

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/26/Add.2

10 November 1975

Special Distribution

Multilateral Trade Negotiations

Original: English

Group "Non-Tariff Measures"

Sub-Group "Subsidies and Countervailing Duties"

SUBSIDIES AND COUNTERVAILING DUTIES

Addendum

1. At its meeting in June 1975, the Sub-Group "Subsidies and Countervailing Duties" agreed "that participants should submit in writing by a target date of 15 October 1975 to the secretariat, for distribution to members of the Sub-Group, their comments on problems encountered in the areas of subsidies and countervailing duties as well as any specific proposal for appropriate solutions to these problems including, where feasible, draft texts or suggestions". (MTN/NTM/5, paragraph 4 and GATT/AIR/1184.)
2. The following communication has been received from Japan.
3. Delegations which have not yet submitted their comments or proposals are invited to do so without delay.

JAPAN

1. Basic objective of the negotiations

It is the view of the Japanese Government that the negotiation in this field should be conducted on the basis of the present GATT provisions and that it should aim at placing the relevant laws and regulations of the participating countries as well as their administration in conformity with the relevant provisions of the General Agreement.

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

2. Countervailing duties

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

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

3. Export subsidies to be prohibited

(1) To ensure implementation of Article XVI:4 of the General Agreement, drawing up a list of export subsidies to be prohibited would be an appropriate as well as realistic means and Japan would be prepared to participate in drawing up such a list. In our view, the 8 item list of 1960 should be the basis for this negotiation and we should examine how it could further be improved upon where appropriate and within reasonable bounds. In such an examination, with a view to building upon the past works by the GATT, the list of twenty-one prohibited practices drawn up by Working Group 1 could also serve as reference material.

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

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

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

4. Other subsidies

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

(2) GATT provisions, which should be the basis of the negotiation in this field, do not provide for abolition of subsidies other than those mentioned in 3 above. At the same time, there is under the GATT possibility of imposition of countervailing duties in cases of "material injury" to domestic industry caused by subsidization in another country, as well as of the use, where appropriate, of the consultation and representation procedures under Articles XXII and XXIII of the General Agreement. In light of the above, it is realistic to seek solution of the problems caused by the other subsidies through the review where necessary, of the notification and discussion mechanism of Article XVI:1 of the General Agreement.

5. Classification of subsidies in relation to countervailing duties

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

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

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