

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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GROUP 3(b) - CONTINUATION OF THE WORK ON EXPORT SUBSIDIES (TASK 9)

Statement Made by the Delegate for Canada at the Meeting of
Group 3(b) on 29 May 1974

I welcome the proposal of the representative of the United States that we should contemplate a new start, because his proposal gives me an opportunity to express some of my concerns and reservations about the evolution of international discussion on the range of subjects on our agenda, and to indicate the very limited area which, in our view, is open to possible negotiation and to the resolution of problems. I start from the same position as the European Communities - that is, that we start with the General Agreement, and we do not contemplate reducing the rights of contracting parties under the General Agreement.

I am probably more inclined than many of my colleagues in this room to believe that the drafters of the General Agreement knew what they were doing and that they carried the task of setting out a complex of rights and obligations in these areas just about as far as they could be taken. The problem of the Agreement is not that it is unclear or unsatisfactory, but that, frequently, countries are unwilling to abide by it in a meaningful sense. So I would say, that the way we would approach this complex of issues on our agenda, is that we are not disposed to contemplate having our rights on the General Agreement reduced, we do not ask for other people's rights being reduced and I would say parenthetically that I do not consider that the Protocol of Provisional Application is one of the "rights" under the General Agreement.

Secondly, I do not think we should be going at this work in such a way that the end result is to sanction new barriers to trade. We should not give a new right to trading countries to impose barriers to trade that they do not now have.

Thirdly, we should be prepared to contemplate adding obligations to the Agreement, but that is a process which should be done cautiously, carefully, with all the care that the Agreement was originally drafted and in a context in which the negotiating countries have a mandate to exchange concessions, not in technical exercises. The kind of material which the secretariat has collected together, very usefully, does indicate the dangers of proceeding at a technical level without governments having the authority to negotiate.

I would like to go on to comment that there is a certain balance in the General Agreement. The trend of the discussions hitherto, as reflected in MTN/3B/10, indicates a failure to recognize that that balance can be seriously disturbed. My approach to this is to always keep in mind that if one adds to the obligations of some countries - and thereby adds to the rights of others, given that the countries differ in economic size and they differ in the ratio of trade to GNP, you may well get the existing balance of the Agreement seriously disturbed. That does not mean that you cannot add some small provisions, but that we should examine any such provision from the point of view of whether or not it affects the balance of the Agreement. I would suggest that an extensive list of prohibited export subsidies, with an accompanying set of proposals for sanctions, would seriously undermine the balance of the Agreement, and for that reason alone, it would probably not provide a basis for the negotiation.

If I could go on from having outlined our basic proposals to start from the Agreement and the acceptance of the GATT as the framework, let me talk about your agenda. I do not want to alter the agenda, but I want to indicate its ramifications. We can talk about export subsidies, we can talk about subsidies to domestic production which have an impact on exports, we should talk about import replacement subsidies, and then we might usefully talk about the corrective actions that should be taken in relation to any alleged breach of obligations in respect to any of those three. Finally, and not as a matter of priority, we might talk about one particular sanction that has relevance to certain of those subsidies in certain circumstances - that is, countervailing duties. I think that we have possibly mislead ourselves by having an agenda which appears to focus on the whole range of subsidies, but on only one particular corrective action. I think the notion of the corrective actions is subsumed in the heading of subsidies. I do not think that the agenda has to be altered, but I would like to proceed on that basis. I would like to interject parenthetically, that I cannot really accept the view of the representative of the Communities that we should deal with countervail as a matter of priority, because it threatens to be a barrier to trade. In my view it does not threaten to be a barrier to trade, as applied by one major trading country outside the terms of Article VI; it clearly is a barrier to trade. But there are other barriers to trade which should be dealt with with equal priority; those are the import-replacement subsidies which are barriers to trade and which quantitatively may be as important as the application of countervailing duties by one contracting party. For those subsidies it is not clear that there is an adequate remedy or recourse in the General Agreement.

Let me go on, then, to the more specific and narrow heading of export subsidies. My delegation is prepared to accept ad referendum and subject to a great deal of detailed discussion in a negotiating context the concept of a list of prohibited export subsidies. That list, if it were finally to be accepted by the Canadian Government, would not include (in my view) any of the items that are ascribed to one delegation in paragraph 13 of MTN/3B/10. It might contain a number that appear in the other list, but not all of them. Could I say, that I really do not understand the basis in which work has been done on the subject before. I do not understand what is the utility of the list that contains proposed prohibitions which everybody in the room must know cannot be accepted by certain major trading countries, and which therefore could not possibly form the basis of a useful negotiation. In my view, every item on the list of proposed prohibitions, whether or not we might feel as a delegation is already prohibited by the terms of Article XVI, or whether it is not, should be the subject of detailed discussion in this group so that we, like other delegations, can make a report to our government and recommend whether or not that proposed prohibition can be accepted in the negotiation. This will be an important spelling-out of our obligations, if not new obligations, and as already indicated, that should be done cautiously and carefully. When we accept a new obligation we do it, like other contracting parties, on the assumption that we are going to adhere to that obligation.

Let me go on, having talked about export subsidies, to talk about corrective action. Everywhere in the Agreement where there are obligations, there was some attempt by the founding fathers to say what sort of corrective action could be taken. There are some general provisions in Article XXIII there is consultation provision, I am afraid an inadequate one, in paragraph 1 of Article XVI, and so forth. Now, it seems to me that the principle of the General Agreement is that if one country feels that another country is in breach of its obligations, its recourse is to bring the matter before the Contracting Parties, to seek an examination of whether it is in breach of that obligation, to seek a decision or a view from the international community. If the international community, through the GATT, decides that that country has, possibly through a misunderstanding inadvertently breached its obligations, then it considers what corrective action should be taken. But nowhere in the General Agreement, have I been able to find a notion that the legal experts of one country may take it upon themselves to decide another country is in breach of its obligations, and to proceed to unilaterally apply a sanction. Now to make myself a little clearer - it seems to me that the notion of an automatic countervail, without the test of injury, against the prohibited list of export subsidies, is contrary to the whole concept of the General Agreement. I do not see there is any basis on which the negotiations could proceed on that basis. That proposal has nothing to recommend it except formal symmetry, which is not a matter to which we attach any importance. We would be quite prepared to examine an elaboration, possibly as an interpretative note

to paragraph 1 of Article XVI, of consultation procedures under which one could envisage that if one was thought to be in breach of the obligation not to pay a particular kind of subsidy, that the matter could be brought before the Contracting Parties - some sort of ad hoc panel, complaint panel or specially constituted surveillance body could examine it, and recommend what corrective action should be taken. It might be that the country concerned might agree to progressively reduce the export subvention and to report back to the Contracting Parties. It might decide to seek a waiver, with the usual reporting procedures. But in no case, it seems to me, should the decision that a sanction to be applied, or any corrective action taken, be taken alone by the legal authorities of another country, acting in isolation. That is a decision for the international community as a whole, for the Contracting Parties. Now in that sort of approach to the negotiation, we would come then to a negotiation about countervail, which I agree is a matter of priority but not the matter of priority.

If I might briefly indicate at this point, I do think that it was perhaps unfortunate that in the drafting of the General Agreement, the two provisions - anti-dumping and countervail - were put in the same Article. These are rather different provisions, and I suggest that our job, when we address ourselves to countervail, is to carry forward the work of the founding body, not backward, which one delegation has proposed.

Those are the comments on the Canadian delegation as to how we might make a new start. I suppose it is implied that we might make haste a little more slowly than some delegations have been prepared to do.