Committee on Trade in Industrial Products

Working Group 1

EXPORT SUBSIDIES, COUNTERVAILING DUTIES AND DOMESTIC SUBSIDIES THAT STIMULATE EXPORTS

Note by the Secretariat on the Meeting of April 1973

1. Working Group 1 of the Committee on Trade in Industrial Products met on 10-12 April 1973 under the chairmanship of Mr. Einar Benediktsson (Iceland). In addition to continuing its work on export subsidies the Working Group was also assigned the task of developing ad referendum solutions to the additional problems of counter­vailing duties and domestic subsidies that stimulate exports.

Export subsidies

2. As had been agreed at the October meeting, the Group continued its examination of possible general criteria for determining which measures should be prohibited and discussed the considerations outlined in Spec(72)129, paragraph 5. It was generally thought that it was much easier to determine the existence of a prohibited measure than to attempt to calculate its trade effects. Some delegations were of the view, however, that there should be a general prohibition of export subsidy measures which distort trade. It was agreed to adopt as a working technique an approach that would involve the general principle that countries should not institute or maintain export subsidy measures that distort trade and draw up a list of practices that would be prohibited. The general view was that the list should not be exhaustive, as it could not be expected to cover every possible type of export subsidy, however, some delegations thought that it nevertheless should be binding in that there would be no qualification to the prohibition of the measures on the list. Some delegations agreed to this working technique, it being understood that for the time being the 1960 list would remain in force.

3. The Group then turned to an examination of measures that could be included in a list of prohibited practices. It considered the following list, based on the suggestions of one delegation but incorporating the comments of some other delegations.

(a) Rebate of indirect taxes on exports in excess of accrued charges on like products for sale in the domestic market.

(b) A deduction, deferral or credit allowed against a tax payable based on the export performance of a firm.
(c) Remission calculated in relation to exports, of taxes not borne by the products (taxes occultes).  

(d) The accordance by governments of special privileges to a firm based on its export performance, such as the extension of time for the repayment of loans, easier access to credit, or more favourable terms in export insurance programmes.

(e) Tax rebate allowed in addition to a normal deduction in calculating income tax payable for expenses incurred in developing markets abroad.

(f) Loans to firms on concessionary terms to finance the cost of developing new markets abroad, but where the obligation to repay the loan is forgiven if the firm is not successful in developing a new market abroad.

(g) Sums excluded from taxable income when allocated to a special reserve to cover special risks in exporting (bad debts, etc.).

(h) Government procurement policies which provide an assured domestic market for producers of certain industrial products (e.g. heavy electrical equipment), thus enabling such firms to realize economies of scale and permit quotation of competitive prices in export markets.

(i) Cases of exportation where a domestic buyer of a locally-made product is paid a premium equal to the difference between a "standard price" set by national authorities and the duty-paid price of a comparable product.

4. The following preliminary comments were made by various delegations on some of the points in the list in paragraph 3 above:

(i) With regard to point (c) in paragraph 3 above, some delegations noted the findings of the Working Party on Border Tax Adjustments with regard to "taxes occultes".  

---

1The following examples were given of taxes not borne by like products:

(i) Customs duties on plant and equipment (as opposed to customs duties on raw materials consumed in the manufacturing process)
(ii) Stamp taxes for shipping and other documents
(iii) Registration taxes on deeds and documents
(iv) Mortgage taxes
(v) Taxes on insurance
(vi) Advertising and publicity taxes
(vii) Taxes on government licenses and permits
(viii) Registration and other motor vehicle taxes

2BISD 18th Supplement page 101, paragraph 15
(ii) On point (d) some delegations did not consider that the granting of privileges to certain exporters could, in all cases, be considered to be a subsidy.

(iii) A number of delegations could not understand how the situation in (f) could be considered as an export subsidy as it seemed that no exports would take place.

(iv) Many delegations were of the view that (h) was outside the Group's terms of reference and pointed out that a similar situation could be created by high customs duties or other protective devices.

(v) Some delegations could not see how the practice described in (j) could constitute an export subsidy.

5. The Working Group then examined the suggested modifications to the 1960 list of practices which had been proposed at the previous meeting, and drew up the following text for further consideration by the Group.

(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 to exporters;

(c) The remission or deferral 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 or performance 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 rebate of charges or taxes in respect of exported goods or components thereof, which result in payments exceeding the amounts of charges or indirect taxes levied 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.

1 Spec(72)129 Annex 1
(f) The provision by governments, (or special institutions controlled by governments) or export credit insurance and guarantees, or insurance against increases in the costs of products at premium rates which are manifestly inadequate to cover the long-term operating costs and losses of the insurance institutions.

(g) The grant by governments (or special institutions controlled by governments) of 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 allowance of special deductions related to exports in the calculation of the base on which direct taxes are charged, such as 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; or deduction of export promotion or market development expenses beyond that of actual costs incurred.

(k) The government bearing all or part of the costs incurred by exporters in obtaining transport and freight insurance cover.

(l) Transport and freight subsidies on export shipment on terms more favourable than for domestic shipments.

6. It was noted that there was a certain amount of overlapping between the provisions in the lists in paragraphs 3 and 5 above and that an effort should be made at the next meeting to merge the two lists. Delegations were invited to submit additions to these lists for consideration at the next meeting. It was also suggested that certain concepts should be more clearly defined, such as "export shipment", "indirect" and "direct" taxes etc.

7. It was agreed that other possible elements of an ad referendum solution for export subsidies which had already been discussed in previous meetings such as, the extension of the prohibition to cover all industrial products, a separate solution for concessional export financing, wider acceptance of the obligations, improved notification procedures and revival of the standstill provisions would be returned to at a later meeting of the Group.

8. Representatives of developing countries stated that it was their understanding that the solutions to export subsidies were being developed in the context of an elaboration and refinement of the provisions of Article XVI:4. They explained that, as Article XVI:4 was not in effect for their governments, they had refrained from participating in the development of solutions which would not be applicable to them. Another delegation noted, however, that some developing countries were bound by the provisions of Article XVI:4.
B. Domestic subsidies that stimulate exports

9. In the view of a large number of delegations possible elements to a solution to the problem of domestic subsidies that stimulate exports would consist of devising improved procedures. These delegations were of the view that the issues of general subsidy measures and export subsidies which implied differential treatment should not be confused as they were usually applied for different reasons.

10. One delegation stated that while the area of export stimulating measures and regional aids might require a different treatment to that of export subsidies, they did not really constitute separate problems. This delegation put forward the following text for consideration by the Group.

"The following government aids constitute an export subsidy whenever, with respect to a production activity receiving such aids, the aids involved are greater than a de minimus amount and the percentage of the output exported is significant.

(a) Aids to plant modernization under which a firm is granted a special tax depreciation allowance on production equipment in addition to the regular depreciation allowance.

(b) Research and development activities in advanced technologies, underwritten by the national government, where the technologies developed are turned over to the private sector for commercial exploitation.

(c) Sale of electric power by a government-owned utility to certain industries (aluminium, ferro-alloy producers) at rates below those charged other comparable industrial users.

(d) Agreements entered into between a national government and a domestic firm where the latter undertakes a large development project (aircraft, computers) based on a guarantee the government provides to make up the difference between actual sales (domestic and foreign) and the firm's break-even point."

11. Other delegations considered that this approach brought up serious considerations of principle in that it confused the distinction between subsidies not specifically prohibited under Article XVI:1 and export subsidies per se under Article XVI:4. There were also difficulties in that the concept of significant percentage of output exported would differ between small countries and those having a large domestic market. The expression "de minimus aid" would also require a definition which could vary in different situations.

12. One delegation pointed out that regional aids could have trade distorting effects especially when plants were set up specifically to export to another country. Another delegation felt that any rules on domestic subsidies should not
be such as to restrict regional programmes. A third delegation was of the view that regional aids would have to be included in any solution to trade distorting domestic subsidies. It was pointed out that in most cases regional aids were given to industries merely to compensate them for locating in a disadvantageous area but did not have trade distorting effects.

13. It was pointed out that the Committee on Trade in Industrial Products had left it to the Group to decide whether or not to expand its mandate to cover domestic subsidies with an import replacement effect. One delegation pointed out that consideration of solutions of the subsidy issue would not be complete if it did not include measures with import replacement effects, noting that they were specifically referred to in Article XVI:1. It was proposed that the Group should deal with these subsidies at its next meeting. At the request of certain delegations, however, a decision on this matter was postponed.

C. Countervailing duties

14. Some delegations considered that the major problem in regard to countervailing duties was the fact that not all contracting parties had accepted the provisions of Article VI:6(a) requiring proof of material injury and that the acceptance of the injury criterion by all contracting parties should be the fundamental element of any solution. These delegations suggested that the Group adopt the approach that had been proposed earlier (COM.IND/W/98, Annex III); i.e., a code on countervailing duties that would be similar to the Anti-Dumping Code and constitute a further interpretation of Article VI. The first element to be discussed in the code would be the provisions relating to the definition and the determination of injury. Some delegations took the position that all contracting parties should adopt a meaningful material injury test for all countervailing duty actions and that there was need for a better definition of material injury than that contained in the Anti-Dumping Code.

15. Other delegations pointed out that, unlike anti-dumping duties, countervailing duties were a response to deliberate government measures. In their view the basic problem for which solutions should first be sought was that of export subsidies. If an adequate solution could be found to export subsidization, countervailing duties would cease to be a problem. In cases where a contracting party subsidized its exports in breach of its GATT obligations, it did not seem reasonable to require the affected country to prove that material injury was caused or threatened to its domestic industry.

16. Certain delegations maintained their support for the approach suggested in paragraph 14 above. Although they recognized the relationship between Article XVI and Article VI, they felt that any solution sought for countervailing duties should be within the context of the clear provisions of Article VI. A possible code of conduct such as that outlined in Annex III of COM.IND/W/98 would
be designed to prevent countervailing actions from becoming non-tariff barriers. It was difficult to see how this could be achieved if the prohibitions in Article VI against countervailing duties in the absence of injury were ignored. One of these delegations suggested that the distinction between prohibited and permitted subsidies in Article XVI could be taken into consideration in the application of Article VI.

17. Representatives of developing countries pointed out that in their view countervailing duties should not be applied to their exports. Developing countries were not bound by the prohibition on export subsidies and in fact they felt it was recognized in Part IV of the General Agreement that certain export incentives were a legitimate method for developing countries to increase their exports. Since exports under these incentive schemes from developing countries were not in breach of GATT rules, and as the growth of exports from developing countries was recognized as an objective of the GATT, counter measures should not be taken against these exports.

18. In the view of one delegation, the GATT rules on countervailing duties were not adequate to protect exporting industries from injury caused by competition from subsidized exports in third country markets. The provisions of Article VI did not require the importing country to take action to offset the subsidies and in fact it might, in many cases, be in the third countries' interests not to do so. If, on the other hand, the importing country did decide to apply countervailing duties, this action required approval by the CONTRACTING PARTIES. Article XXIII offered another possible approach and one member noted that it was now applying Article XXIII procedures in such a case to test their efficacy. Finally, it was suggested that the affected party could also be empowered to act directly by suspending a concession or obligation of interest to the contracting party maintaining the export subsidy.