SECRETARIAT NOTE ON THE USE OF SUBSIDIES
BY LESS-DEVELOPED COUNTRIES

At the meeting of the Committee on the Legal and Institutional Framework of the GATT in Relation to Less-Developed Countries, held from 14-18 October 1963, a question was raised concerning the use by less-developed countries of export subsidies for export promotion. That Committee has requested Committee III to consider the problem, and the secretariat has been requested to furnish background material on:

1. the legal position in regard to use of export subsidies for trade development purposes and the possibility that subsidies may lead to recourse to Article VI of the General Agreement;

2. in collaboration with less-developed countries who had had experience in use of subsidies, the actual difficulties which had been encountered by less-developed countries in this regard.

Committee III is asked to report back to the Legal and Institutional Framework Committee.

1. The Legal Position

The use of subsidies is covered by Article XVI; they are not prohibited by the General Agreement, but since in certain circumstances they may have harmful effects, their use is made subject to notification and certain other safeguards. In the revision of the Agreement in 1955 a further step was taken, envisaging a ban on the use of export subsidies for manufactured products; this prohibition has since been placed in effect voluntarily among a group of developed countries. As discussed in greater detail in the Annex, the present position so far as the less-developed countries generally are concerned is that subsidies are permitted in respect of exports of both primary and non-primary products.

When subsidies cause trade diversion harmful to other exporters, or injury in the importing country a variety of procedures may be invoked. Consultation, both bilateral and multilateral, is envisaged within the terms of Article XVI itself. Additional consultation procedures are provided in Article XXII. A country which feels its domestic interests are being injured by export sales at prices below those prevailing in the country of origin, or which suffers injury because of a subsidy on a product which is entering its markets may, in certain circumstances, have recourse to an anti-dumping or countervailing duty in an equivalent amount.
Instances in which this has actually happened seem, however, to have been relatively rare and to involve mainly pairs of developed countries.

The cases in which anti-dumping duties or countervailing duties may be used and other recourses in case of injury from subsidies are discussed in greater detail in the Annex. It should be noted, however, that the general approach of Article VI is to impose strict limits on the circumstances in which redress may be had, and upon its amount and duration.

2. Difficulties Encountered by Less-Developed Countries in Relation to the Use of Anti-Dumping Duties and Countervailing Duties by Importing Countries

From information at present available there does not appear to have been widespread resort to the provisions of Article VI in respect of subsidies on the export of manufactured and semi-manufactured goods from less-developed countries. Further material on this point will be circulated if additional information from less-developed countries indicates that these countries have, in fact, experienced significant difficulties in this connexion.

3. Summary of Existing Position

In summary, the present situation appears to be as follows:

1. Less-developed countries generally are legally permitted to use subsidies on both primary and non-primary products.

2. A country importing subsidized products may or may not wish to impose anti-dumping or countervailing duties; if it does wish to do so, it is bound by the strict requirements of Article VI which limit the circumstances in which such measures may be used and the amount of duty which may be imposed.

3. There has so far been little indication that less-developed countries have experienced difficulties through the imposition of anti-dumping and countervailing duties.

4. Taking account of the fact that the use of export subsidies by less-developed countries is not contrary to the provisions of the General Agreement, and considering that not only are there strict limitations on the employment of counter measures under Article VI but that apparently such measures have not been widely employed, it might be questioned whether the time is yet appropriate to contemplate the amendment of the existing Articles of the General Agreement. On the other hand, if it were felt that an improvement in existing procedures could be made, it may be considered desirable to invite the Legal and Institutional Framework Committee to concentrate on the development of procedures, including consultation procedures, designed to ensure that anti-dumping or countervailing duties are not applied to the trade of less-developed countries in advance of detailed and sympathetic consideration of the problems of such countries and of examination of the alternative courses of action open to both the importer and exporter concerned.
Obligations of GATT with respect to use of subsidies

Subsidies are covered in Article XVI. The Article as such does not prohibit the use of subsidies in general or those applied to exports in particular. However, subsidies and especially those on exports are recognized as having potentially harmful effects on the trade of other contracting parties; accordingly their use is subjected to notification and to certain other safeguards. The principle is established that export subsidies on primary products are to be applied in such a manner as to avoid a diversion of trade which would give the subsidizing country more than an equitable share of world export trade (paragraph 3). With respect to other products (manufactures), contracting parties are urged to accept an obligation not to grant any export subsidy as from 1 January 1958 or the earliest practicable date thereafter (paragraph 4).

In implementation of this last-mentioned provision, the CONTRACTING PARTIES at their seventeenth session in November 1960 drew up (1) a Declaration Giving Effect to the Provisions of Article XVI:4 and (2) a Declaration Extending the Standstill Provisions of Article XVI:4. The first instrument became effective between the countries which accepted it on 14 November 1962 after it had been accepted by a number of listed "key" industrial countries; as between the sixteen countries which have accepted the Declaration, the obligation foreseen in paragraph 4 is therefore in force, that is, they may not use any direct or indirect export subsidy which results in the sale of non-primary products at a price lower than the comparable price charged for the like product to buyers in the domestic market.

At the meeting of the Working Party which drew up the Declaration Giving Effect to the Provisions of Article XVI:4, it was apparent that a number of countries were anxious to promote regulation of the use of export subsidies on non-primary products but were unwilling or unable to accept the full and permanent obligation. It was therefore the view of the Working Party, later approved by the CONTRACTING PARTIES, that a Declaration providing a standstill on export subsidies on non-primary products should also be opened once more, continuing the practice followed in one form or another since the revision of the GATT in 1955. Consequently a standstill declaration was opened for acceptance, affording countries the opportunity to agree not to grant new subsidies on non-primary products and not to increase or extend existing ones or re-impose such subsidies once they had been reduced or removed. This

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1The "key" countries, all of which have accepted this Declaration, are: Austria, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Italy, Luxemburg, Netherlands, Norway, Sweden, Switzerland, the United Kingdom and the United States. New Zealand and the Federation of Rhodesia and Nyasaland have also accepted the Declaration.
standstill, which also became effective 14 November 1962, is due to expire at the end of 1963. Seventeen contracting parties\(^1\) have accepted it, and these include three which have not accepted the permanent ban on use of export subsidies.

Nineteen contracting parties are thus bound by one declaration or the other.

At the time these declarations were prepared, a number of less-developed countries expressed reluctance to undertake a commitment on export subsidies on manufactured goods and the Working Party's report accordingly records that "some members of the Working Party stressed that ... \(\text{these declarations were}\) of a voluntary character; they indicated that for various reasons their respective governments were not in a position to accept ... \(\text{these declarations}\) at the present time".

Countermeasures open to importing countries when export subsidies are used

Since the use of export subsidies by a country which has not accepted the two Declarations of 19 November 1960 is not prohibited as such, other contracting parties have no automatic right to complain against export subsidies and may also have no interest in doing so.\(^2\) Only if a subsidy or a dumping situation involving the export of a product at "less than normal value" results in injury in the importing country or injury to the interests of another exporting country which is a contracting party, may redress be sought, and the means of doing so are in turn surrounded by safeguards for the subsidizing country.

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\(^1\) They are the fourteen "key" countries listed in the preceding note, plus Japan, which is a "key" country in this context, Ceylon and Uganda.

\(^2\) In the Committee on Legal and Institutional Framework of GATT, the possibility of resort to Article XVIIIC was mentioned as possibly offering a means whereby a less-developed country might obtain advance permission to use export subsidies. This section begins in paragraph 13, referring to measures of governmental assistance required to promote establishment of a particular industry in cases where "no measure consistent with the other provisions of this agreement is practicable". In the following paragraphs a procedure is outlined concerning introduction of specific measures affecting imports. This procedure would not appear, as it stands, to be either necessary or appropriate in connexion with export subsidies contemplated by less-developed countries, since (1) the use of export subsidies is not, as such, inconsistent with the provisions of the agreement applicable to them (assuming they have not accepted either declaration) and (2) the measure under consideration is an export incentive rather than one affecting imports.
Article XVI review

The simplest and most direct means by which countries using subsidies to promote exports and the importing countries may consult together about the operation of subsidies is within the framework of consultations as envisaged in Article XVI and the examination of responses to the questionnaires on subsidies and State trading. Both bilateral and multilateral consultation is envisaged (paragraph 1). Examination of the operation of subsidies, on the basis of country notifications is also carried out every three years to give effect to paragraph 5 of Article XVI for the purpose of avoiding subsidization seriously prejudicial to the trade of contracting parties, and the review would provide a forum for discussing any troublesome subsidy measures.

Article XXII

Consultation under the procedures of Article XXII on the effect of subsidies presents a logical second means of attempting to find a satisfactory solution to subsidy problems, as a matter affecting the operation of the Agreement. There is at present no obligation on contracting parties to proceed through these various procedures in this order, but a procedure available at any time, upon request, and which avoids an atmosphere of accuser and accused, provides a good general starting point for more serious problems which cannot be resolved bilaterally or in the course of a general review.

Article VI

Countries which find they are suffering material injury may have resort to use of anti-dumping or countervailing duties in certain cases, but by no means all subsidies or all dumping give rise to situations permitting use of countervailing duties or anti-dumping duties, and in some situations a given amount of dumping or subsidy might not warrant such action even though in others it would. The general approach of Article VI is to impose strict limits on the circumstances in which redress may be had, and upon its amount and duration.
All three of these basic conditions must be met:

(1) Injury. Apart from all other facts, a contracting party must either itself be suffering or be threatened with material injury to its own domestic industry - and the case in which establishment of a domestic industry is being materially retarded is assimilated to this case - or there must be material injury to another exporting country which the importing country wishes to help (Article VI:6). In the latter situation, ordinarily the importing country would in addition have to obtain advance approval of the CONTRACTING PARTIES, though in exceptional circumstances where delay might cause damage difficult to repair, the duty may be imposed first and then reported to the CONTRACTING PARTIES on the understanding it will be withdrawn if disapproved (VI:6(b) and (c)).

(2) Price advantage. Imposition of anti-dumping or countervailing duties requires a determination either that goods are being exported at less than the domestic price of like goods in the exporting country (not counting tax refunds, which are permitted), in which case dumping is presumed and may be offset by the margin of difference; or that a bounty or subsidy is being afforded to the trade of the exporting industry, in which case the countervailing duty is limited to that amount. In no case can both types of penalty duty be applied to the same situation by a single importing country. Elaborate rules, which have been interpreted extensively, circumcribe the determination of the margin of dumping, and protect the exporting country from excessive charges by the importing country. These penalty duties apply only to imports from the country found to be subsidizing or dumping.

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1The Protocol of Provisional Application permits countries to deviate from compliance with the provisions of GATT to the extent that such deviation is required by mandatory legislation in effect at the time of their becoming parties to GATT. This is of relevance in connexion with Article VI in that one important country had, at the time of its becoming a party to GATT, mandatory legislation which does not permit taking account of the question of injury; if subsidization is found, countervailing duties must be imposed.

(3) Qualification of the aid measure. Dumping is defined in Article VI as the process by which exports are introduced into the commerce of another country at less than normal price. Subsidies or bounties are not positively defined, but the Agreement and its notes contain several partial guides to a definition, as do Panel reports and Working Party reports. Article VI itself specifically rules out countervailing duties or anti-dumping duties on account of refund or non-imposition of taxes or duties borne by like products when consumed in the domestic market (paragraph 4). Similarly, a stabilization system for primary products which results in an export price sometimes higher than the domestic price and sometimes lower is presumed, in paragraph 7, not to constitute a cause of injury to others if it does not stimulate exports unduly. An interpretative note (Note 2 to paragraphs 2 and 3) specifies that multiple currency practices may in some cases constitute an export subsidy or a form of dumping which may be met by countervailing or anti-dumping duties. A long but not necessarily exhaustive list of actions which many contracting parties would regard as export subsidies is contained in the Working Party report to the seventeenth session (98, BISD, p. 186) but it is clear that some such measures would not, in many or all cases, justify use of anti-dumping or countervailing duties.

The necessity that anti-dumping or countervailing duties satisfy all three of the foregoing conditions means that many situations may be envisaged in which dumping or, especially, subsidization could take place without much risk of counteraction. The nature of the export market may also widen the area within which subsidization causes no injury and hence provokes no counterclaims. An importing country with deficit production may welcome subsidized imports as benefiting its consumers. This would be especially likely if the importing country did not produce the article domestically at all.

**Article XIX**

In theory, at least, Article XIX offers a further recourse to a contracting party concerned with serious injury caused through increased imports which may, in part at least, result from subsidies or dumping practices. This solution, if adopted, would of course penalize imports from all sources, even though imports at less than fair value were coming from only one country source, as Article XIX does not permit discriminatory tariff action.

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1See Article VI:3 and interpretative note 2 to this paragraph; Article XVI:1 and interpretative note (general), also note to Section B; Panel Report, 98 BISD, paragraphs 9-13, pp. 190-192; Working Party Report, 98, BISD, paragraph 5, pp. 186-187.