limited to influencing the location of industry within a country and not shifting production from one country to another.

| <u>Notification</u><br><u>No.</u> | <u>Country main-</u><br><u>taining the</u><br><u>measure</u> | <u>Nature of the</u><br><u>non-tariff</u><br><u>measure</u> | <u>Notifying</u><br><u>countries</u>        |
|-----------------------------------|--|---|---|
| 44                                | United Kingdom   | Investment grants<br>to aluminium                           | Australia<br>Canada<br>Norway<br>Yugoslavia |

---

While I have the floor, I should also like to take the opportunity of expressing the appreciation of my country to the delegation of the United States in respect of the recent decision to substantially modify the provisions for tax-free industrial development bonds, that had applied until the end of last year in that country, so as to eliminate their adverse effects in international trade terms. These provisions had also affected us in relation to the siting of aluminium plants. I think that this is a highly welcome development and we should like to express our appreciation to our colleagues from the United States.

Note by United Kingdom

The investment grant system has been replaced by a system of tax allowances and reductions supplemented by regional grants in certain specified circumstances under the terms of the Industry Act 1972. The payment of investment grants in respect of expenditure after 26 October 1970 is prohibited unless the expenditure is in to contracts made before that date.



| <u>Notification<br/>No.</u> | <u>Country main-<br/>taining the<br/>measure</u> | <u>Nature of the<br/>non-tariff<br/>measure</u> | <u>Notifying<br/>countries</u>       |
|-----------------------------|--|---|--------------------------------------|
| 55                          | United States                                    | Countervailing<br>duties                        | Canada<br>EEC<br>Japan<br>Yugoslavia |

#### Method

Section 303 of the Tariff Act of 1930 is of mandatory character and requires the Treasury to impose an additional duty on any imported goods that benefit from a manufacturing, production or export subsidy. The additional duty is levied even though the imports cause no injury to United States industry.

The competent Yugoslav authorities and interested commercial circles consider that the application of countervailing measures not taking into account the factor of real damage constitutes an obstacle in international trade.

The representative of the United States said that normally a case would only be opened if a complaint had been received.

#### Effects

The United States representative pointed out that since 1897 there had only been seventy basic countervailing duty orders issued of which twelve were still in force.

It was said that the fact that a main trading country maintained a measure that was more protective than the GATT rules foresaw tended to encourage protectionism in other countries.

#### GATT relevance

Measure allowed under the Protocol of Provisional Application.

Note: The representative of the United States advised that there have been no amendments to Section 303 as printed in "Anti-dumping and Countervailing Duties" of July 1958. The text of the administrative procedures under Section 16:24 of the Customs Regulations has been transmitted to the secretariat (Spec(69)60/Add.3).

ANNEX IV

Extracts from the Report of Working Group 1 of the  
Committee on Trade in Industrial Products Relating  
to the Elaboration of a List of Prohibited Practices  
in the Field of Subsidies

The following is the list of prohibited practices as examined by Working Group 1 at its last meeting (Spec(73)44, paragraph 6), it being understood that this list did not commit any delegation and that the 1960 list of prohibited practices remained as it stood:

- (a) The provision by governments of direct subsidies to exporters.
- (b) Internal transport and freight subsidies on export shipments on terms more favourable than for domestic shipments.
- (c) The government bearing directly or indirectly all or part of the transport or freight charges incurred on export shipments beyond national frontiers.
- (d) The government bearing all or part of the costs incurred by exporters in obtaining transport and freight insurance cover.
- (e) The government bearing all or part of the costs incurred by exporters in obtaining credit for financing export shipments.
- (f) Government loans to exporters on concessional terms for working capital purposes, where such loans enable the exporter to offer concessional sales terms, including financing.
- (g) The grant by governments (or special institutions controlled by governments) of export credits at rates below those which they have to pay in order to obtain the funds so employed.
- (h) The provision by governments (or special institutions controlled by governments) of export credit insurance and guarantees, or insurance against increases in the costs of products at premium rates which are manifestly inadequate to cover the long-term operating costs and losses of the insurance institutions.

- (i) The accordance by governments of preferred treatment to certain exporters based on their export performance, such as the extension of time for the repayment of loans, easier access to credit, or more favourable terms in export insurance programmes.
- (j) Loans that minimize the risk involved in developing new markets abroad, (i.e. the obligation to repay the loan is forgiven if the firm is not successful in developing a substantial market abroad).
- (k) Currency retention schemes or any similar practices which involve a bonus on exports or re-exports.
- (l) Special government measures to offset, in whole or in part, the price disadvantages on exports that result from its own or other countries' exchange rate adjustments.<sup>1</sup>
- (m) The remission (including credit allowances) or deferral of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises when the criterion for remission or deferral is related to the export performance.
- (n) The exemption, in respect of exported goods, of charges or taxes, other than charges in connexion with importation or indirect taxes levied at one or several stages on the same goods if sold for internal consumption.
- (o) The allowance of special deductions related to exports, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged (e.g. accelerated depreciation allowances on capital goods used in the production of exports; deduction of special reserves set aside to cover risks connected with export sales).
- (p) Tax rebate allowed beyond that of actual costs incurred, in calculating income payable for expenses incurred in developing markets abroad.
- (q) Rebate of indirect taxes or charges on exports or components thereof, in excess of accrued indirect taxes or charges on the exported products.

---

<sup>1</sup>It was understood, as suggested by the representative of the IMF, that the "special government measures" were measures other than through the exchange rate system, since the latter could give rise to multiple currency practices, which fell under the competence of the Fund.

(r) Remission calculated in relation to exports of taxes not borne by the products (taxes occultes).<sup>1</sup>

(s) The reduction of the direct tax burden on producers and exporters of a product accompanied by an increase in the indirect taxes borne by the same product.

(t) In respect of deliveries by governments or governmental agencies of imported raw materials for export business on different terms than for domestic business, the charging of prices below world prices; and for such deliveries of raw materials of domestic origin, the charging of prices for such materials destined for processing for export sales, below those charged for materials destined for processing for domestic sales.

(u) Government payments to producers or exporters that vary with the value of domestic materials used in the manufacture of goods for export.

The following comments were made by various delegations on certain points in the above list:

- (i) On point (c), it was noted that "transport or freight charges" were not to be understood to include ship-building subsidies.
- (ii) On point (j), some delegations pointed out that a situation as described in this paragraph could not lead to trade damage in the sense of Article XVI:2.
- (iii) On point (l), some delegations were of the view that this point should not be included in a list of prohibited practices because "special government subsidies" were either outright subsidies and were therefore covered under other points, or they were measures

---

<sup>1</sup>The following examples were given of taxes not borne by like products:

- (i) Customs duties on plant and equipment (as opposed to customs duties on raw materials consumed in the manufacturing process)
- (ii) Stamp taxes for shipping and other documents
- (iii) Registration taxes on deeds and documents
- (iv) Mortgage taxes
- (v) Taxes on insurance
- (vi) Advertising and publicity taxes
- (vii) Taxes on government licences and permits
- (viii) Registration and other motor vehicles taxes.

taken for domestic reasons and as such did not constitute subsidies. A number of delegations thought that the measures in question should be considered in the light of their implications, and that the matter needed further reflection. One delegation specified that the provision should not include any temporary measures taken by governments in view of compensating exporters for losses incurred as the result of changes in the exchange rate (e.g. when an export contract is closed at one rate of exchange, but payment is later effected at a different rate).

- (iv) On point (r), some delegations recalled the findings of the Working Party on Border Tax Adjustments with regard to "taxes occultes". (BISD, 18th Supplement, page 101, paragraph 15)
- (v) On point (s), some delegations were of the view that this practice did not constitute an export subsidy. They recalled the extensive work undertaken on the subject in the Working Party on Border Tax Adjustments, and the view held by most members of that Working Party that the present rules served the purposes of trade neutrality of tax adjustment appropriately and that no motive could be found to change them. (L/3464, paragraph 9)
- (vi) With regard to point (t), one delegation drew attention to the fact that, whereas the 1960 list contained two criteria on this point, namely that of price differential for raw materials between export business and domestic business, and that of prices below world prices, in the present formulation of the second alternative only the former criterion had been retained.

ANNEX V

List of GATT Background Documentation  
and Reports on the Discussion  
on Subsidies and Countervailing Duties

A. Background notes

Export Subsidies: Background  
Note by the Secretariat

COM.IND/W/73

Countervailing Duties and Domestic  
Subsidies that Stimulate Exports:  
Background Note by the Secretariat

COM.IND/W/98

Subsidies and Countervailing Duties:  
Background Note by the Secretariat

MTN/3B/10

B. Reports on discussions

Reports on the discussion in  
Working Group 1 of the Committee  
on Trade in Industrial Products

L/3496  
Spec(72)33; Spec(72)61;  
Spec(72)129; Spec(73)18;  
Spec(73)44

Reports on discussion in Group 3(b)

MTN/3B/19  
MTN/3

C. Proposals made by delegations

Differential Treatment in the field  
of Subsidies and Countervailing  
Duties: Working Paper Presented  
by the Brazilian Delegation

MTN/W/5

Subsidies and Countervailing Duties:  
Working Paper Presented by the  
Brazilian Delegation on Differentiated  
Treatment in the field of Subsidies  
and Countervailing Duties

MTN/3B/W/3