GENERAL AGREEMENT ON
TARIFFS AND TRADE

Committee on Trade in Industrial Products

WORKING GROUP 1 - EXPORT SUBSIDIES

Note by the Secretariat on the Meeting of October 1972

1. Working Group 1 on Export Subsidies met on 9-10 October 1972, under the Chairmanship of Mr. Einar Benediktsson (Iceland) to continue its task of seeking ad referendum solutions to the problem of export subsidies covered by Article XVI:4.

2. The Group resumed its discussion from the June meeting on proposals regarding a refinement and elaboration of a definition of measures prohibited by Article XVI:4. Certain delegations reaffirmed their position that a major element in any solution to the problem of export subsidization would be for contracting parties to agree upon a list of measures whose implementation or maintenance could be prohibited. Such a list would be based on an extension and elaboration of the list of practices drawn up by the 1960 Working Party on Subsidies. The Group conducted an examination of the 1960 list, taking into account comments that had been made in that context at the June meeting. A number of modifications to the existing list were proposed, including the addition of the measures which the secretariat's background paper had described as being situated in a "grey area" due to the absence of an agreed interpretation of the GATT rules. In the opinion of certain delegations such a grey area did not exist but they supported the inclusion of these items if it served to clarify the obligations under Article XVI:4. The proposed additions to, and deletions from, this list are contained in square brackets in the annex. One delegation indicated that it would endeavour to put forward additional wording in regard to concessional export financing at a later date.

3. Some delegations were not convinced that drawing up a list of prohibited practices was the best way of dealing with the problem of export subsidies. A wide range of government measures existed which could stimulate exports in one way or another, but it seemed very unlikely that contracting parties would wish to prohibit all of them. Before starting work on a list, it would first be necessary to agree upon a set of general criteria for determining which measures, in fact, contracting parties wished to prohibit, as any list by nature would not be exhaustive. In fact, one result of the Group's work might be three lists of export incentive measures - those prohibited, those permitted, and those prohibited only if they resulted in trade distortion.

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1 Spec(72)61, paragraphs 2 and 7.
2 BISD, 9th Supplement, page 185.
3 COM.IND/W/73, page 3.
4. The Group had a preliminary discussion as to what would be included in such a set of criteria. It was pointed out that one general criterion for the prohibition already existed in Article XVI:4, i.e., that the export price of a product must be lower as a result of subsidization than the comparable domestic price. In this context certain delegations reiterated their interpretation of the two-price criterion to mean that the measures in the 1960 list (which again were only "generally" considered to be export subsidies) were only prohibited in cases where they resulted in the two-price situation. Other delegations, referring to previous interpretations of analogous sections of the General Agreement, were of the view that the two-price criterion in Article XVI:4 would cover the effective two-price situation arising from instances where the savings to exporters as a result of the subsidy were directed into advertising, promotion, research, etc., or were used simply to maintain the export price at a level no higher than the domestic price. Other delegations shared the view that the measures in the 1960 list were, in fact, subject to an absolute prohibition under Article XVI:4 and felt that the two-price criterion - or any other provision that might be interpreted as qualifying this prohibition - should be deleted, so that in future the prohibition of export subsidies would not depend on an interpretation of the concept of price or of any other term. Other delegations, while not agreeing that the measures in the 1960 list were absolutely prohibited, nevertheless believed that the two-price criterion should be eliminated. Certain other delegations, however, favoured the retention of the two-price criterion, in that it provided an objective way of determining whether any given practice constituted a breach of Article XVI:4.

5. It was agreed that at the next meeting more time would be devoted to examining possible general criteria for identifying an export subsidy. Among the considerations mentioned were:

(a) whether the prohibition should apply to particular measures in themselves, or only to practices resulting in distortion to trade of a certain magnitude;

(b) whether a qualifier such as the word "generally", used in connexion with the 1960 list, should be retained;

(c) whether indirect as well as direct taxes are relevant to the subsidies issue;

(d) whether rules should apply to general measures having the effect of increasing exports, or only to those directly linked to quantities of, or increases in, exports;

(e) whether any list of prohibited practices should be illustrative or binding; and

(f) whether domestic subsidies having export-stimulating effects should be covered in any definition or list of prohibited practices.

The references in this context were to previous interpretations of the concept of "to increase exports" in Article XVI:1 and of "increased quantities" in Article XIX:1.
6. Some delegations had a few initial comments in regard to these criteria, including (a) that there should be no qualifier to any list of prohibited practices, and (b) that although the probable trade effects of any measure were an important consideration in deciding whether it should be prohibited, from a pragmatic point of view it was much easier to determine the existence of a measure included on the prohibited list than to attempt to calculate its trade effects.

7. There was some consideration of the proposals included in the 1970 report of Working Group 1 and discussed at the June meeting in favour of more comparable treatment of primary products and for an improved definition of a "primary product". It was proposed that the obligations of Article XVI:4 be extended to cover all industrial products, i.e., HTN Chapters 25-99. Some delegations reiterated their understanding that, in accordance with previous practice, the Agriculture Committee would have the right to examine any ad referendum solution emanating from the work of Group 1, to determine its applicability to agricultural products.

8. As requested by the Committee on Trade in Industrial Products, the Group devoted some time to a discussion of problems arising from the provision of export financing at concessional terms among developed countries. An expert from the OECD gave a brief résumé of the progress made under the auspices of that organization in the field of export financing, including recently arrived at agreements on a procedure for prior consultation and a system for the exchange of information, and of the work contemplated for the future. The view was expressed that the GATT should leave the task of seeking solutions to problems arising from export financing to the OECD. It was pointed out, however, that the endeavours undertaken in the OECD had met with only limited success. For example, the effectiveness of the prior consultation procedure had been hindered by two important factors: (a) that interest rates had not been adequately dealt with, and (b) that certain major trading countries did not participate. It was pointed out that if the OECD were to draw up rules on concessional export financing, this could not prevent a contracting party from taking remedial action against export subsidy measures under the relevant provisions of the General Agreement. One member asked whether those delegations favouring leaving the matter to the OECD would be willing to waive these rights.

9. It was recognized that the interest rate, credit period, down-payment, repayment schedule and other factors such as local cost financing, were elements that would have to be adequately dealt with in any solution to the problem of concessional export financing. Most delegations were of the view that a solution to this particular problem should first be sought within the general context of export subsidies, and that the possibility of a separate solution in regard to concessional export financing, such as a code, should be kept open in case it proved that the importance or the complexity of the problem necessitated dealing with it on a separate basis.
10. One delegation pointed out that one of the main elements to any solution on export subsidies would be improved notification procedures. It was suggested that the secretariat prepare a catalogue of existing GATT notification procedures to assist the Group in its consideration of possible improvements. Other delegations pointed out that although they considered that notification procedures, including inter alia notification on demand, would be an important element of any solution, detailed consideration of any improvement should be postponed until further work had been accomplished on the refinement and elaboration of the obligations of Article XVI:4.

11. At this meeting the Group did not continue the discussion beyond that of the June meeting\(^1\) in regard to the proposals relating to (a) a wider acceptance of the obligations, (b) the revival of the standstill provision of Article XVI:4, and (c) possible action that might be taken in case of an infraction of the prohibition under Article XVI:4.

\(^1\)Spec(72)61, paragraphs 10, 11, 13.
ANNEX I

The words in square brackets indicate proposed modifications to the 1960 indicative list of export subsidies.\(^1\) Double brackets indicate suggested deletions from the existing text.

(a) Currency retention schemes or any similar practices which involve a bonus on exports or re-exports;

(b) The provision by governments of direct [subsidies] [economic assistance] to exporters;

(c) The remission, [or deferred] [calculated in relation to exports] of direct taxes or social welfare charges [paid by] [or payable by] industrial or commercial enterprises; [when the criterion for remission [or deferral] is related to the export activities of the enterprise];

(d) The exemption, in respect of exported goods, of charges or taxes, other than charges in connexion with importation or indirect taxes levied at one or several stages on the same goods if sold for internal consumption; or the [payment]; [rebate of charges or taxes] in respect of exported goods [of amounts exceeding those] [effectively] levied at one or several stages on these goods in the form of indirect taxes or of charges in connexion with importation or in both forms; [or components thereof, which result in payments exceeding the amounts of charges or taxes levied directly on the exported products];

(e) In respect of deliveries by governments or governmental agencies of imported raw materials for export business on different terms than for domestic business, the charging of prices below world prices; [and for such deliveries of raw materials of domestic origin, the charging of prices for such materials destined for processing for export sales, below those charged for materials destined for processing for domestic sales];

(f) [In respect of government export credit guarantees, the charging of premiums at] [The provision by governments, (or special institutions controlled by governments) of export credit guarantees or export risk insurance at premium rates which are manifestly inadequate to cover the long-term operating costs and losses of the credit insurance institutions];

\(^1\)BISD, Ninth Supplement, page 185.
(g) The grant by governments (or special institutions controlled by governments) or export credits at rates below those which they have to pay in order to obtain the funds so employed;

(h) The government bearing all or part of the costs incurred by exporters in obtaining credit.

(/j) The deferral of direct taxes in respect of exported goods.\)

(/k) The allowance of special deductions related to exports in the calculation of the base on which direct taxes are charged:

- accelerated depreciation allowances on capital goods used in the production of exports;

- deduction of special reserves set aside to cover risks connected with export sales on medium-term credit;

- deduction of export promotion or market development expenses.\)

(/l) The accordance by governments of special advantages to exporters in obtaining credit.\)

(/m) The government bearing all or part of the costs incurred by exporters in obtaining insurance cover.\)

(/n) Transport and freight subsidies on export shipments.\)