ELEMENTS OF A CODE ON COUNTERVAILING MEASURES

Note by the United Kingdom Delegation

The United Kingdom delegation has asked that the following note is circulated to the Working Group to assist its consideration of possible lines on which further work could be done towards the suggested countervailing duties Code. This note represents only preliminary thinking at this stage but, because of the close relationship between anti-dumping and countervailing measures and the fact that Article VI of GATT deals with both, it seems desirable to introduce a measure of consistency between any new Code on countervailing duties and the existing Anti-Dumping Code. From the note it can be seen that a large part of the existing Code would be equally applicable to a new Code so that major problems in drawing up a new text might be minimized. Although, for the same reason, the adoption of such a Code would not be a major step forward, it would in our view make the contractual position on countervailing duties somewhat clearer and would remove certain anomalies which exist at present.

1. The Anti-Dumping Code interprets Article VI of the GATT and elaborates rules for its application in respect of anti-dumping duties. In the opinion of the United Kingdom it would be useful to consider whether a similar Code could be applied to countervailing duties.

2. In so far as it interprets concepts such as material injury which are quoted in Article VI as applying to both countervailing and anti-dumping action it would seem reasonable to hold that the interpretation given in the Anti-Dumping Code should apply equally to countervailing action.

3. In relation to procedures laid down in the Anti-Dumping Code which are not specified in Article VI (e.g. on notifying the countries and firms concerned; what is an "industry"; the public announcement of decisions reached) signatories are formally committed to apply them in relation to anti-dumping duties only. Although many countries no doubt already apply these procedures in countervailing duty cases also, it would be useful to make this a formal obligation.
4. The following Articles in the Code would be relevant also in relation to subsidization, the only changes necessary being, in general, the substitution of the words subsidy, subsidies or subsidization for dumping:

\begin{itemize}
\item \textbf{Article 1} - All countervailing action to be subject to Article VI.
\item \textbf{Article 3} - Determination of injury.
\item \textbf{Article 4} - Definition of industry for the purpose of an investigation (including the possibility of action on behalf of regional industries in certain circumstances).
\item \textbf{Article 5(a)} - Initiation of cases on application only (normally).
\begin{itemize}
\item (b) - Subsidization and injury to be considered simultaneously.
\item (c) - Application to be rejected, or the investigation stopped, if the effect of subsidization is found to be negligible.
\item (d) - Normal customs clearance of goods to continue.
\end{itemize}
\item \textbf{Article 6(h)} - Notification of decisions to the countries and firms concerned.
\begin{itemize}
\item (i) - If facts are withheld decisions may be taken on the information available.
\end{itemize}
\item \textbf{Article 8(a)} - Action to be permissive. A countervailing duty less than the margin of subsidization to be imposed, if this would suffice to remove the material injury.
\begin{itemize}
\item (c) - Duty not to exceed the subsidy element.
\end{itemize}
\item \textbf{Article 9(a)} - Countervailing duties to remain in force only so long as is necessary to counter materially injurious subsidization.
\begin{itemize}
\item (b) - Authorities to review cases at intervals and on request.
\end{itemize}
\item \textbf{Article 15} - Any changes in legislation, regulations etc. to be notified to the contracting parties.
\item \textbf{Article 16} - Annual Report to be made to the contracting parties on action taken.
\end{itemize}

It would be for consideration whether the Code provisions on provisional and retroactive duties (Articles 10 and 11) should be applied also in the case of countervailing duties. The question of machinery to review implementation would also arise.
6. Articles 2, 6(a) to (g), 7, 8(b), 8(d) and 8(e) of the Code could not be applied directly to countervailing action. But the following points might arise in this connexion:

(a) The accused government to be given a proper opportunity to comment on the charges.

(b) The investigating government to be given all reasonable information including the opportunity of personal discussions with the authorities directly concerned with the alleged subsidy.

(c) How any necessary enquiries of firms as well as governments should be conducted.

(d) The accused government to be given the opportunity of making suitable administrative changes as an alternative to countervailing duties, if the verdict goes against it.