

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Special Distribution

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## Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Subsidies and Countervailing Duties"

### CHECKLIST OF POSITIONS ON THE VARIOUS ISSUES IN THE AREA OF SUBSIDIES AND COUNTERVAILING DUTIES

Note by the Secretariat

#### Revision

1. At its July 1976 meeting the Sub-Group "Subsidies and Countervailing Duties" agreed that the secretariat prepare, on its own responsibility but in consultations with delegations, a revised, concise checklist of positions on the various issues in the area of subsidies and countervailing duties. The Sub-Group also agreed that this document would constitute a basis for the discussion at the next meeting of the Sub-Group (MTN/NTM/19 paragraph 4).
2. According to the Sub-Group's instructions, the present note has been prepared by the secretariat in consultation with delegations and is based on comments reproduced in MTN/NTM/W/52 including additional comments submitted in writing by delegations to the secretariat.
3. The note has been prepared on the secretariat's responsibility and neither its content nor the way in which the issues have been presented commit any delegation.

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I. GENERAL OBSERVATIONS

1. Several delegations expressed the opinion that the aim of negotiations should be a new instrument:

- containing independent (of GATT) and compulsory rules for everyone;

MEXICO (MTN/NTM/W/43/Add.3)

- an international code that clearly delineates rules and limitations on the use of subsidies and sets out the rights and obligations of countries in the use of offsetting measures in response to failures to abide by those rules and limitations;

UNITED STATES (MTN/NTM/W/26)

- governing application of subsidies and countervailing duties at a multilateral level, for example an international code of conduct;

VENEZUELA (MTN/NTM/W/43/Add.1)

2. One delegation stated that "the negotiations in the field of subsidies and countervailing duties should be conducted on the basis of the present GATT provisions and 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. 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".

JAPAN (MTN/NTM/W/26/Add.2)

3. The following considerations to be taken into account in the negotiations have been suggested:

- any examination should start with the General Agreement proper, that is the existing rights of contracting parties should not be reduced and those rights and obligations which are not being respected should be;
- any rules should avoid sanctioning new barriers to trade, i.e. contracting parties should not acquire rights to impose barriers to trade that they do not now have under the GATT;

- any new instruments should seek to maintain the balance of rights and obligations in the GATT. Given that countries differ in economic size and in their dependence on foreign trade, any addition to the rights of contracting parties will be, as a practical matter, an addition to the rights of only some contracting parties;
- any system of obligations, and sanctions for any breach of such obligations, which would allow one contracting party to determine unilaterally that its rights or the obligations of another contracting party have been breached and then to apply a sanction unilaterally, would be entirely contrary to the GATT and would not be acceptable;
- the relationship between subsidies and countervailing duties cannot be symmetrical. Countervailing duties by definition cannot be used to offset the impact of subsidies to production that simply replaces imports.

CANADA (MTN/NTM/W/26/Add.1)

- the discussions of the problems of subsidies can only be undertaken and pursued if it is accompanied by strictly parallel progresses in the application of the GATT rules on countervailing duties.

EEC (MTN/NTM/W/43/Add.51)

- solution to the problems of subsidies must not be sought in relation to countervailing duties.

JAPAN (MTN/NTM/W/26/Add.2)

MEXICO (MTN/NTM/W/43/Add.3)

- interests of developing countries should receive appropriate consideration and should be safeguarded through the application of differential and more favourable treatment.

VENEZUELA (MTN/NTM/W/43/Add.1)

## II. GENERAL COMMENTS ON SPECIAL TREATMENT OF DEVELOPING COUNTRIES

4. There is a widespread recognition in the Sub-Group that subsidies and countervailing duties is an area where special and differentiated treatment for developing countries is both feasible and appropriate:

- differential measures are possible: the adoption of criteria relating to the impact of countervailing measures in the export markets, the industry and the economy of developing countries; commitments not to countervail against a developing country before all bilateral and multilateral procedures have been exhausted; commitments to avoid, if not in general, at least in relation to developing countries, any form of unilateral action; possibly, and this could only be seen at a later stage of negotiations, certain additional criteria.

### BRAZIL (MTN/NTM/W/52)

- full account must be taken of the special interest of developing countries. The final determination of what differential measures might be appropriate should take place in the light of general solutions evolved in these negotiations.

### CANADA (MTN/NTM/W/26/Add.1)

- the developed countries should show greatest flexibility in the application of countervailing duties to imports from developing countries.

### EEC (MTN/NTM/W/26/Add.1)

- differentiated and more favourable treatment for the developing countries must be borne in mind while continuing the work in this field.

### NORDIC COUNTRIES (MTN/NTM/W/43/Add.2)

- new rules are needed and it will not be sufficient - and in any case not automatic - for our interests to be taken into account through an adequate definition of "material injury" and a system of international surveillance. We are not opposed to special rules in favour of developing countries being formulated in the light of the general rules.

### MEXICO (MTN/NTM/W/43/Add.3)

- it will prove feasible and appropriate to negotiate provisions for differentiated treatment under prescribed conditions for developing countries in certain areas of subsidies and countervailing duty rules. Such treatment should be geared to the particular situations of developing countries and to periods linked to achieving particular development objectives;

UNITED STATES (MTN/NTM/W/26)

- recognition should be given, by means of concrete resolutions to be adopted, to the right of the developing countries to use subsidies as a means of promoting the expansion and diversification of their exports ... provisions should be established to exempt imports originating in developing countries from the application of countervailing duties by importing countries ...

VENEZUELA (MTN/NTM/W/43/Add.1)

5. It was also pointed out that the General Agreement was negotiated in the post-war era when the problems of the developing countries had not received the attention of the international community. The basic elements of the GATT are based on the principles of equality, reciprocity and mutuality of benefit. Some recognition to the problems of developing countries was given when Part IV of GATT was negotiated in the early sixties, though this did not take into account all the problem areas in relation to GATT and did not go far enough. One such area which needs to be given urgent attention is that of promotional measures which the developing countries have to take to expand their exports including incentive and subsidies which they have to grant to selected sectors.

INDIA (MTN/NTM/W/26/Add.3)

### III. COUNTERVAILING DUTIES

#### A. Objective of the negotiations on countervailing duties

6. Some delegations proposed a code of conduct or an interpretative note to Article VI:

- the negotiations on countervailing duties should aim at the elaboration of an appropriate instrument, e.g. a code or an interpretative note to Article VI. The main purpose of such an instrument should be to ensure that all contracting parties are bound to the same obligations in their respective system of levying countervailing duties ...

AUSTRIA (MTN/NTM/W/26)

- existing GATT rules should be revised in a direction that would meet the interests of both developed and developing countries. Once the procedures are negotiated for consolidating differentiated and more favourable treatment to developing countries they could be given reality through interpretative notes and/or supplementary provisions to Articles VI and XVI, or through the negotiation of a binding code of conduct ...

BRAZIL (MTN/NTM/W/26)

- development of a code governing the application of countervailing duties or preparation of a Declaration or Interpretative Note expanding on particular provisions of Article VI as they apply to countervailing duties;

CANADA (MTN/3B/W/6)

- a code for the application of the provisions of Article VI, containing, inter alia:
  - (a) definitions of certain essential ideas, appropriate criteria and procedures,
  - (b) agreed rules of general nature, binding all Signatory Parties and applied in their entirety without exceptions or reserve,

- (c) rules, based on Article VI, concerning three principal subjects; care being taken to maintain a balance between their inter-relationships and inter-actions
  - (i) the notion of subsidy
  - (ii) the notion of material injury
  - (iii) appropriate procedures.

EEC (MTN/NTM/W/26/Add.1)

- a code independent of the General Agreement, reflecting the spirit and the letter of Article VI amended in line with the provisions of Article XXXVII:3(c) so as to stipulate differentiated treatment in favour of developing countries.

MEXICO (MTN/NTM/W/43/Add.3)

7. The delegation of Australia expressed some reservations about the proposal to elaborate a new code.

- Article VI has proven an inadequate deterrent to the use of subsidies. It does not take sufficient account of the fact that, at least in agricultural trade, subsidized competition usually occurs in third markets, where the importing country has no real interest in taking countervailing action. Moreover, subsidies are often not clearly identifiable and, even if they are, are hard to quantify.
- Australia accepts that countries may have a legitimate grievance about countervailing duties which are not applied, for whatever reason, in accordance with existing GATT provisions. In Australia's view the appropriate course for countries with such a grievance would be to seek to induce those countries to apply the present injury criteria included in the relevant GATT provisions. It seems that it would be quite incommensurate with the problem to elaborate a whole new code for the application of the GATT provisions relating to countervailing duties. Such a course of action would only be justified if, for example, it could be shown, as it was in the case of the Anti-Dumping Code, that countries were exploiting the indefiniteness of the GATT wording to apply an additional layer of protection to domestic industry. So far as Australia is aware there is no evidence that this is the case.
- the code envisaged by the EEC may therefore be legislating for a problem that has not been demonstrated to exist. On the other hand, as regards a problem in this area that is well known to exist - the fact that in third country markets, where difficulties arise as a result of subsidized exports, governments are rarely willing to take countervailing action - it appears the EEC would not envisage improving on the present provisions in the GATT relating to third country subsidization. Indeed to the extent that the code would apply to such cases, a code of the kind proposed by the Community would actually make it harder for countervailing action to be taken because the injury criteria envisaged are stricter.

- if, however, a code were drawn up it should address itself to the particular problems in this area resulting from the use of variable levies. These problems arise because variable levies are usually calculated as the difference between a fixed price below which imports may not enter and a representative price on the world market (i.e. not the actual price of particular shipments). If, as is frequently the case in commodity trade, the representative price has been artificially reduced by a subsidy the corresponding levy will include an automatic countervailing element.<sup>1</sup>

This could mean that:

- non-subsidizing exporting countries would be countervailed,
- in the case of countries which were subsidizing, there is no guarantee that the countervailing element would not exceed the level of subsidy in some cases,
- even where the countervailing duty was the same or less than the level of subsidy, the fact that it is automatically an element in the variable levy means that it is most unlikely that countries applying levies have properly established that material injury has been caused to domestic industries before imposing it.

New rules, in the form of a code or interpretative note to Article VI, ought to be worked out to meet those problems, particularly the fact that under levy systems, countervailing duties are automatically applied.

8. Several delegations (including some of the delegations mentioned above, as an alternative solution) expressed the opinion that any solution while based on existing GATT rules should aim at elaboration of new provisions:

- it would be useful to examine the connexion between proof of injury and imposition of countervailing duties, both from the point of view of existing GATT provisions and proposals for new ones.

AUSTRALIA (MTN/NTM/W/52)

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<sup>1</sup>In this context the European Community recalls its view that all matters arising from the application of variable levies should be discussed in the agriculture group. It does not consider the above comments are relevant to a possible negotiation on countervailing duties. A variable levy, which is not bound in GATT, is applied to all imports in relation to the price at which imports are offered. Since no account is taken of whether imports are subsidized, it is clear that the element of countervailing is entirely absent.

- re-drafting of the existing GATT rules so as to clearly define the concept of "material injury" in Article VI. The text of Article VI should make provision for separation of the two types of measures at present covered (anti-dumping and countervailing duties);

COLOMBIA (MTN/NTM/W/52)

- the objective of the negotiations should be put to domestic laws and regulations concerning countervailing duties and their administration in participating countries in conformity with Article VI. 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;

JAPAN (MTN/NTM/W/26/Add.2)

- solutions in the area of countervailing duties should be based on the present provisions of the General Agreement.

NORDIC COUNTRIES (MTN/NTM/W/43/Add.2)

B. Conditions for levying a countervailing duty

(a) Material injury

9. Several delegations stated that the proof of material injury or threat thereof should be the main condition for levying a countervailing duty:

- levying of countervailing duties could only be taken into consideration if injury to domestic industries has in fact been established;

AUSTRIA (MTN/NTM/W/26)

- countervailing actions against exports of developing countries which benefit from incentives not included in the positive list (of incentives authorized for developing countries) could be taken only in exceptional circumstances, as a last resort, in accordance with Article VI and its basic criterion of serious injury;

BRAZIL (MTN/NTM/W/26)

- the provisions of Article VI should be examined in order to ensure that the concept "injury" is clearly defined, that the concept "material" is so defined as to ensure that material injury is not determined to exist unless it is clear that the degree of injury is substantially and significantly more than de minimis and there is a meaningful examination or test of whether or not material injury (or threat thereof) has in fact occurred. There is no reason why any contracting party should not subscribe to such provisions regarding material injury;

Associated with the general definition of injury are questions concerning what effectively constitutes an "industry" and a "regional market". Both are important in assessing whether or not imports are injurious in a given instance. There is clearly room for improvements with respect to the application of these terms.

CANADA (MTN/NTM/W/26/Add.1 and  
MTN/3B/W/6)

- non-application of countervailing duties until such time as material injury is shown to exist, consistently with previously established criteria in which case before such a measure is taken, procedures would be established for consultations.

COLOMBIA (MTN/NTM/W/52)

- particular attention must be given to the idea of material injury which brings to bear on the entire system organized by Article VI a factor of moderation and of flexibility. It is in the interests of the Contracting Parties to establish uniform criteria for a determination of injury:

(a) First phase: Objective criteria; Market penetration:

1. Substantial increase in imports, either in absolute value or in relative value by comparison with the production of the importing country.
2. Substantial price undercutting by the subsidized product as compared with the price of like products made in the importing country.
3. A rapid increase in the market share held by the subsidized product.

Whatever the exact content of the criteria which are finally adopted it would be advisable to give them more weight by providing that they should apply cumulatively, in such a way that the absence of any one of the criteria would lead to a negative determination.

The result of the first stage being a condition for passing into the second stage without, however, prejudging it any way.

(b) Second phase: situation of the affected industry

(Article 3(b) and (c) of the Anti-Dumping Code)  
(Annex A of the MFA)

1. The development of turnover, profits and internal prices, employment etc.
2. Other factors not connected to the effects of the subsidy, such as the intensity of competition between the producers in the importing country, contraction of demand, substitution of other products, etc.

The evaluation must refer to the production of strictly similar products.  
(Article 3 of the Anti-Dumping Code.)

Minimum definition

- the objective criteria (market penetration) must be met
- the threat of injury would only concern the situation of the affected industry

that is: market penetration whose existence has been established, threatens injury to the industry concerned.

Causality: The subsidy must be the principal cause of material injury, that is, a cause more important than all other causes together.

EEC (MTN/NTM/W/26/Add.1)

- the developed countries should contemplate countervailing action against a developing country only if there is material injury, directly, as a result of subsidy.

The injury should be to the industry as a whole and not to certain units ...

INDIA (MTN/NTM/W/26/Add.3)

- the presence of material injury should be the necessary precondition for imposition of countervailing duties.

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.

JAPAN (MTN/NTM/W/26/Add.2)

- no procedure for the application of countervailing duties may be initiated against a developing country by reason of a mere presumption of "threat of injury", material injury must be shown to exist. by means of an appropriate strict examination, in an entire representative industrial sector not merely in one undertaking or groups of undertakings.

MEXICO (MTN/NTM/W/43/Add.3)

- material injury or threat of material injury is one of the basic concepts contained in Article VI and it is important that all contracting parties accept the injury criterion as a condition for countervailing action. Only when a meaningful examination has proved that the subsidy has caused material injury or threat thereof to a certain industry, the relying on countervailing action should be allowed.

NORDIC COUNTRIES (MTN/NTM/W/43/Add.2)

- in the case of countervailing action by developing countries more flexible criteria should be adopted, for example, not only the criterion of proved material injury but also that of threatened injury.

VENEZUELA (MTN/NTM/W/43/Add.1)

10. One delegation stated that under the new rules if one country adopts a prohibited subsidy, any other country should be allowed to neutralize that subsidy through the use of countervailing duties, thereby restoring the market place to the condition that would have prevailed in the absence of the subsidy. Prohibited subsidies should, therefore, be susceptible to counter-measures, in an amount not to exceed the amount of the subsidy, without regard to the question of injury. In third country market situations, any affected supplying country should be allowed to take appropriate counter-measures against the subsidizing country.

Other subsidies that distort international trade should be subject to off-setting measures only under certain conditions, such as an injury test. Other subsidies that have little or no impact on international trade should not be subject to off-setting measures.

UNITED STATES (MTN/NTM/W/43/Add.6)

11. Another delegation suggested that the present Article VI:6(b) could be changed so that:

- (a) redress would be available not by virtue of material injury having been caused to the injured exporting country's counterpart industry, but rather because of the injury caused to its market position in any specific third country; and

- (b) instead of making imposition of countervailing duties a matter of waiver granted by the CONTRACTING PARTIES (as present Article VI:6(b) does), individual GATT members could be specifically given the right to seek adjudication from the contracting parties which could issue a recommendation to the importing (third) country to impose countervailing duties.

If new provisions were to be agreed outlawing certain specific kinds of subsidy practice, it may be argued that retaliation against prescribed subsidies should be available via imposition of countervailing duties without proof of injury. The proposal would thus significantly extend the scope for retaliatory action allowed by the GATT at present.

AUSTRALIA (MTN/NTM/W/52)

12. It was pointed out that the term "industry" related to the concept of material injury should be also defined:

The expression "domestic injury" means the domestic producers as a whole of like products or those of them whose collective production constitutes a major proportion of the total domestic production of these products.

EEC (MTN/NTM/W/26/Add.1)

- (b) Internal investigations procedures

13. The following procedure has been proposed by the European Communities:

- (a) Opening of the procedure

The procedure should only be opened as a result of a formal complaint by the industry affected and the complaint should be supported by sufficient evidence regarding both the existence of a subsidy and of material injury.

- (b) Simultaneity

Strictly simultaneous examination of "subsidy" and "material injury" at all stages of the procedure. Consequently, a complaint should be immediately rejected and the enquiry closed as soon as the absence or the negligible impact of a subsidy or of injury resulting therefrom, are established.

(c) Normal customs clearance

No obstacles should be placed in the way of normal customs clearance. Up to the time of imposition of a possible countervailing duty no change should take place in customs clearance procedures.

EEC (MTN/NTM/W/26/Add.1)

14. In contrast to rules about dumping, which involves the pricing policies of private enterprises, rules about subsidies and about sanctions designed to off-set the trade distorting effects of subsidies are rules about the actions of contracting parties and about the off-setting actions that other contracting parties may take. Procedural rules must give due weight to this.

CANADA (MTN/NTM/W/26/Add.1)

C. International notifications, consultations and surveillance

15. Several delegations were of the opinion that special international procedures should be established in relation to any countervailing action:

- in the case of measures not included in the positive list for developing countries prior consultations between the developed importing country and the developing exporter country at the request of the former. Procedures for such consultations should be the same as those normally adopted under Article XXII of the General Agreement; should these fail to be an agreement in the consultations the developing country would be free to take the question to the contracting parties or to any other body to be created to administer a Code or an Agreement in this area. The multilateral examination of this question should obey the criteria described in MTN/NTM/W/26/pages 4-6.

BRAZIL (MTN/NTM/W/26)

- export subsidies, (and the use of countervailing duties) domestic subsidies, subsidies that replace imports and all proposed sanctions should be subject to effective international discipline. Contracting parties should not be allowed to decide unilaterally whether their rights or the obligations of another contracting party have been breached, and unilaterally to apply a sanction. There should be provisions for reporting and notification procedures, for bilateral consultations, for multilateral surveillance and for dispute settlement.

CANADA (MTN/NTM/W/26/Add.1)

- a system must be established to ensure consultation before any corrective measure is applied against a subsidized product coming from a developing country.

COLOMBIA (MTN/NTM/W/52)

- consultations would have to take place before the institution of any defensive measures by the importing country. All requests for consultation should be supported by a detailed factual justification regarding both the subsidy and material injury.

In the course of this consultation, the countries involved should give their mutual collaboration.

In the case of failure of bilateral consultations, the question would be brought before the Signatory Parties or before a more restricted body whose powers, composition and rules would require to be defined.

EEC (MTN/NTM/W/26/Add.1)

- the fact of injury having been raised should be subject to multilateral surveillance.

In taking action it should be examined if the advantage lies in favour of a developing country (labour intensiveness local raw materials low technologies). Such areas should be vacated by developed countries and adjustment assistance granted to their industry instead of taking protective measures.

The impact of measures taken on the economy of the developing exporting country should also be considered.

It should be examined whether subsidies have any element of discrimination.

INDIA (MTN/NTM/W/26/Add.3)

- in the context of special procedures in favour of developing countries:
  - (a) Consultation must be held among interested countries at the time when the existence of injury is examined;
  - (b) If no agreement is reached under sub-paragraph (b) above, the matter may be brought before the multilateral surveillance body.

- (c) Where injury has been found to exist a reasonable period of time must be allowed so that the developing country that could be affected by the countervailing duty can take appropriate action to avoid application of the duty.

MEXICO (MTN/NTM/W/43/Add.3)

- bilateral consultations should precede every countervailing action.

NORDIC COUNTRIES (MTN/NTM/W/43/Add.2)

D. Modalities of levying countervailing duties

16. The following procedures have been proposed by the European Communities:

- (a) The imposition of countervailing duties could only take place sixty days after the request for bilateral consultations and thirty days after the international authority had been seized of the matter.
- (b) The decision to impose the countervailing duty should be optional in all the signatory countries.
- (c) The amount of the duty should not exceed the amount of the subsidy granted by the exporting country and could be less if a lesser duty would suffice to remove the injury.
- (d) A countervailing duty should only be levied to products entered for consumption after the date of the institution of the duty. It should only remain in force as long as is necessary to neutralize the subsidy or eliminate the injury. If maintenance, in effect should be reconsidered periodically and at the request of the exporting country.

EEC (MTN/NTM/W/26/Add.1)

E. Domestic implementation of international rules

17. The European Communities expressed the view that every one of the parties to the Code should ensure that its laws, regulations and procedures conform to the Code. The benefit of the discipline imposed by the Code should be reserved to signatory countries only.

EEC (MTN/NTM/W/26/Add.1)

F. Standstill agreement

18. Some delegations pointed out that the negotiations should presuppose a "standstill" agreement or understanding, so as to prevent indiscriminate recourse to countervailing action against developing countries pending the final agreement on special procedures on the matter:

- as a result of this standstill agreement, and until new rules or interpretative notes to the present GATT rules are worked out, the developed countries should refrain from compensatory measures and should commit themselves to adopting them only after having exhausted all possibilities of agreement in previous consultations.

BRAZIL (MTN/NTM/W/26)

- the standstill must be absolute so long as no new rules are adopted, and we could not accept any exceptions in the undertakings entered into by the developed countries.

MEXICO (MTN/NTM/W/43/Add.3)

IV. SUBSIDIES

G. General comments on possible approaches

19. The United States delegation has expressed the view that there is a need for effective international discipline on the use of subsidies that distort international trade. For this purpose, new rules reflecting the differences in subsidy practices as they relate to international trade are essential. These rules should apply equally to all products. They could take a form of a code of rules governing subsidy practices and responses to them.

UNITED STATES (MTN/NTM/W/43/Add.6)

20. Several delegations expressed the view that in the field of subsidies solutions should be sought in the context of the existing GATT provisions:

- the approach proposed by the Community could be as follows:

- (i) respect for the rules of the GATT, in particular Articles XVI and VI, the pragmatic basic concept of which rests on the idea of injury, should be reaffirmed;
- (ii) establishment of improved discipline by means of the institution of new international procedures.

The Community is of the opinion that the basic concept of Article XVI should be reaffirmed, particularly because of the stress it lays on the central concept of serious injury and this notion gives their sense both to the provisions on subsidies in general (Article XVI:A) and to those on export subsidies.

With regard to Article XVI:B, the Community confirms that it adheres to the present distinction between export subsidies for primary products and exports subsidies for other products. With regard to the latter, the Community's view is that the provisions of Article XVI:4 remain applicable.

EEC (MTN/NTM/W/43/Add.5)

- it is the view of the Japanese Government that the negotiations in the field of subsidies should be conducted on the basis of the present GATT provisions, and that the solution to the problems of subsidies should not be sought in relation to countervailing duties.

JAPAN (MTN/NTM/W/26/Add.2)

- in the field of subsidies solutions to be sought in the MTN should be based on the present provisions of the GATT, which can be supplemented by appropriate interpretative complementary notes or by a new code if this would prove to be useful.

The present distinction between the treatment of primary and non-primary products should be maintained.

NORDIC COUNTRIES (MTN/NTM/43/Add.2)

21. There must be an effective framework of rights and obligations regarding impact on the exporting industries of a contracting party of subsidy that replaces imports in its export market. This framework of rights and obligations should be as effective as any such framework regarding export subsidies.

CANADA (MTN/NTM/W/26/Add.1)

22. Several delegations from developing countries expressed the view that the existing GATT rules (such as Articles XXXVI:2 and XXXVII:3(c) albeit imperfect, together with the fact that developing countries did not subscribe to the 1960 Declaration on the implementation of Article XVI:4 ensures these countries a differentiated and more favourable treatment in relation to the application of incentives to their exports, in particular they are not obliged to abstain from subsidizing their exports.

BRAZIL (MTN/NTM/W/26)  
COLOMBIA (MTN/NTM/W/52)  
INDIA (MTN/NTM/W/43/Add.4)  
MEXICO (MTN/NTM/W/43/Add.3)

In this context the delegation of the United States pointed out that although those developing countries that did not sign the declaration giving effect to Article XVI:4 have no obligation with respect to it, however, all contracting parties have obligations under Article XVI.

UNITED STATES (MTN/NTM/W/43/Add.6)

23. Some delegations from developing countries pointed out that in the present negotiations:

- there should be recognition of the need of developing countries to grant subsidies in order to promote their trade development. Irrespective to the procedures to be adopted in the negotiations on subsidies such as for example: new general rules, a code or further refining of the existing GATT rules the basic principle of differentiated and more favourable treatment to developing countries should apply.

BRAZIL (MTN/W/5)  
COLOMBIA (MTN/NTM/W/52)  
INDIA (MTN/NTM/W/43/Add.4)  
MEXICO (MTN/NTM/W/43/Add.3)  
VENEZUELA (MTN/NTM/W/43/Add.11)

- the right of developing countries to grant subsidies taking into account the interests of other exporting developing countries should be recognized and built into the provisions of GATT.

INDIA (MTN/NTM/W/26/Add.3)

24. The view was also expressed that the International Community has accepted the principle of discriminatory treatment in favour of the developing countries through the acceptance and implementation of the GSP. The granting of export subsidies on manufactured items by the developing countries is merely the other side of the coin and could be construed as supplementing the efforts under GSP. Similarly, the grant of subsidies for commodities is not altogether prohibited. The principle needs to be extended to manufactures of developing countries also.

Another consideration is that the trade and production structures of most developing countries are distorted because of policies pursued for compelling socio-economic reasons. By offsetting these distortions which are inherent in the peculiar situation of a developing country, export subsidies simply serve to correct them. This is another reason why developing countries should be free to grant subsidies.

INDIA (MTN/NTM/W/26/Add.3)

H. Definition of subsidy

25. The following opinions were expressed in this respect:

- export subsidies should be defined with greater precision by trying to draft a general definition and/or by the enumeration of practices which are export subsidies. Such subsidies usually involve the transfer to producers of funds from the general fiscal resources (or the foregoing of revenue) for the purpose of stimulating increased exports or maintaining exports at levels higher than would otherwise be attained. However it would be for consideration whether the two-price criterion and the requirement concerning primary products which are now incorporated in Article XVI:4 should remain in place or be deleted. It is important to keep in mind that subsidized exports, if exported at prices lower than comparable prices for which they sold in the domestic market, may, if injurious to producers of like goods in the importing country, be dealt with under anti-dumping systems.
- domestic subsidies might be defined as any subsidy which is designed primarily to stimulate investment, employment or production in disadvantaged regions or to achieve other socio-economic purposes, and which is unrelated to the export performance of the producers receiving such subsidies.

CANADA (MTN/NTM/W/26/Add.1)

- a satisfactory definition of a subsidy within the meaning of Article XVI of GATT would be difficult and it would be better to adhere to the elements contained in Article VI which constitute, if not a definition, at least a description of a subsidy, and to rely also, on the conclusion of the report of the Experts Groups in 1960.

These elements, which could be restated, are the following:

- (i) aid granted from public funds (experts report);
- (ii) concerning the export, manufacture, production or transport of a product (Article VI:3);
- (iii) licit or illicit in the terms of Article XVI (experts report);
- (iv) other than fiscal exemption within the meaning of Article VI:4.

EEC (MTN/NTM/W/26/Add.1)

- the work on subsidies in the Sub-Group should mainly concentrate on subsidies related to export. Greater precision should be given to the definition of the concept of export subsidy. This could be achieved inter alia by enumerating practices which are export subsidies. In enumerating export subsidy practices, the difference between export and domestic prices as provided for in Article XVI:4 of the General Agreement should be taken into account.

NORDIC COUNTRIES (MTN/NTM/W/43/Add.2)

- new international rules on subsidies and offsetting measures should deal with three basic problems: subsidies leading to increased exports artificially distorting normal market forces, leading to loss of sales for competitors in third country markets; leading to loss of sales in the subsidizing country's market.
- subsidies and offsetting measures, including countervailing duties, are inextricably related issues, requiring co-ordinated solutions. A framework for discussion of these problems could consist of defining three categories of subsidies - prohibited practices, practices that are subject to offsetting measures only when certain conditions are met, and practices expressly permitted and defining the conditions and procedures under which offsetting measures may be taken. In addition, it can be expected that controversial or complex subsidy practices, particularly those that are in widespread use or that are closely linked to national socio-economic goals, will require special rules.

UNITED STATES (MTN/NTM/W/26)

I. Differentiation of subsidy practices

26. The United States delegation has proposed to categorize all types of subsidy practices and set forth the conditions by which offsetting measures could be taken against such practices. In their opinion, rules concerning subsidies are, in particular, needed to:

- (i) Effectively delineate that category of subsidies that should be prohibited;
- (ii) Place limits and constraints on the use of domestic subsidies that benefit exports to the detriment of other nations;
- (iii) Delineate which subsidy measures should be permitted.

The United States delegation has also expressed the opinion that it is possible to differentiate between subsidy practices by type and by effect and from this point of view there are three types of subsidies:

- (i) Some subsidy practices are purposely designed or utilized to increase the competitiveness of a country's producers in international markets, thereby distorting international trade. For example, direct export payments or payments conditioned on export performance are clearly designed to stimulate sales in foreign markets.
- (ii) Some subsidy practices are designed to achieve domestic economic, social, or political objectives but may, nevertheless, distort international trade.
- (iii) Some subsidy practices have little or no impact on the flow of international trade.

A framework for discussion of these problems could consist of defining three categories of subsidies - prohibited practices, practices that are subject to offsetting measures only when certain conditions are met, and practices expressly permitted and defining the conditions and procedures under which offsetting measures may be taken.

If a subsidy practice in one country distorts international trade, it can have one or more effects. The subsidized product, if exported, can displace the sales of a producer in an importing country or the sales of an exporter of another country in third-country markets. Furthermore, the subsidized product can, if consumed domestically, displace the sales of an exporter of another country in the subsidizing country itself.

UNITED STATES (MTN/NTM/W/26 and  
MTN/NTM/W/43/Add.6)

27. The delegation of Japan has expressed the opinion that in order 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 drawing such list 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.

JAPAN (MTN/NTM/W/26/Add.2)

28. The delegation of Mexico, while commenting on the proposal described in paragraph 26 above has said that it was their understanding that the categorization of subsidies was designed to establish norms for relations among developed countries and that developing countries should be exempted from such norm through differentiated treatment. As regards the possible framework for a solution (prohibited, conditional, permitted) in any case it should not be applicable to developing countries, and if this idea were approved as a working basis, consideration would have to be given simultaneously to a different categorization for developing countries.

MEXICO (MTN/NTM/W/43/Add.3)

29. The delegation of the Communities has expressed some reservations about the approach proposed by the United States:

Firstly, experience of the 1960 list has shown that a prohibition based on a list of practices strictly defined or designed by name would not be of any great efficacy in the absence of procedures which would allow of a case-by-case determination of the injurious nature of a measure. Furthermore, such a list would require constant amendment in order to take account of changes in the legislation and practices of contracting parties and the risk would remain that subsidies would reappear in a disguised form or under a different presentation.

Secondly, subsidies themselves are often not a cause but rather the result of phenomena related to differences in the economic, social, regional and monetary positions and are aimed at remedying disequilibrium. In other words, a radical suppression of subsidies could not be envisaged unless the factors which make them necessary are likewise suppressed.

Furthermore, it must be observed that subsidies, in the classic sense, are only one element, and, in many cases, not the most important element in "distortion of international competition". For example, aids for research and development and price control of certain products on national markets which have not up to now been considered as export subsidies properly so-called nevertheless have similar consequences.

Such a list would also presuppose a very great harmonization of fiscal, social, monetary and other policies by the contracting parties. However, even though such a harmonization could be envisaged, and would even be desirable, in certain specific fields, it would be hopeless to expect rapid global solutions. The Community is of the opinion, therefore, that a dogmatic enumerative approach is inadequate. More realistic solutions should be sought.

EEC (MTN/NTM/W/43/Add.5)

J. Export subsidies

30. The following opinions have been expressed on a proposal to draw up a list of prohibited subsidy practices.

- Australia would find it impossible to accept drawing up a list of prohibitive subsidy practices concerning only industrial products.

AUSTRALIA (MTN/NTM/W/52)

- export subsidies, as such and as defined, should be prohibited.

CANADA (MTN/NTM/W/26/Add.1)

- drawing up a list of export subsidies to be prohibited would be an appropriate as well as realistic means ... The eight-item list of 1960 should be the basis for the negotiations and we should examine how it could further be improved upon where appropriate and within reasonable bounds. In such an examination ... the list of twenty-one prohibited practices drawn up by Working Group 1 would also serve as reference material.

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.

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.

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 necessary preconditioned for imposition of countervailing duties. Also procedures provided for in provisions of Articles XXII and XXIII could be applied.

JAPAN (MTN/NTM/W/26/Add.2)

- Article XVI:1 and 3 of the General Agreement should be amended so as to prohibit the grant of export subsidies by developed countries in respect of their primary products, in order that developing countries producing the same primary products may not be faced with ruinous competition.

MEXICO (MTN/NTM/W/43/Add.3)

- as a practical matter it would be impossible to prohibit all subsidy practices that distort international trade. There are good reasons however to prohibit a much wider range of subsidy practices than are presently banned. Benefits directly or indirectly conferred upon exports that are not equally conferred upon goods produced domestically and destined for the domestic market and benefits conditioned on export performance would be prohibited. The United States approach of prohibiting subsidy practices on the basis of agreed criteria is far more practical than trying to list all those practices that should be prohibited. Governments could always devise subsidy programmes not included on any list that might be developed.

UNITED STATES (MTN/NTM/W/26) and  
(MTN/NTM/W/43/Add.6)

31. As to the question of conditional subsidy practices the United States delegation has proposed the following definition:

"Benefits whose application and use equally affect all production, whether defined for the domestic market or for export would be conditional and would be subject to offsetting measures only under certain conditions, such as injury test".

UNITED STATES (MTN/NTM/W/26)

32. Of the ways in which differential treatment might be provided in the context of an international code on subsidies and countervailing duties the United States is willing to explore, inter alia, the possibility that certain subsidy practices could be designated as conditional for certain developing countries when they are prohibited for developed countries.

UNITED STATES (MTN/NTM/W/43/Add.6)

33. As to the problems of permitted subsidy practices the following definition has been proposed by the United States delegation:

The permitted category would consist of practices that are considered to have minimal impact on international trade. Permitted practices would be limited to those specifically agreed within that category. Such practices and any practices judged to result in a de minimus subsidy, would not be subject to offsetting measures.

UNITED STATES (MTN/NTM/W/26)

34. The delegation of Japan could 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.

JAPAN (MTN/NTM/W/26/Add.2)

35. Another point raised in the context of export subsidies was that the Article XVI:3 discourages but does not prohibit countries from using agricultural subsidies. If they do, then the subsidies must not be such as to gain "more than an equitable share of world trade". The principal defect of this provision is that damage must occur to a country's markets before it can complain. Apart from that it is virtually unworkable in practice because the only way of establishing what is "equitable" is to calculate what share of the trade countries would have in the absence of subsidies (and other distorting factors) and these are ex hypothesi present. Moreover it has nothing to say on the price effects of subsidization.

AUSTRALIA (MTN/NTM/W/43)

K. "Positive list"

36. Several delegations of developing countries expressed the view that a number of incentives to their exports should be allowed:

- Brazil submitted to participants in the negotiations the suggestion of elaborating a "positive list" of export subsidies which, within the framework of differentiated and more favourable treatment to developing countries, would be expressly authorized for these countries. Measures included in the positive list could not therefore, lead to the imposition of countervailing duties by developed countries.

Brazil proposed furthermore, that the positive list be sufficiently flexible to take into account the trade needs of developing countries. Brazil indicated, in defending a flexible positive list, that a vast range of export incentives is already applied by developing countries within the framework of their national development plans, and that it would therefore not be reasonable to expect such countries to accept an extremely rigid and limited list.

BRAZIL (MTN/NTM/W/26)

- whatever solution is adopted, whether in the form of a code, interpretative notes, a list or additional provisions, it should include special treatment in favour of developing countries, providing in particular that: subsidies applied by developing countries would fall within a category deemed not to adversely affect the interest of developed contracting parties.

COLOMBIA (MTN/NTM/W/52)

- the right of the developing countries to grant subsidies taking into account the interests of other exporting developing countries should be recognized and built into the provisions of GATT.

INDIA (MTN/NTM/W/26/Add.3)

- we do not accept the idea of a positive list because we believe it would be in the interest of the developing countries themselves to act on the basis of exemption.

It would be important to establish as a general principle that developing countries can grant subsidies of any kind, whether for domestic reasons or in connexion with export promotion, in the context of their development and industrialization policy.

MEXICO (MTN/NTM/W/43/Add.3)

37. The United States delegation expressed its belief that any approach for dealing with developing countries must be flexible in order to deal with the particular situations and stages of growth in individual developing countries. In this regard, it has been the United States experience that some developing countries are already internationally competitive in many products. In such cases, special and differential treatment would result in unfair competition. Any rules for special and differential treatment for developing countries should be structured in such a way as to permit individual developing countries to progressively accept in full over a definite period of time the obligations incumbent upon the developed members of the world trading system.

UNITED STATES (MTN/NTM/W/43/Add.6)

L. Complementary approach to the proposal on the categorization of subsidy practices

38. Another approach would be to reform the appropriate GATT rules. One obvious move would be to tighten up Article XVI:3. For example its provisions ought to be obligatory, just as those of Article XVI:4. This would go some way to meeting the problems of third country subsidization, and the inadequacy of existing countervailing duties to deal with them. Again, like Article XVI:4, it should not merely aim to regulate the effects of subsidies, but rather, should categorize the general characteristics in terms of which subsidy practices ought to be prohibited. Even adoption of the simple two-price criterion of Article XVI:4 would be a major advance if it were applied to agricultural subsidization.

Australia sees this sort of general "in principle" approach as complementary to the proposal that various forms of subsidy practices be categorized as prohibited, conditional and permissible only under certain conditions. The danger with an exclusively general regulation covering subsidies is that it will never be applied to concrete practices. On the other hand it will not do to simply list banned practices, since others can always be invented to take their place. Hence in our view these two approaches are not antipathetic, indeed could work very well in tandem.

AUSTRALIA (MTN/NTM/W/43)

M. Domestic subsidies

39. The following opinions have been expressed on possible approaches to the question of domestic subsidies:

- domestic subsidies should be brought into the negotiating process and in this connexion the Dillon Round would be regarded as a precedent.

AUSTRALIA (MTN/NTM/W/52)

- these are areas in which developing countries must be allowed to retain a considerable freedom of action, for they touch upon important elements of structural development policies.

BRAZIL (MTN/NTM/W/52)

- rules on domestic subsidies should aim at minimizing their trade-distorting effects without reducing the necessary freedom of action of contracting parties to use subsidies, direct or indirect, to reduce disparities in income and employment between different regions within their jurisdictions and for other broad socio-economic objectives.
- any international rules regarding subsidies must take into account that the degree to which goods subsidized for socio-economic reasons enter into international trade varies significantly according to the relative importance of international trade to the subsidizing country. For a country with a small domestic market and in which for certain industries economies of scale can be achieved only by exporting a significant portion of production, domestic subsidies may for these products incidentally influence the level of exports but for a country with a large domestic market or markets and which exports a relatively small share of its national production, the impact of domestic subsidies need not necessarily affect exports but may be to displace imports or to relocate productive facilities within its customs territory.

CANADA (MTN/NTM/W/26/Add.1)

- Japan does not agree with the contention that would seek the abolition of domestic subsidies.

GATT provisions, which should be the basis of the negotiation in this field, do not provide for abolition of subsidies other than export subsidies under Article XVI:4. 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 the 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.

JAPAN (MTN/NTM/W/26/Add.2)

- it will be very difficult to agree on proper definitions of domestic subsidies. Most of the measures falling within this category are of general character and not related particularly to exports. It would therefore be difficult to distinguish domestic subsidies with trade distorting effects from other domestic subsidies and to define the former.

If domestic subsidies, however, are deliberately used as instruments of competition between countries in international trade and thereby cause or threaten to cause material injury the matter could be brought up at international level for example by using the procedures in Article XVI:1 and Articles XXII and XXIII of the General Agreement.

NORDIC COUNTRIES (MTN/NTM/W/43/Add.2)

N. Import replacement

40. As regards the import replacement:

- there must be an effective framework of rights and obligations regarding the impact on the exporting industries of a contracting party of subsidy that replaces imports in its export market. This framework of rights and obligations should be as effective as any such framework regarding export subsidies. Countervailing duties by definition cannot be used to offset the impact of subsidies to production that simply replaces import. The provisions of Article XXII and XXIII are relevant in this connexion.

CANADA (MTN/NTM/W/26/Add.1)

- subsidy rules should provide for obligatory consultations regarding complaints on domestic subsidy practices that could result in import replacement. In addition signatories to the Code should have a reasonable expectation that new or increased subsidies will not result in the nullification or impairment of benefits under trade agreements.

UNITED STATES (MTN/NTM/W/26)

- the import replacement argument of the United States runs counter to development policies in which import replacement is a first step in the industrialization process of the country concerned, and the remarks made by the United States delegation are therefore totally unacceptable.

MEXICO (MTN/NTM/W/43/Add.3)

O. Supplementary protocols

41. Certain subsidy practices pose particularly difficult problems for which special rules may be more desirable than general rules. These rules could, for example, define agreed standards or levels for those subsidy practices. The use of special rules would offer the flexibility that may be necessary to effectively deal with the economic, social, and political complexities often associated with problems that arise in the area of subsidies and countervailing duties. Such special rules could be incorporated in the Code by supplementary protocol. For example, an agreement on export financing or regional aid might regulate the use of such practices. If supplementary rules for certain subsidies are negotiated, different criteria or limits could be established for developing countries than for developed countries.

UNITED STATES (MTN/NTM/W/26 and  
(MTN/NTM/W/43/Add.6)

F. International notifications, consultations and surveillances

42. The following opinions have been expressed on this question:

- export subsidies, (and the use of countervailing duties) domestic subsidies, subsidies that replace imports and all proposed sanctions should be subject to effective international discipline. Contracting parties should not be allowed

to decide unilaterally whether their rights or the obligations of another contracting party have been breached, and unilaterally to apply a sanction. There should be provisions for reporting and notification procedures, for bilateral consultations, for multilateral surveillance and for dispute settlement.

CANADA (MTN/NTM/W/26/Add.1)  
supported by MEXICO (MTN/NTM/W/43/Add.3)

- Colombia proposed the establishment of an international surveillance system as one element of the basis for the solution to the problem of subsidies and countervailing duties. A system must be established to ensure consultation before any corrective measure is applied against a subsidized product from a developing country.

COLOMBIA (MTN/NTM/W/52)

- the objective would be to guarantee improved international discipline with regard to the provisions contained in the General Agreement. To this end a double approach could be adopted: on the one hand, to give increased guarantees against distortions of international competitions resulting from the use of subsidies; on the other hand, to exclude the unilateral application of defensive measures leading to the establishment of new protectionist barriers.

EEC (MTN/NTM/43/Add.5)

- export subsidies and the use of countervailing duties should be subject to international discipline. There should be provisions for improved notifications and consultations procedures.

NORDIC COUNTRIES (MTN/NTM/W/43/Add.2)

- the Code should provide for effective notification procedures, whereby the subsidy practices of countries can be brought to the attention of the adherents of the Code by a number of ways, including notifications by countries other than the one granting the subsidy. One of the weaknesses in GATT Article XVI is that notification of subsidy programmes that affect, or could affect, international trade is limited to self-notification by a country of its own programmes. The United States believes that new rules should also allow countries to notify other countries' subsidy programmes. It is of course well established that a contracting party can be required to consult concerning a subsidy, whether or not it has been notified.

UNITED STATES (MTN/NTM/W/26 and  
(MTN/NTM/W/43/Add.6)

43. The delegation of European Communities has outlined the following scope of international notifications, consultations and surveillances procedures:

Notification procedure:

On the first point, the obligation to notify subsidies which directly or indirectly, have the effect of increasing exports or of replacing imports should be reaffirmed and an adequate international procedure should be set up to guarantee that this obligation is respected. Since the self-accusatory nature of the present notification system limits its effectiveness, a special procedure for explanation at the request of a third country affected by any measure, could be set up.

The notification would have to include the information necessary in order to appreciate the possible impact on international trade of a subsidy.

Consultation and international surveillance procedure:

The procedure which would, of course, be based on the information gathered during the notification and explanations could be carried out in two phases:

- a first, bilateral phase during which the procedures would put in contact the two or more countries involved, i.e. the country or countries granting the subsidy and the importing country or countries and, if necessary, the other exporting country or countries which could be affected by the subsidy;
- a second, multilateral phase during which the problem would be placed before a GATT body specially created to ensure that the provisions of Article XVI were respected and to conciliate on the differences. This procedure could provide for a recourse to the forum of the CONTRACTING PARTIES.

A combination of these two approaches and of their respective advantages (the discretion of bilateralism and the guarantees of multilateralism) could be found.

At the bilateral level, it would have to be provided that consultations should commence after the introduction of a formal request by the importing country or by an affected exporting country. Such a request for consultations addressed to the contracting party granting the subsidy would require to specify the practice concerned and to include indications of the actual or foreseen trade effects resulting therefrom.

The contracting party granting the subsidy should be required to lend itself to such consultations. At the expiration of a fixed time-limit the affected party could, in the event of breakdown in the consultations, in accordance with a procedure to be defined, bring the matter before either the CONTRACTING PARTIES or a specially created GATT body, the composition and constitution of which would have to be defined in the light of the experience gained, in particular, in the Anti-Dumping Committee and the Textiles Surveillance Body. Such a body could have the power to make recommendations to the contracting party granting the subsidy.

If the contracting party in question does not, within a time-limit to be determined, declare itself to be disposed to accept such recommendations, the affected party could, under the conditions and within the limits fixed in the General Agreement for an autonomous intervention by a contracting party, and with a view to re-establishing the balance of rights and obligations of the contracting parties, apply countervailing duties or suspend concessions or other advantages resulting from the General Agreement. It follows that the affected contracting party would be required to refrain from taking unilateral action until such time as the GATT body has handed down its decision.

The rights and obligations of the new discipline would, of course, be limited to Signatory Parties, Articles XXII and XXIII remaining applicable, in particular, for non-adherent countries.

EEC (MIN/NTM/W/43/Add.5)

V. THIRD COUNTRY SUBSIDIZATION AND POSSIBLE COUNTER-MEASURES

44. Several opinions have been expressed on this item:

- the subsidy practices of certain major developed countries have been of enduring concern to Australia. They have resulted in the partial or total loss of markets in those countries themselves, and in disruption to Australia's exports to third countries. This latter disruption has included loss of market shares and reductions in the prices at which commodities are traded.
- where production benefiting from domestic subsidies is exported, such subsidies may also have trade distorting effects in third markets. However, direct export subsidies - those which reduce the price of goods for export have caused far more disruption to international trade than domestic subsidies. The need for them arises because production costs in the developed countries referred to above is so high that otherwise the produce could not be disposed of on commercial markets. In this way problems arising from the domestic welfare and support policies of certain countries are passed on to the international community for it to cope with as it can.
- as they stand the countervailing provisions of Article VI are permissive, i.e. a country need not take countervailing action against subsidized imports but may if it so wishes. As such, Article VI has been quite ineffective in deterring subsidized disruption in third country markets. For this reason consideration ought to be given to whether and how these provisions could be made obligatory.

AUSTRALIA (MTN/NTM/W/43)

- there is a necessity for developing countries to offset the subsidies given by developed countries for their exports to third markets when they compete with the exports from developing countries.

It would no doubt be more beneficial for the developing countries if such subsidization by developed countries ceases because in that event subsidization by developing countries to neutralize such adverse effects would no longer be required. However, even in such a situation developing countries may have to use subsidies and overcome the handicaps from which their production suffers.

INDIA (MTN/NTM/W/26/Add.3 and  
MTN/NTM/W/43/Add.4)

- 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 be sought through unilateral retaliatory or other measures by the affected competing exporting country claiming to be affected by third country subsidies.

JAPAN (MTN/NTM/W/26/Add.2)

- as regards subsidies affecting exports of third countries, the following mechanisms could be adopted:

- (a) developing countries should be allowed to utilize subsidies regardless of the effects that these could have on exports from developed third countries, and the latter should not take any measures or present any complaint, even if indirectly affected.
- (b) where subsidies granted by developed countries affect exports from developing third countries, the latter may request the importing country, whether developing or developed, to take measures.
- (c) if, furthermore, subsidies are granted by developing countries and are shown to constitute an unfair practice under the rules established, and injury is shown to be caused thereby to the exports of another developing country, there should be provisions for consultations between these countries in order to seek satisfactory solutions.

MEXICO (MTN/NTM/W/43/Add.3)

- with respect to the question of subsidized exports by a third country to markets of export interest for another country, one possible way of action could be to seek solutions through consultations between the countries concerned or/and by the use of appropriate multilateral procedures. Countries should, however, not be allowed to decide unilaterally whether to apply sanctions against subsidization on third country markets.

NORDIC COUNTRIES (MTN/NTM/W/43/Add.2)

- given the inadequacies of Article VI in this regard and to ensure that countries do not use prohibited subsidy measures in third country markets, countries that are or might be adversely affected by such subsidization should be allowed to take appropriate counter-measures. Such measures might include the withdrawal of concessions or the impositions of restrictions by the affected supplier against the subsidizing country. With regard to the Australian suggestion that the importing country itself should be required to apply countervailing duties in third country markets, the United States does not believe that this is a feasible solution to the problem and suggests that the remedies outlined above offer a more practical approach.

UNITED STATES (MTN/NTM/W/43/Add.6)

VI. STATE INDUSTRIES, INDUSTRIES WITH GOVERNMENT PARTICIPATION AND NON-MARKET ECONOMIES

45. Governments around the world are increasingly involved in their economies, not only through the application of fiscal, monetary and regulatory policies, but also through direct financial participation in the production and distribution of goods that enter into international trade. At times it may occur that a government-owned enterprise, or an enterprise with heavy government participation, can operate without regard to profit, or even at a loss, with the government covering the loss through revenues generated elsewhere. In such cases, a subsidy element is probably involved. This is a problem that requires further attention in order to determine what provisions the new rules should incorporate to specifically deal with such cases.

UNITED STATES (MTN/NTM/W/43/Add.6)

46. The nature of non-market economies makes it difficult to determine whether a subsidy exists and in what amount. Subsidies by non-market economy countries will require different rules, perhaps in the context of safeguard provisions.

UNITED STATES (MTN/NTM/W/26)

VII. TAX PRACTICES

47. Current GATT rules on subsidies and countervailing duties have specific provisions that deal with various tax practices. The United States believes that new rules on subsidies and countervailing duties must also contain provisions that deal with the impact of varying tax practices on international trade.

UNITED STATES (MTN/NTM/W/43/Add.6)