

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Subsidies and Countervailing Duties"

SUBSIDIES/COUNTERVAILING MEASURES

Outline of an Arrangement¹

The following text has been prepared by several delegations of developed and developing countries and is intended to serve as a substantive basis from which a final, operational document might be prepared. It should be noted that there are places in the text where alternative language appears. Delegations may have reservations which are not indicated in the text, and in the light of its further evolution they may wish to propose additional elements or alternative texts.

The signatories to this Arrangement,

Noting that Ministers on 12-14 September 1973 agreed that the Tokyo Round of Multilateral Trade Negotiations should, inter alia, reduce or eliminate the trade restricting or distorting effects of non-tariff measures, and bring such measures under more effective international discipline;

¹Most of those delegations who have agreed in principle to this Outline of an Arrangement have also agreed that it is essential to ensure the consistency of this Arrangement with parallel provisions of the Anti-Dumping Code since both documents represent an elaboration and implementation of Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as the General Agreement). These delegations have further agreed to bring the relevant parallel provisions of the Anti-Dumping Code in conformity with those which exist in this Outline of an Arrangement and which are specified in footnotes in the text. Finally, these delegations have agreed that, in the context of conforming the Anti-Dumping Code provisions as noted above, it will be appropriate to introduce further amendments and interpretations of the Anti-Dumping Code as developed by the Committee on Anti-Dumping Practices.

The legal drafting of the French and Spanish texts of this Arrangement will be addressed later.

Recognizing that subsidies are used by governments to promote important objectives of national policy;

Recognizing also that subsidies may have harmful effects on trade and production;

Recognizing that the emphasis of this Arrangement should be on the effects of subsidies and that these effects are to be assessed in giving due account to the internal economic situation of the signatories concerned as well as to the state of international economic and monetary relations;

Desiring to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory to this Arrangement, and that countervailing measures do not unjustifiably impede international trade, and that relief is made available to producers adversely affected by the use of subsidies within an agreed international framework of rights and obligations;

Taking into account the particular trade, development and financial needs of developing countries;

Desiring to apply fully and to interpret with respect to subsidies and countervailing measures the provisions of Articles VI, XVI and XXIII of the General Agreement¹, and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Desiring to provide for the speedy, effective and equitable resolution of disputes arising under this Arrangement,

Have agreed as follows:

I. Application of Article VI²

Signatories shall take all necessary steps to ensure that the imposition of countervailing duties on any product of the territory of any signatory imported into the territory of another signatory is in accordance with the provisions of Article VI of the General Agreement and the terms of this Arrangement.

¹This Arrangement interprets and applies certain provisions of the General Agreement as among signatories. When identical problems are considered both by the provisions of the General Agreement and by this Arrangement, the provisions of the latter shall govern.

²Without prejudice to the possibility that action may be brought simultaneously under section I and section II, only one remedy would be available.

A. Domestic procedures and related matters

1. Countervailing duties may only be imposed pursuant to investigations initiated¹ and conducted in accordance with the provisions of this section. An investigation to determine the existence, degree and effect of any alleged subsidy shall normally be initiated upon a written request by or on behalf of the industry affected. The request shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount; (b) injury within the meaning of Article VI as interpreted by this Arrangement² and (c) a causal link between the subsidized imports and the alleged injury. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a)--(c) above.
2. Each signatory shall notify the Committee of Signatories³ (a) which of its authorities are competent to initiate and conduct investigations referred to in this section and (b) its domestic procedures governing the initiation and conduct of such investigations.
3. When such authorities are satisfied that there is sufficient evidence to justify initiating an investigation, the signatory or signatories the products of which are subject to such investigation and known to⁴ be interested parties shall be notified and a notice shall [may] be published.
4. Upon initiation of an investigation and thereafter, the evidence of both a subsidy and of injury should be considered simultaneously. In any event the evidence of both the existence of subsidy and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Arrangement provisional measures may be applied.

¹The procedural action by which a signatory formally commences an investigation as provided in paragraph 3 of this sub-section.

²Under this Arrangement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of Section I F.

³As established in Section IV of this Arrangement and hereinafter referred to as the Committee.

⁴Conforming change to be made to Anti-Dumping Code.

5. The notice referred to in paragraph 3 above shall adequately describe the subsidy practice or practices to be investigated. Each signatory shall ensure that its authorities afford all interested parties a reasonable opportunity, upon request, to see all relevant information that is not confidential (as indicated in paragraphs 6 and 7 below) and that is used by the authorities in the investigation, and to present in writing and, upon justification, orally, their views to the investigating authorities.

6. Any information which is by nature confidential or which is provided on a confidential basis by parties to an investigation shall, upon cause shown, be treated as such by the investigating authorities.¹ Such information shall not be disclosed without specific permission of the party submitting such information. Parties providing confidential information may be requested to furnish non-confidential summaries thereof.²

7. However, if the investigating authorities find that a request for confidentiality is not warranted and if the party requesting confidentiality is unwilling to disclose the information such authorities may disregard such information unless it can otherwise be demonstrated to their satisfaction that the information is correct.

8. The investigating authorities may carry out investigations in the territory of other signatories as required, provided they have notified in good time the signatory in question and unless the latter objects to the investigation and provided they obtain the agreement of any firm from which specific data is requested they may carry out investigations on the premises of such firm.

9. In cases in which any interested party or signatory refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, final findings³, affirmative or negative, may be made on the basis of the facts available.

10. The procedures set out above are not intended to prevent the authorities of the signatory from proceeding expeditiously with regard to reaching preliminary findings, affirmative or negative, or applying provisional measures, in accordance with relevant provisions of this Arrangement.

¹Signatories recognize that in the territory of certain signatories disclosure pursuant to a narrowly drawn protective order may be required in the context of domestic judicial proceedings.

²Conforming change to be made to Anti-Dumping Code.

³Because of different terms used under different systems in various countries the term "finding" is hereinafter used to mean a formal decision or determination.

11. In cases where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the provisions of this Arrangement shall be fully applicable and the transaction(s) shall, for the purposes of this Arrangement, be regarded as having taken place between the country of origin and the country of importation.

12. An investigation shall be terminated when the authorities are satisfied either that no subsidy exists or that the effect of the alleged subsidy on the industry is not such as to cause injury, and that the request is therefore not substantiated.

13. An investigation shall not hinder the procedures of customs clearance.

14. Investigations should normally be concluded within one year after their initiation.

15. Public notice shall be given of any preliminary or final determination whether positive or negative. In the case of any positive finding each such notice shall set forth the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons or basis therefor. In the case of any negative determination, each notice shall set forth at least the basic conclusions and a summary of the reasons therefor. All notices of determination shall be forwarded to the signatory or signatories the products of which are subject to such determination.¹

16. The provisions of Article X:3(b) of the General Agreement apply fully to the imposition of countervailing measures.

17. Signatories shall report to the Committee all preliminary or final actions taken with respect to countervailing duties and shall submit, on a semi-annual basis, reports of any countervailing duty actions taken within the preceding six months.

B. Consultations

1. As soon as possible after a request is accepted and in any event before the initiation of any investigation signatories the products of which may be subject to such investigations shall be afforded a reasonable opportunity for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 4 below, and arriving at a mutually agreed solution.

¹Conforming change to be made to Anti-Dumping Code.

2. Furthermore, throughout the period of investigation, signatories, the products of which are the subject of the investigation, shall be afforded reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.¹

3. Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of the signatory from proceeding expeditiously with regard to initiating the investigation, reaching a preliminary or final finding, affirmative or negative or applying a provisional or final measure, in accordance with the provisions of this Arrangement.

4. For purposes of such consultations, the signatory which intends to initiate investigations shall permit, or request, the signatory or signatories the products of which are subject to such investigation access to non-confidential evidence including the summary of non-confidential data being used for initiating the investigation.

C. Imposition of countervailing duties

1. The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less, are decisions to be made by the authorities of the importing signatory. It is desirable that the imposition be permissive in the territory of all signatories and that the duty be less than the amount if such lesser duty would be adequate to remove the injury to the domestic industry.

2. No countervailing duty shall be levied on any imported product in excess of the amount of the subsidy, calculated in terms of subsidization per unit of the subsidized and exported product.

3. When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and to be causing injury, except as to imports from those sources which have renounced any subsidies in question or from whom undertakings under the terms of this Arrangement have been accepted.

¹It is particularly important, in accordance with the provisions of this paragraph, that no affirmative finding whether preliminary or final be made without reasonable opportunity for consultations having been given.

4. If, after reasonable efforts have been made to complete consultations, a signatory makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this section unless the subsidy is withdrawn.

5. Investigation or action may be terminated without imposition of countervailing duties or provisional measures either (a) upon reaching an agreement with the exporting signatory that the latter eliminates or limits the subsidy so that it no longer causes injury or (b) upon receipt of a voluntary undertaking by the exporters

(i) to revise their prices so that the investigating authorities are satisfied that the injurious effects of the subsidy are eliminated or

(ii) to cease or to limit the exports of the subsidized product to the area in question

if the authorities concerned consider this practicable, e.g. if the number of exporters or potential exporters of the product in question is not too great and/or if the trading practices are suitable.

6. Authorities in an importing country may require any exporter from whom price undertakings were accepted to provide periodic information concerning its prices and the subsidies received, and to permit verification of such data. Normally price undertakings should not be enforced any longer than countervailing duties could remain in force under this Arrangement. In case of violation of undertakings or assurances, the authorities of the importing country may take expeditious actions which may constitute immediate application of provisional measures using the best information available or retroactive application of definitive duties consistently with the provisions of this Arrangement.

7. Whenever a countervailing duty investigation is terminated or suspended by means of a voluntary undertaking, this fact shall be officially notified and must be published in the same manner as all preliminary or final determinations under this Arrangement.

8. A countervailing duty shall remain in force only as long as, and to the extent, necessary to counteract the subsidization which is causing injury. The investigating authorities shall review the need for continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.

D. Provisional measures

1. Provisional measures may be taken only after preliminary positive finding has been made that a subsidy exists and that there is sufficient evidence of injury as provided for in Section I:A:1(a) - (c). Provisional measures shall not be applied unless the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation.
2. Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.
3. The imposition of provisional measures shall be limited to as short a period as possible, not exceeding four months.¹
4. Relevant provisions of Section C shall be followed in the imposition of provisional measures.

E. Retroactivity

1. Where a finding of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or where the provisional measures consist of cash deposits or bonds and the subsidized imports carried out during the period of their application would, in the absence of these provisional measures, have led to such a finding, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.
2. If the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected. If the definitive duty is less than the amount guaranteed by the cash deposit or bond, the excess amount shall be reimbursed or the bond released in an expeditious manner.
3. Where a finding of threat of injury or material retardation is made (but no injury has yet occurred) a definitive countervailing duty may be imposed only from the date of the finding of threat of injury or material retardation and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

¹Conforming change to be made in Anti-Dumping Code.

4. Where final finding is negative any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

5. In critical circumstances in order to prevent injury which would be difficult to repair and where for the subsidized product in question the authorities find that the injury is caused by a massive amount of imports of a product benefiting from export subsidies paid or bestowed inconsistently with the provisions of the General Agreement as interpreted by this Arrangement in a relatively short period to such an extent that, to effectively remedy the injury and preclude its recurrence it is deemed necessary to assess countervailing duties retroactively on those imports, the definitive countervailing duty may be assessed on imports which were entered for consumption not more than ninety days prior to the date of application of provisional measures.

F. Determination of injury¹

1. A determination of injury² for purposes of Article VI of the General Agreement shall involve an objective examination of both (a) the volume of subsidized imports and their effect on prices in the domestic market for like products³ and (b) the consequent impact on these imports on domestic producers of such products.

2. With regard to volume of subsidized imports the investigating authorities shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect on prices of the subsidized imports, the investigating authorities shall consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

¹Conforming changes to be made in Anti-Dumping Code.

²Determinations of injury under the criteria set forth in this section shall be based on positive evidence. In determining threat of injury the investigating authorities, in examining the factors listed in this section, may take into account the evidence on the nature of the subsidy in question and the trade effects likely to arise therefrom.

³Throughout this Arrangement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

3. The examination of the impact on the industry concerned shall include an evaluation of all relevant economic factors such as actual and potential decline in output, sales, market share, profits, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investment. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.*

[4. In the case of agricultural products, injury may also include interference with a domestic agricultural support programme.]

5.** It must be demonstrated that the subsidized imports are causing injury to the domestic industry. There may be other factors which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the subsidized imports.

6. In determining injury, the term "domestic industry" shall, except as provided in paragraph 8 below, 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 when producers are importers of the allegedly subsidized product the industry may be interpreted as referring to the rest of the producers.

7. The effect of the subsidized 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' realization, profits. When the domestic production of the like product has no separate identity in these terms the effects of subsidized 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.

*For consideration: reference to affiliates of a complainant.

**This formulation has been developed by some but not all of the participating delegations. Other delegations have suggested alternative texts for consideration. One delegation stated that it had accepted the above formulation on the condition that the relevant provisions of the Anti-Dumping Code would be, in parallel, subject to the same reformulations. Some other delegations agreed that the Anti-Dumping Code should be so revised.

8.* In exceptional circumstances a customs territory may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the customs territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured provided there is a concentration of subsidized imports into such an isolated market and provided further that the subsidized imports are causing injury to all or almost all of the producers within such market.

9. When the industry has been interpreted as referring to the producers in a certain area, i.e. as defined in paragraph 8 above, countervailing duties shall only be definitively collected on the products in question consigned for final consumption to that area, except in cases where the exporter shall, prior to the imposition of countervailing duties, be given an opportunity to cease exporting at subsidized prices to the area concerned. In such cases, if an adequate assurance to this effect is promptly given countervailing duties shall not be imposed provided, however, that if the assurance is not given or is not fulfilled, the countervailing duties may be imposed without limitation to an area.

10. 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 paragraph 6 above.

* This formulation has been developed by some but not all of the participating delegations. Other delegations have suggested alternative texts for consideration. One delegation stated that it had accepted the above formulation on the condition that the relevant provisions of the Anti-Dumping Code would be, in parallel, subject to the same reformulations. Some other delegations agreed that the Anti-Dumping Code should be so revised.

II. Application of Articles XVI and XXIII^{1/}

A. Notification of subsidies

1. Having regard to the provisions of Article XVI:1 of the General Agreement, any signatory may make a written request for information on the nature and extent of any subsidy practice of another signatory, including any form of income or price support, which operates directly or indirectly to increase exports of any product from or reduce imports of any product into its territory.

2. Signatories so requested shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready upon request to provide additional information to the requesting signatory. Any signatory which considers that such information has not been provided may bring the matter to the attention of the Committee.

3. Any interested signatory which considers that any practice of another signatory having the effects of a subsidy has not been notified in accordance with the provisions of Article XVI:1 of the General Agreement may bring the matter to the attention of such other signatory. If the subsidy practice is not thereafter notified promptly, such signatory may itself bring the subsidy practice in question to the notice of the Committee.

B. Subsidies - General Provisions

1. Signatories recognize that subsidies are used by governments to promote important objectives of social and economic policy. Signatories also recognize that subsidies can cause adverse effects on the interests of other signatories.

2. Signatories agree not to use export subsidies in a manner inconsistent with the provisions of this Arrangement.

3. Signatories further agree that they shall seek to avoid causing, through the use of any subsidy:

(a) injury to the domestic industry of another signatory^{2/};

^{1/} Without prejudice to the possibility that action may be brought simultaneously under Sections I and II only one remedy would be available.

^{2/} The term injury to domestic industry is used here in the same sense as it is used in Section I of this Arrangement.

- (b) nullification or impairment of the benefits accruing directly or indirectly to another signatory under the General Agreement¹; or
- (c) serious prejudice to the interests of another signatory.²

4. The adverse effects on the interests of another signatory required to demonstrate nullification or impairment³ or serious prejudice may arise through:

- (a) the effects of the subsidized imports in the domestic market of the importing signatory;
- (b) the effects of the subsidized imports in displacing or impeding the imports of like products into the market of the subsidizing country; or
- (c) the effects of subsidized imports in displacing the exports of like products of another signatory to a third country market.⁴

C. Export subsidies on products other than certain primary products⁵

1. Signatories shall not grant export subsidies, as defined in paragraph 2 below.

2. An export subsidy is any charge on the public account, provided or mandated by governmental action, except as may be otherwise provided in Article XVI of the General Agreement or its notes and supplementary provisions or in other international arrangements and protocols not

¹Benefits accruing directly or indirectly under the General Agreement include the benefits of tariff concessions bound under Article II of the General Agreement.

²Serious prejudice to the interests of another signatory is used here in the same sense as it is used in Article XVI:1 of the General Agreement.

³Signatories recognize that nullification or impairment of benefits may also arise through the failure of a signatory to carry out its obligations under the GATT or this Arrangement. Where such failure (concerning export subsidies) is determined by the Committee to exist, adverse effects may, without prejudice to paragraph 9 of section III B below, be presumed to exist. The other signatory will be accorded a reasonable opportunity to rebut this presumption.

⁴The problem of third country markets so far as certain primary products are concerned are dealt with exclusively under section D below.

⁵For definition of "certain primary products" see footnote to sub-section D below.

inconsistent with the General Agreement, which is conveyed directly or indirectly upon an exported product and which results in differential treatment, including price, covering products sold for export over like or directly competitive products sold domestically.

3. The practices listed in points (a)-(k) in Annex A hereto illustrate such export subsidies as defined above.

D. Export subsidies on certain primary products¹

1. In accordance with the provisions of Article XVI:3 of the General Agreement, signatories agree not to grant directly or indirectly any export subsidy on any agricultural product in a manner which results in the signatory granting such subsidy having more than an equitable share of world export trade in such product, account being taken of the shares of the signatories in trade in the product concerned during a previous representative period, and many special factors which may have affected or may be affecting trade in such product.

2. For purposes of Article XVI:3 of the General Agreement and paragraph 1 above:

- (a) "more than an equitable share of world export trade" shall include any case in which the effect of an export subsidy granted by a signatory is to displace the exports of another signatory bearing in mind the developments on world markets;
- (b) with regard to new markets traditional patterns of supply of the product concerned to the world market, region or country, in which the new market is situated shall be taken into account in determining "equitable share of world export trade";
- (c) "a previous representative period" shall normally be the three most recent calendar years in which normal market conditions existed.

¹For purposes of this Arrangement "certain primary products" means the products enumerated in Note Ad Article XVI of the General Agreement, Section B, paragraph 2, with the deletion of the words "or any mineral".

3. Signatories further agree not to grant export subsidies on agricultural exports to a particular market in a manner which results in prices materially below those of other suppliers to the same market.

E. Subsidies other than export subsidies*

1. Signatories recognize that subsidies other than export subsidies are widely used as important instruments for the promotion of social and economic policy objectives and do not intend to restrict the right of signatories to use such subsidies to achieve these and other important policy objectives which they consider desirable. Signatories note that among such objectives are:

- the elimination of industrial, economic and social disadvantages of specific regions;
- to facilitate the restructuring of certain sectors, especially where this has become necessary by reason of changes in trade and economic policies, including international agreements resulting in lower barriers to trade;
- generally to sustain employment and to encourage re-training and change in employment;
- to encourage research and development programmes, especially in the field of high-technology industries.¹

2. Signatories recognize, however, that subsidies other than export subsidies may cause or threaten to cause serious prejudice, in particular where these are granted on non-commercial terms, and shall therefore seek to avoid causing such serious prejudice through the use of subsidies. In particular, signatories, when drawing up their policies and practices in this field, in addition to evaluating the essential internal objectives to be achieved, shall also weigh, as far as practicable, taking account of the nature of the particular case, possible adverse effects on trade. They shall also consider the conditions of world trade, production (e.g. price, capacity utilization etc.) and supply in the product concerned.

* The text of this section was drafted by one delegation and accepted by other delegations as the substantive basis of an agreement.

¹ One delegation suggested the inclusion of the following objective:
"- the implementation of economic programmes and policies to promote the economic and social development of developing countries". Other delegations reacted favourably to this suggestion.

3. Signatories recognize that the objectives mentioned in (1) above may be achieved, inter alia, by means of subsidies granted with the aim of giving an advantage to certain enterprises. Examples of possible forms of such subsidies are set out below:

- government financing of commercial enterprises, including grants, loans or guarantees;
- government provision or government financed provision of utility, supply distribution and other operational services;
- government financing of research and development programmes;
- fiscal incentives;
- government subscription to, or provision of, equity capital.

The signatories note that the above forms of subsidy are granted either regionally or by sector. The enumeration of forms of subsidy set out above is illustrative and non-exhaustive, and reflects those currently granted by a number of signatories to this Code.

Signatories recognize, nevertheless, that the enumeration of forms of subsidy set out above should be reviewed periodically and that this should be done, in consultations, in conformity with the spirit of Article XVI(5) of the General Agreement.

4. The signatories recognize further that nothing in paragraphs 1-3 above and in particular the enumeration of forms of subsidy creates, in itself, any basis for action under Articles XVI and XXIII(i) of the General Agreement, as interpreted by this Arrangement.

F. Consultations

1. Whenever a signatory has reason to believe that an export subsidy is being granted or maintained by another signatory in a manner inconsistent with the provisions of this Arrangement, such signatory may request consultations with such other signatory.

2. A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

3. Whenever a signatory has reason to believe that any subsidy is being granted or maintained by another signatory and that such subsidy either causes injury to its domestic industry, nullification or impairment of benefits accruing to it under the General Agreement, or serious prejudice to its interests, such signatory may request consultations with such other signatory.

4. A request for consultations under paragraph 3 above shall include a statement of available evidence with regard to (a) the existence and nature of the subsidy in question and (b) the injury to the domestic industry caused or, in the case of nullification or impairment, or serious prejudice, the adverse effects caused to the interests of the signatory requesting consultations.

5. Upon request for consultations under paragraph 1 or paragraph 3 above, the signatory believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

G. Conciliation, dispute settlement and authorized countermeasures

1. If, in the case of consultations under paragraph 1 of sub-section F, a mutually acceptable solution has not been reached within thirty days¹ of the request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Section III.

2. If, in the case of consultations under paragraph 3 of sub-section F, a mutually acceptable solution has not been reached within sixty days of the request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Section III.

3. If any dispute arising under this Arrangement is not resolved as a result of consultations or conciliations, the Committee shall, upon request, review the matter in accordance with the dispute settlement procedures of Section III.

¹Any time-periods mentioned in this section and in section III B may be extended by mutual agreement.

4. If, as a result of its review, the Committee determines that an export subsidy is being granted in a manner inconsistent with the provisions of this Arrangement or that a subsidy is being granted or maintained in such a manner as to cause injury, nullification or impairment, or serious prejudice, it shall make such recommendations to the parties as may be appropriate to resolve the issue and, in the event the recommendations are not followed, it may authorize such countermeasures as may be appropriate.

III. Application of Article XXIII

A. Conciliation

1. In cases where matters are referred to the Committee for conciliation failing a mutually agreed solution in consultations under this Arrangement, the Committee shall immediately review the facts involved and, through its good offices, shall encourage the signatories involved to develop a mutually acceptable solution.¹

2. Signatories shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

3. Should the matter remain unresolved, notwithstanding efforts at conciliation made under paragraph 2 above, either signatory involved may, thirty days after the request for conciliation, request that a panel be established by the Committee in accordance with the provisions of subsection B below.

B. Dispute settlement

1. The Committee shall establish a panel upon request pursuant to paragraph 3 of Section A.² A panel so established shall review the facts of the matter and, in light of such facts, shall present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by this Arrangement.

2. Panels should deliver their findings to Committee within sixty days of the request for a panel of a case.

¹In this connexion, the Committee may draw signatories' attention to those cases in which, in its view, there is no reasonable basis supporting the allegations made.

²This does not preclude, however, the more rapid establishment of a panel when the Committee so decides, taking into account the urgency of the situation.

3. When a panel^{*} is set up, the Director-General to the CONTRACTING PARTIES to the GATT (hereinafter referred to as "the Director-General"), after securing the agreement of the signatories concerned, should propose the composition of the panel, of three or five members depending on the case, to the Committee for approval. A panel composed of more than three members would not be appropriate in cases where this would involve a delay in the prompt establishment of the panel. It is understood that citizens of countries whose governments¹ are parties to the dispute would not be members of the panel concerned with that dispute. The panel should be constituted as promptly as possible.²

4. In order to facilitate the constitution of panels, the Director-General should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade relations, economic development, and other matters covered by the General Agreement and this Arrangement, who could be available for serving on panels. For this purpose, each signatory would be invited to indicate at the beginning of every year to the Director-General the name of one or two persons who would be available for such work.

5. Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

6. To encourage development of mutually satisfactory solutions between the parties, each panel should first submit the descriptive part of its report to the parties concerned with a view to obtaining their comments for its consideration, and should subsequently inform the parties to the dispute of its conclusions, or an outline thereof, a reasonable period of time before they are presented to the Committee.

¹The term "governments" is understood to mean governments of all member countries in cases of common markets or customs unions.

²The parties to the dispute would respond within a short period of time, i.e., seven working days, to nominations of panel members by the Director-General and would not oppose nominations except for compelling reasons.

^{*}Certain points concerning the composition and operation of panels are to be discussed further.

7. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any signatory with an interest in the matter has a right to enquire about and be given appropriate information about that solution and a notice outlining the solution that has been reached shall be presented by the panel to the Committee.

8. In cases where the parties have failed to come to a satisfactory solution, the panels shall submit a written report to the Committee which should set forth the findings of the panel as to the questions of fact and the application of the relevant provisions of the General Agreement as interpreted and applied by this Arrangement and the reasons and bases therefor.

9. The Committee shall consider the panel report as soon as possible and, taking into account the findings contained therein, may make recommendations to the parties with a view to resolving the dispute. If the Committee's recommendations are not followed within a reasonable period, or if other circumstances so warrant, the Committee may authorize appropriate countermeasures (including withdrawal of GATT concessions or obligations) taking into account the nature and degree of the adverse effect found to exist. Committee recommendations should be presented to the parties within thirty days of the receipt of the panel report.

IV. Committee of Signatories

1. There shall be established a Committee of Signatories composed of representatives from each of the signatories to this Arrangement. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Arrangement at request of any signatory. The Committee shall carry out special responsibilities as assigned to it under this Arrangement and it shall afford signatories the opportunity of consulting on any matters relating to the operation of the Arrangement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.

2. The Committee may set up subsidiary bodies as appropriate.

3. In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate.

4. Once a year the Committee shall carry out a review of the operation of this Arrangement.

V. Developing countries

1. Signatories recognize that subsidies are an integral part of economic development programmes of developing countries.
2. Accordingly, this Arrangement shall not prevent developing country signatories from adopting measures and policies to assist their industries, including those in the export sector. In particular the commitment of Section II C shall not apply to developing country signatories, subject to the provisions of paragraphs 5 through 8 below.
3. Developing country signatories agree that export subsidies on their industrial products shall not be used in a manner which causes adverse effects to the trade or production of another signatory.
4. There shall be no presumption that subsidized exports from developing country signatories result in adverse effects, as defined in this Arrangement, to the trade or production of another signatory. Such adverse effects shall be demonstrated by positive evidence, through an economic examination of the impact on trade or production of another signatory.
5. A developing country signatory should agree or commit to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive needs.
6. When a developing country has agreed or committed to reduce or eliminate export subsidies, as provided in paragraph 5 above, countermeasures pursuant to the provisions of Sections II and III of this Arrangement against subsidies of such developing country shall not be available to other signatories of this Arrangement, provided that the subsidies in question are in accordance with the terms of the agreement or the commitment.
7. With respect to any subsidy, other than export subsidies, granted by developing country signatories, action may not be authorized or taken under Sections II and III of this Arrangement, unless nullification or impairment of tariff bound concessions or other GATT obligations is found to exist as a result of such subsidy, in such a way as to displace or impede imports of like products into the market of the subsidizing country, or unless injury to domestic industry in the importing market occurs in terms of Article VI of the GATT, as interpreted and applied by this Arrangement.
8. The Committee shall undertake periodic reviews of the export subsidy programmes of developing country signatories to examine the extent to which the programmes in their entirety, or the subsidization of particular products or sectors, conform to the obligations of this

Arrangement. If a developing country signatory has taken a commitment or has entered into an agreement pursuant to paragraph 5 of this section, that developing country will not be subject to such review so long as subsidy reductions are being made in accordance with the provisions of such agreement or commitment.

9. The Committee shall also undertake similar periodic reviews of measures taken by signatories under the provisions of this Arrangement which affect interests of developing countries.

10. Signatories recognize that the obligations of this Arrangement apply to all signatories with respect to export subsidies for primary products.

VI. State-controlled economy countries

[It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where the domestic prices are fixed by the State, special difficulties may exist in determining the existence and/or the amount of a subsidy. Such determinations therefore can be made on any reasonable basis.]

VII. Final provisions

1. No specific action against the subsidy of another signatory can be taken except in accordance with the provisions of the General Agreement, as interpreted by this Arrangement.

Signature, acceptance and accession

2. This Arrangement shall be open for acceptance by signature or otherwise, by governments, contracting parties to the GATT or having provisionally acceded to the GATT and by the European Economic Community.

3. Any government which is not a contracting party to the GATT, or has not acceded provisionally to the GATT, may accede to this Arrangement on terms to be agreed between that government and the signatories. [The instrument of Accession shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT.]

Note: Transitional rule.

4. Reservations, except those agreed upon Accession, may not be entered in respect of any of the provisions of this Arrangement.

5. This Arrangement shall enter into force on as among the parties which have accepted it by that date. For each government accepting the Arrangement after that date it shall enter into force on the thirtieth day following the date of such acceptance.

Internal procedures

6. Each signatory shall take all necessary steps, of a general or particular character, to ensure, not later than the date of the entry into force of this Arrangement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Arrangement.

7. Each signatory shall inform the Committee of any changes, in its laws and regulations relevant to this Arrangement and in the administration of such laws and regulations.

8. Each signatory shall report to the Committee annually on the administration of its laws and regulations relevant to this Arrangement giving summaries of the cases in which countervailing measures have been taken definitively.

Amendments

9. This Arrangement may be amended any time. Any decision to amend this Arrangement shall be taken [by a two-thirds majority] of the signatories to this Arrangement and shall become effective, for the signatories accepting the amendments, upon acceptance by [two thirds] of the signatories which have accepted the Arrangement and thereafter for each other signatory upon its acceptance of the amendments.

Withdrawal

10. Any signatory may withdraw from this Arrangement. The withdrawal shall take effect upon the expiration of ninety days from the date on which the written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. The Director-General shall promptly inform each signatory. Any signatory may, upon receipt of such information, request an immediate meeting of the Committee.

Non-application

11. This Arrangement shall not apply as between any signatory accepting this Arrangement or government acceding thereto, if at the time of acceptance of the Arrangement or of Accession thereto, a signatory of the Arrangement or the acceding government does not consent to such application.

Annexes

12. The Annexes hereto constitute an integral part of this Arrangement.

Secretariat

13. This Arrangement shall be serviced by the GATT secretariat.

Deposit

14. This Arrangement shall be deposited with the Director-General to the Contracting Parties to the GATT, who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph or of each Accession thereto, pursuant to paragraph to each signatory of the Arrangement.

Registration

15. This Arrangement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this day of nineteen hundred and seventy, in a single copy, in English, French and Spanish languages, each text being authentic.

Annex A

Illustrative List of Export Subsidies*

- (a) Currency retention schemes or any similar practices which involve a bonus on exports or re-exports.
- (b) Internal transport and freight charges on export shipments on terms more favourable than for domestic shipments.
- (c) In respect of deliveries by governments or governmental agencies of raw materials for export business on different terms than for domestic business, the charging of prices below world prices.
- Version 1 [(d) The full or partial exemption, remission or deferral, specifically calculated in relation to exports, of direct taxes¹ or social welfare charges paid or payable by industrial or commercial enterprises.²]

Version 2 [In lieu of paragraph (d) and its footnotes, the following paragraph would be added at the beginning or the end of the text:

The relationship of direct tax practices to export trade and pricing, and to Article XVI of the General Agreement, has been a subject of concern to many signatories to this Arrangement. It is agreed that the Contracting Parties should examine practices and GATT findings in this area with a view to supplementing this list and formulating comprehensive recommendations for adoption and implementation by signatories.]

- (e) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.
- (f) The exemption or remission, in respect of exported goods of indirect taxes¹ in excess of those actually levied on the same goods if sold for internal consumption.

*[The text of an EC reservation in favour of Ireland remains to be drafted.]

- [(g) The remission of prior stage indirect taxes on goods or services used in the production of exported goods in excess of the remission of like prior stage indirect taxes on goods or services used in the production of the same goods if sold for internal consumption; provided, however, that prior stage indirect taxes may be remitted on exported goods even when not remitted on the same goods sold for internal consumption, if the prior stage indirect taxes are levied on components that are physically incorporated (making normal allowance for waste) in the exported product.]
- (h) The remission or draw-back of import charges¹ in excess of those actually levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported product; provided, however, that in particular cases a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed one year.
- (i) The provision by governments (or special institutions controlled by governments) of insurance or guarantees against increases in the costs of exported products at premium rates which are manifestly inadequate to cover [over a long-term period consistent with commercial principles the] [the long-term] operating costs and losses of the insurance or guarantee programmes.³
- (j) The provision by governments (or special institutions controlled by governments) of export credit [or exchange risk] guarantee or insurance programmes at premium rates which are manifestly inadequate to cover [over a long-term period consistent with commercial principles the] [the long-term] operating costs and losses of the programmes.
- [(k) The grant by governments (or special institutions controlled by [and/or acting under the authority of] governments) of export credits at rates below those which they have to pay in order to obtain the funds so employed, or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credit, insofar as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least [twelve] original signatories⁴ to this Arrangement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rate provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Arrangement.

Notes:

¹For the purpose of this Arrangement, the term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property. [The term "import charges" shall mean tariffs, duties, border tax adjustments in lieu of indirect taxes, and other fiscal charges levied on imports.] The term "indirect taxes" shall mean sales, excise, value added, franchise, stamp, transfer and personal property taxes, and all taxes other than direct taxes and import charges.

[2

(i) The signatories reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any signatory may draw the attention of another signatory to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the signatories shall [normally] [where appropriate] attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of signatories under the General Agreement, including the right of consultation created in the preceding sentence.

(ii) The signatories recognize that major conceptual and practical difficulties stand in the way of full implementation of paragraph (d). Accordingly, the Contracting Parties, recognizing the principles noted in sub-paragraph (i), will convene a working party, as soon as practicable to study different direct tax systems and the scope for harmonizing their impact on trade flows.

(iii) The signatories agree that the panel findings references in GATT documents L/4422, L/4423, L/4424 and L/4425 shall be re-examined in light of paragraph (d) and this note during the deliberations of the special session of the Committee of Signatories.

(iv) Pending the deliberations of that session, the signatories agree not to introduce measures in contravention of the principles of paragraph (d), and to examine methods of bringing their existing measures into compliance with paragraph (d) within a reasonable period of time, bearing in mind the need to make correlative adjustments elsewhere in their tax systems in order to accommodate firms which have come to rely on existing measures.]

³The signatories agree that nothing in this paragraph shall prejudice or influence the deliberations of the panel established by GATT decision_____.

⁴An original signaotry to this Arrangement shall mean any signatory which adheres ad referendum to the Arrangement on or before 31 March 1979.

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