

GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Subsidies and Countervailing Duties"

SUBSIDIES/COUNTERVAILING MEASURES

Note by the Chairman

Attached hereto is the text of an Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade. The text is the result of negotiations in the Sub-Group "Subsidies and Countervailing Duties".

AGREEMENT ON INTERPRETATION AND APPLICATION OF
ARTICLES VI, XVI AND XXIII OF THE GENERAL AGREEMENT
ON TARIFFS AND TRADE*

The signatories¹ to this Agreement,

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;

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;

¹The term "signatories" is hereinafter used to mean parties to this Agreement.

* This Agreement has been prepared and advanced by the delegations of Austria, Brazil, Bulgaria, Canada, European Communities, Finland, Hungary, India, Japan, Mexico, Norway, Poland, Sweden, Switzerland and the United States.

Recognizing that the emphasis of this Agreement 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 Agreement, 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 the provisions of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade¹ (hereinafter referred to as "the General Agreement" or "GATT") only with respect to subsidies and countervailing measures 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 Agreement,

¹Wherever in this Agreement there is reference to "the terms of this Agreement" or the "articles" or "provisions of this Agreement" it shall be taken to mean, as the context requires, the provisions of the General Agreement as interpreted and applied by this Agreement.

Have agreed as follows:

PART I

Article 1 - Application of Article VI of the General Agreement¹

Signatories shall take all necessary steps to ensure that the imposition of a countervailing duty² 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 Agreement.

Article 2 - Domestic procedures and related matters

1. Countervailing duties may only be imposed pursuant to investigations initiated³ and conducted in accordance with the provisions of this Article. 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

¹The provisions of both Part I and Part II of this Agreement may be invoked in parallel: however, with regard to the effects of a particular subsidy in the domestic market of the importing country, only one form of relief (either a countervailing duty or an authorized countermeasure) shall be available.

²The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of off-setting any bounty or subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in Article VI:3 of the General Agreement.

³The term "initiated" as used hereinafter means procedural action by which a signatory formally commences an investigation as provided in paragraph 3 of this Article.

within the meaning of Article VI as interpreted by this Agreement¹ 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) to (c) above.

2. Each signatory shall notify the Committee of Signatories² (a) which of its authorities are competent to initiate and conduct investigations referred to in this Article 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 the exporters and importers known to the investigating authorities to have an interest therein and the complainants shall be notified and a public notice shall be given. In determining whether to initiate an investigation, the investigating authority should take into account the position adopted by the affiliates of a complainant party³ which are resident in the territory of another signatory.

4. Upon initiation of an investigation and thereafter, the evidence of both a subsidy and injury caused thereby should be considered simultaneously. In any event the evidence of both the existence of subsidy

¹Under this Agreement 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 Article 6.

²As established in Part V of this Agreement and hereinafter referred to as the Committee.

³For the purpose of this Agreement "party" means any natural or juridical person resident in the territory of any signatory.

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 Agreement provisional measures may be applied.

5. The public notice referred to in paragraph 3 above shall describe the subsidy practice or practices to be investigated. Each signatory shall ensure that its authorities afford all interested signatories and all interested parties¹ 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. Such information shall not be disclosed without specific permission of the party submitting it.² Parties providing confidential information may be requested to furnish non-confidential summaries thereof. In the event such parties indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible must be provided.

¹Any "interested signatory" or "interested party" shall refer to a signatory or a party economically affected by the subsidy in question.

²Signatories are aware that in the territory of certain signatories disclosure pursuant to a narrowly-drawn protective order may be required.

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.¹

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. Further, the investigating authorities may carry out investigations on the premises of a firm and may examine the records of a firm if (i) the firm so agrees and (ii) the signatory in question is notified and does not object.

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, preliminary and final findings², 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 a signatory from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

¹Signatories agree that requests for confidentiality should not be arbitrarily rejected.

²Because 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 Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the country of importation.
12. An investigation shall be terminated when the investigating 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.
13. An investigation shall not hinder the procedures of customs clearance.
14. Investigations shall, except in special circumstances, be concluded within one year after their initiation.
15. Public notice shall be given of any preliminary or final finding whether positive or negative and of the revocation of a finding. In the case of a 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 and basis therefor. In the case of a negative finding each notice shall set forth at least the basic conclusions and a summary of the reasons therefor. All notices of finding shall be forwarded to the signatory or signatories the products of which are subject to such finding and to the exporters known to have an interest therein.

16. Signatories shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports will be available in the GATT secretariat for inspection by government representatives. The signatories shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months.

Article 3 - Consultations

1. As soon as possible after a request for initiation of an investigation 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 Article 2, paragraph 1 above and arriving at a mutually agreed solution.

2. Furthermore, throughout the period of investigation, signatories the products of which are the subject of the investigation shall be afforded a 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 investigating authorities, in accordance with the provisions of this Agreement, 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.

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. Such consultations may establish the basis for proceeding under the provisions of Part VI of this Agreement.

4. The signatory which intends to initiate any investigation or is conducting such an investigation shall permit, on request, the signatory or signatories the products of which are subject to such investigation access to non-confidential evidence including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

Article 4 - 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 total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry.

2. No countervailing duty shall be levied¹ on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.²

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 which undertakings under the terms of this Agreement have been accepted.

¹As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.

²An understanding among signatories should be developed setting out the criteria for the calculation of the amount of the subsidy.

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(a) Proceedings may¹ be suspended or terminated without the imposition of provisional measures or countervailing duties, if undertakings are accepted under which:

- (1) the government of the exporting country agrees to eliminate or limit the subsidy or take other measures concerning its effects; or
- (2) the exporter agrees to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under undertakings shall not be higher than necessary to eliminate the amount of the subsidy. Price undertakings shall not be sought or accepted from exporters unless the importing signatory has first (a) initiated an investigation in accordance with the provisions of Article 2 of this Agreement and (b) obtained the consent of the exporting signatory. Undertakings offered need not be accepted if the authorities of the importing signatory consider their acceptance impractical, for example if the number of actual or potential exporters is too great, or for other reasons.

(b) If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the exporting signatory so desires or the importing signatory so decides. In such a case, if a determination of

¹The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings, except as provided in paragraph 5(b) of this Article.

no injury or threat thereof is made, the undertaking shall automatically lapse, except in cases where a determination of no threat of injury is due in large part to the existence of an undertaking; in such cases the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement.

- (c) Price undertakings may be suggested by the authorities in the importing country, but no exporter shall be forced to enter into such an undertaking. The fact that governments or exporters do not offer such undertakings or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the subsidized imports continue.

6. Authorities in an importing country may require any government or exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of undertakings, the authorities of the importing country may take expeditious actions under this Agreement in conformity with its provisions which may constitute immediate application of provisional measures using the best information available. In such cases definitive duties may be levied in accordance with this Agreement on goods entered for consumption not more than ninety days before the application of such provisional measures, except that any such retro-active assessment shall not apply to imports entered before the violation of the undertaking.

7. Undertakings shall not remain in force any longer than countervailing duties could remain in force under the Agreement. The authorities of an

importing country shall review the need for the continuation of any undertaking, where warranted, on their own initiative, or if interested exporters or importers of the product in question so request and submit positive information substantiating the need for such review.

8. Whenever a countervailing duty investigation is suspended or terminated pursuant to the provisions of paragraph 5 above and whenever an undertaking is terminated, this fact shall be officially notified and must be published. Such notices shall set forth at least the basic conclusions and a summary of the reasons therefor.

9. 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.

Article 5 - Provisional measures and retroactivity

1. Provisional measures may be taken only after a preliminary positive finding has been made that a subsidy exists and that there is sufficient evidence of injury as provided for in Article 2, paragraph 1 to (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.
4. Relevant provisions of Article 4 shall be followed in the imposition of provisional measures.
5. Where a final finding of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or in the case of a final finding of threat of injury where the effect of the subsidized imports would, in the absence of the provisional measures, have led to a finding of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.
6. 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.
7. Except as provided in paragraph 5 above, 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.
8. Where a 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.
9. In critical circumstances where for the subsidized product in question the authorities find that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from

export subsidies paid or bestowed inconsistently with the provisions of the General Agreement and of this Agreement and where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports, the definitive countervailing duties may be assessed on imports which were entered for consumption not more than ninety days prior to the date of application of provisional measures.

Article 6 - Determination of injury

1. A determination of injury¹ 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 products² and (b) the consequent impact of 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 of the subsidized imports on prices, 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

¹Determinations of injury under the criteria set forth in this Article shall be based on positive evidence. In determining threat of injury the investigating authorities, in examining the factors listed in this Article, may take into account the evidence on the nature of the subsidy in question and the trade effects likely to arise therefrom.

²Throughout this Agreement 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.

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.

3. The examination of the impact on the industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as actual and potential decline in output, sales, market share, profits, productivity, 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 and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

4. It must be demonstrated that the subsidized imports are, through the effects¹ of the subsidy, causing injury within the meaning of this Agreement. There may be other factors² which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the subsidized imports.

5. In determining injury, the term "domestic industry" shall, except as provided in paragraph 7 below, be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose

¹As set forth in paragraphs 2 and 3 of this Article.

²Such factors can include inter alia, the volume and prices of non-subsidized imports of the product in question, contraction in demand or changes in the pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

collective output of the products constitutes a major proportion of the total domestic production of those products, except that when producers are related¹ to the exporters or importers or are themselves importers of the allegedly subsidized product the industry may be interpreted as referring to the rest of the producers.

6. 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.

7. In exceptional circumstances the territory of a signatory 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 territory. In such circumstances, injury may be found to exist even where a major portion of

¹The Committee should develop a definition of the word "related" as used in this paragraph.

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 the producers of all or almost all of the production within such market.

8. When the industry has been interpreted as referring to the producers in a certain area, as defined in paragraph 7 above, countervailing duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing country does not permit the levying of countervailing duties on such a basis, the importing signatory may levy the countervailing duties without limitation, only if (1) the exporters shall have been given an opportunity to cease exporting at subsidized prices to the area concerned or otherwise give assurances pursuant to Article 4, paragraph 5, of this Agreement, and adequate assurances in this regard have not been promptly given, and (2) such duties cannot be levied only on products of specific producers which supply the area in question.

9. Where two or more countries have reached under the provisions of Article XXIV:8(a) of the General Agreement 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 paragraphs 5 to 7 above.

PART II

Article 7 - Notification of subsidies¹

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 granted or maintained by 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.

¹In this Agreement, the term "subsidies" shall be deemed to include subsidies granted by any government or any public body within the territory of a signatory. However, it is recognized that for signatories with different federal systems of government, there are different divisions of powers. Such signatories accept nonetheless the international consequences that may arise under this Agreement as a result of the granting of subsidies within their territories.

Article 3 - 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 may cause adverse effects to the interests of other signatories.
2. Signatories agree not to use export subsidies in a manner inconsistent with the provisions of this Agreement.
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 signatory¹;
 - (b) nullification or impairment of the benefits accruing directly or indirectly to another signatory under the General Agreement²; or
 - (c) serious prejudice to the interests of another signatory.³
4. The adverse effects to the interests of another signatory required to demonstrate nullification or impairment⁴ or serious prejudice may arise through:

¹The term injury to domestic industry is used here in the same sense as it is used in Part I of this Agreement.

²Benefits accruing directly or indirectly under the General Agreement include the benefits of tariff concessions bound under Article II of the General Agreement.

³Serious prejudice to the interests of another signatory is used in this Agreement in the same sense as it is used in Article XVI:1 of the General Agreement and includes threat of serious prejudice.

⁴Signatories recognize that nullification or impairment of benefits may also arise through the failure of a signatory to carry out its obligations under the General Agreement or this Agreement. Where such failure concerning export subsidies is determined by the Committee to exist, adverse effects may, without prejudice to paragraph 9 of Article 18 below, be presumed to exist. The other signatory will be accorded a reasonable opportunity to rebut this presumption.

- (a) the effects of the subsidized imports in the domestic market of the importing signatory;
- (b) the effects of the subsidy in displacing or impeding the imports of like products into the market of the subsidizing country; or
- (c) the effects of the subsidized exports in displacing¹ the exports of like products of another signatory from a third country market.²

Article 9 - Export subsidies on products other than certain primary products³

1. Signatories shall not grant export subsidies on products other than certain primary products.
2. The practices listed in points (a) to (1) in the Annex are illustrative of export subsidies.

Article 10 - Export subsidies on certain primary products⁴

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 certain primary products 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 any special factors which may have affected or may be affecting trade in such product.

¹The term "displacing" shall be interpreted in a manner which takes into account the trade and development needs of developing countries and in this connection is not intended to fix traditional market shares.

²The problem of third country markets so far as certain primary products are concerned are dealt with exclusively under Article 10 below.

³For definition of "certain primary products" see footnote to Article 10 below.

⁴For purposes of this Agreement "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".

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.

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

Article 11 - 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, under socially acceptable conditions, 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;
- the implementation of economic programmes and policies to promote the economic and social development of developing countries;
- redeployment of industry in order to avoid congestion and environmental problems.

2. Signatories recognize, however, that subsidies other than export subsidies, certain objectives and possible forms of which are described, respectively, in paragraphs 1 and 3 of this Article, may cause or threaten to cause injury to a domestic industry of another signatory or serious prejudice to the interests of another signatory or may nullify or impair benefits accruing to another signatory under the General Agreement, in particular where such subsidies would adversely affect the conditions of normal competition. Signatories shall therefore seek to avoid causing such effects 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.

3. Signatories recognize that the objectives mentioned in paragraph 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: government financing of commercial enterprises, including grants, loans or guarantees; government provision or government financed provision of utility, supply distribution and other operational or support services or facilities; government financing of research and development programmes; fiscal incentives; and government subscription to, or provision of, equity capital.

The signatories note that the above forms of subsidy are normally 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 Agreement.

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

4. The signatories recognize further that, without prejudice to their rights under this Agreement, nothing in paragraphs 1-3 above and in particular the enumeration of forms of subsidy creates, in itself, any basis for action under the General Agreement, as interpreted by this Agreement.

Article 12 - 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 Agreement, 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.

Article 13 - Conciliation, dispute settlement and authorized countermeasures

1. If, in the case of consultations under paragraph 1 of Article 12, 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 Part VI.
2. If, in the case of consultations under paragraph 3 of Article 12, 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 Part VI.
3. If any dispute arising under this Agreement 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 Part VI.
4. If, as a result of its review, the Committee concludes that an export subsidy is being granted in a manner inconsistent with the provisions of this Agreement 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 recommendations² 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, taking into account the degree and nature of the adverse effects found to exist.

¹Any time periods mentioned in this Article and in Article 18 may be extended by mutual agreement.

²In making such recommendations, the Committee shall take into account the trade, development and financial needs of developing country signatories.

PART III

Article 14 - Developing countries

1. Signatories recognize that subsidies are an integral part of economic development programmes of developing countries.
2. Accordingly, this Agreement 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 Article 9 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 serious prejudice to the trade or production of another signatory.
4. There shall be no presumption that export subsidies granted by developing country signatories result in adverse effects, as defined in this Agreement, 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 endeavour to enter into a commitment¹ to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs.
6. When a developing country has entered into a commitment to reduce or eliminate export subsidies, as provided in paragraph 5 above, countermeasures pursuant to the provisions of Parts II and VI of this Agreement against any export subsidies of such developing country shall not be authorized for other

¹It is understood that after this Agreement has entered into force, any such proposed commitment shall be notified to the Committee in good time.

signatories of this Agreement, provided that the export subsidies in question are in accordance with the terms of the commitment referred to in paragraph 5 above.

7. With respect to any subsidy, other than an export subsidy, granted by a developing country signatory, action may not be authorized or taken under Parts II and VI of this Agreement, unless nullification or impairment of tariff 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 General Agreement, as interpreted and applied by this Agreement. Signatories recognize that in developing countries, governments may play a large rôle in promoting economic growth and development. Intervention by government in the economy, for example through the practices enumerated in paragraph 3 of Article 11, shall not, per se, be considered subsidies.

8. The Committee shall, upon request by an interested signatory, undertake a review of a specific export subsidy practice of a developing country signatory to examine the extent to which the practice is in conformity with the objectives of this Agreement. If a developing country has entered into a commitment pursuant to paragraph 5 of this Article, it shall not be subject to such review for the period of that commitment.

9. The Committee shall, upon request by an interested signatory, also undertake similar reviews of measures maintained or taken by developed country signatories under the provisions of this Agreement which affect interests of a developing country signatory.

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

PART IV

Article 15 - Special situations

In cases of alleged injury caused by imports from a country described in the notes and supplementary provisions to the General Agreement (Annex I, Article VI, paragraph 1, point 2) the importing signatory may base its procedures and measures either

- (a) on this Agreement, or, alternatively
- (b) on the Anti-dumping Code,

it being understood that in both cases the calculation of the margin of dumping or of the amount of the estimated subsidy can be made by comparison of the export price with:

- (a) the price at which a like product of a country other than the importing signatory or those mentioned above is sold, or
- (b) the constructed value¹ of a like product in a country other than the importing signatory or those mentioned above.

If neither prices nor constructed value as established under (a) or (b) above provide an adequate basis for determination of dumping or subsidization then the price in the importing signatory, if necessary duly adjusted to reflect reasonable profits, may be used.

All calculations shall be based on prices or costs ruling at the same level of trade, normally at the ex factory level, and in respect of operations made as nearly as possible at the same time. Due allowance shall be made in each case, on its merits, for the difference in conditions and terms of sale or in taxation and for the other differences affecting price comparability, so that the method of comparison applied is appropriate and not unreasonable.

¹Constructed value means cost of production plus a reasonable amount for administration, selling and any other costs and for profits.

PART V

Article 16 - Committee of Signatories

1. There shall be established under this Agreement a Committee of Signatories composed of representatives from each of the signatories to this Agreement. 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 Agreement at the request of any signatory. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the signatories and it shall afford signatories the opportunity of consulting on any matters relating to the operation of the Agreement 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. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a signatory, it shall inform the signatory involved.

PART VI

Article 17 - Conciliation

1. In cases where matters are referred to the Committee for conciliation failing a mutually agreed solution in consultations under any provision of this Agreement, 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, any 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 Article 18 below.

Article 18 - Dispute settlement

1. The Committee shall establish a panel upon request pursuant to paragraph 3 of Article 17.² A panel so established shall review the facts of the matter and, in light of such facts, shall present to the Committee

¹In this connection, 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.

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 Agreement.

2. A panel should be established within thirty days of a request therefor¹ and a panel so established should deliver its findings to the Committee within sixty days after its establishment.

3. When a panel is to be established, the Chairman of the Committee, after securing the agreement of the signatories concerned, should propose the composition of the panel. Panels shall be composed of three or five members, preferably governmental, and the composition of panels should not give rise to delays in their establishment. It is understood that citizens of countries whose governments² are parties to the dispute would not be members of the panel concerned with that dispute.

4. In order to facilitate the constitution of panels, the Chairman of the Committee 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 Agreement, 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 Chairman of the Committee the name of one or two persons who would be available for such work.

¹The parties to the dispute would respond within a short period of time, i.e., seven working days, to nominations of panel members by the Chairman of the Committee and would not oppose nominations except for compelling reasons.

²The term "governments" is understood to mean governments of all member countries in cases of customs unions.

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 to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee.

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.

In cases where the parties to a dispute 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 Agreement 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, 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.

PART VII

Article 19 - Final provisions

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

Acceptance and accession

2. (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community.

(b) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the signatories, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

¹This paragraph is not intended to preclude action under other relevant provisions of the General Agreement, where appropriate.

- (c) Contracting parties may accept this Agreement in respect of those territories for which they have international responsibility, provided that the GATT is being applied in respect of such territories in accordance with the provisions of Article XXVI:5(a) or (b) of the General Agreement; and in terms of such acceptance, each such territory shall be treated as though it were a signatory.

Reservations

3. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other signatories.

Entry into force

4. This Agreement shall enter into force on 1 January 1980 for the governments¹ which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

National legislation

5. (a) Each government accepting or acceding to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply to the signatory in question.
- (b) Each signatory shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

¹The term "governments" is deemed to include the competent authorities of the European Economic Community.

Review

6. The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.¹

Amendments

7. The signatories may amend this Agreement having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the signatories have concurred in accordance with procedures established by the Committee, shall not come into force for any signatory until it has been accepted by such signatory.

Withdrawal

8. Any signatory may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any signatory may upon such notification request an immediate meeting of the Committee.

Non-application of this Agreement between particular signatories

9. This Agreement shall not apply as between any two signatories if either of the signatories, at the time either accepts or accedes to this Agreement, does not consent to such application.

¹At the first such review, the Committee shall, in addition to its general review of the operation of the Agreement, offer all interested signatories an opportunity to raise questions and discuss issues concerning specific subsidy practices and the impact on trade, if any, of certain direct tax practices.

Annex

10. The annex to this Agreement constitutes an integral part thereof.

Secretariat

11. This Agreement shall be serviced by the GATT secretariat.

Deposit

12. This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each signatory and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 7, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 2, or each withdrawal therefrom pursuant to paragraph 8 above.

Registration

13. This Agreement 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-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

ANNEXIllustrative List of Export Subsidies

- (a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.
- (b) Currency retention schemes or any similar practices which involve a bonus on exports.
- (c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.
- (d) The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for delivery of like or directly competitive products or services for use on the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to its exporters.
- (e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes^{1/} or social welfare charges paid or payable by industrial or commercial enterprises.^{2/}
- (f) 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.
- (g) The exemption or remission in respect of the production and distribution of exported products, of indirect taxes^{1/} in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

- (h) The exemption, remission or deferral of prior stage cumulative indirect taxes^{1/} on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on goods that are physically incorporated (making normal allowance for waste) in the exported product.^{3/}
- (i) The remission or drawback of import charges^{1/} in excess of those 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, normally not to exceed two years.
- (j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes,

of insurance or guarantee programmes against increases in the costs of exported products^{4/} or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.^{5/}

- (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 actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far 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 signatories^{6/} to this Agreement 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 rates 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 Agreement.

- (1) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the General Agreement.

NOTES

1/ For the purpose of this Agreement:

The term "direct taxes" shall mean taxes on wages, profits, interest, rents, royalties, and all other forms of income, and taxes on the ownership of real property.

The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports.

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges.

"Prior stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product.

"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

"Remission" of taxes includes the refund or rebate of taxes.

2/ The signatories recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The signatories further recognize that nothing in this text prejudices the disposition by the Contracting Parties of the specific issues raised in GATT document L/4422.

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 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.

Paragraph (e) is not intended to limit a signatory from taking measures to avoid the double taxation of foreign source income earned by its enterprises or the enterprises of another signatory.

Where measures incompatible with the provisions of paragraph (e) exist, and where major practical difficulties stand in the way of the signatory concerned bringing such measures promptly into conformity with the Agreement, the signatory concerned shall, without prejudice to the rights of other signatories under the General Agreement or this Agreement, examine methods of bringing these measures into conformity within a reasonable period of time.

In this connection the European Economic Community has declared that Ireland intends to withdraw by 1 January 1981 its system of preferential tax measures related to exports, provided for under the Corporation Tax Act of 1976, whilst continuing nevertheless to honour legally binding commitments entered into during the lifetime of this system.

- 3/ Paragraph (h) does not apply to value-added tax systems, and border-tax adjustment in lieu thereof and the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).
- 4/ The signatories agree that nothing in this paragraph shall prejudice or influence the deliberations of the panel established by the GATT Council on 6 June 1978 (C/M/126).
- 5/ In evaluating the long-term adequacy of premium rates, costs and losses of insurance programmes, in principle only such contracts shall be taken into account that were concluded after the date of entry into force of this Agreement.
- 6/ An original signatory to this Agreement shall mean any signatory which adheres ad referendum to the Agreement on or before 30 June 1979.

TABLE OF CONTENTS

	<u>Page</u>
Preamble	
PART I	3
Art. 1 Application of Article VI of the General Agreement	3
Art. 2 Domestic procedures and related matters	3
Art. 3 Consultations	8
Art. 4 Imposition of countervailing duties	9
Art. 5 Provisional measures and retroactivity	12
Art. 6 Determination of injury	14
PART II	18
Art. 7 Notification of subsidies	18
Art. 8 Subsidies - General provisions	19
Art. 9 Export subsidies on products other than certain primary products	20
Art. 10 Export subsidies on certain primary products	20
Art. 11 Subsidies other than export subsidies	21
Art. 12 Consultations	24
Art. 13 Conciliation, dispute settlement and authorized countermeasures	25
PART III	26
Art. 14 Developing countries	26
PART IV	28
Art. 15 Special situations	28
PART V	29
Art. 16 Committee of signatories	29
PART VI	30
Art. 17 Conciliation	30
Art. 18 Dispute settlement	30
PART VII	33
Art. 19 Final provisions	33
Annex - Illustrative list of export subsidies	37
Notes	40