Committee on Trade in Industrial Products

Working Group 1

EXPORT SUBSIDIES, COUNTERVAILING DUTIES, DOMESTIC SUBSIDIES THAT STIMULATE EXPORTS, AND SUBSIDIES WITH IMPORT SUBSTITUTION EFFECT

Note by the Secretariat on the Meeting of June 1973

1. Working Group 1 of the Committee on Trade in Industrial Products met on 26 and 27 June 1973 under the chairmanship of Mr. Einar Benediktsson (Iceland) to seek solutions to the problems of export subsidies, countervailing duties, domestic subsidies that stimulate exports, and subsidies with import substitution effect.

2. In a general statement one delegation pointed out that it was quite proper for GATT to give some thought to aids which can have the effect of distorting competition. It nevertheless pointed out that in its opinion it was desirable in any case to deal separately with export subsidies on the one hand, and domestic subsidies that stimulate exports and subsidies with import substitution effect on the other. It argued that the second category of subsidies involved different aspects of one and the same problem which in the absence of an overall solution call for piecemeal solutions based on the procedures laid down in Article XVI:1.

3. In reply to that general observation, another delegation said that while those various types of aid undoubtedly produced the same practical effects, on the other hand it was difficult to envisage a common solution for all the subsidies involved. With regard to export subsidies, the delegation in question considered that the solution of the problem lay in the acceptance by the CONTRACTING PARTIES of a non-exhaustive but definitive list of practices prohibited under Article XVI:4. With regard to domestic subsidies that stimulate exports, it suggested going beyond the provisions of Article XVI:1 and drawing up also a list of prohibited practices including criteria for their appraisal. The same delegation raised the question of what the other delegations felt to be the solution in the case of subsidies with import substitution effect.

4. Other delegations then asked what would happen to practices not included in the list of prohibited export subsidies and in a more general way whether it was desirable, in the sphere of domestic subsidies that stimulate exports, to go beyond the terms of Article XVI:1, as had proposed one delegation.
A. Export subsidies

5. Three documents were submitted for examination:

(a) The list of prohibited practices drawn up in 1960 and amended at the previous meeting of the Working Group (Spec(73)18, paragraph 5).

(b) A list of prohibitions submitted at the previous meeting by one delegation and examined on that occasion (Spec(73)18, paragraph 3).

(c) A list distributed by this latter delegation during the current meeting (INT(73)58).

It was agreed to adopt as a working technique an approach combining these various lists so as to produce a composite document, and finally the following list was drawn up at the end of the meeting, it being understood that this list did not commit any delegation and that the 1960 list remained as it stood.

6. The Working Group examined the following list of prohibited practices:

(a) The provision by governments of direct subsidies to exporters.

(b) Internal transport and freight subsidies on export shipments on terms more favourable than for domestic shipments.

(c) The government bearing directly or indirectly all or part of the transport or freight charges incurred on export shipments beyond national frontiers.

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

(e) The government bearing all or part of the costs incurred by exporters in obtaining credit for financing export shipments.

(f) Government loans to exporters on concessional terms for working capital purposes, where such loans enable the exporter to offer concessional sales terms, including financing.

(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 provision by governments (or special institutions controlled by governments) of 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.
(i) The accordance by governments of preferred treatment to certain exporters based on their 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.

(j) Loans that minimize the risk involved in developing new markets abroad, (i.e., the obligation to repay the loan is forgiven if the firm is not successful in developing a substantial market abroad.)

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

(l) Special government measures to offset, in whole or in part, the price disadvantages on exports that result from its own or other countries' exchange rate adjustments.

(m) The remission (including credit allowances) or deferral of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises when the criterion for remission or deferral is related to the export performance.

(n) 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.

(o) The allowance of special deductions related to exports, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged (e.g., 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).

(p) Tax rebate allowed beyond that of actual costs incurred, in calculating income payable for expenses incurred in developing markets abroad.

(q) Rebate of indirect taxes or charges on exports or components thereof, in excess of accrued indirect taxes or charges on the exported products.

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It was understood, as suggested by the representative of the IMF, that the "special government measures" were measures other than through the exchange rate system, since the latter could give rise to multiple currency practices, which fell under the competence of the Fund.
(r) Remission calculated in relation to exports of taxes not borne by the products (taxes occultes).

(s) The reduction of the direct tax burden on producers and exporters of a product accompanied by an increase in the indirect taxes borne by the same product.

(t) 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.

(u) Government payments to producers or exporters that vary with the value of domestic materials used in the manufacture of goods for export.

7. The following comments were made by various delegations on certain points in the list in paragraph 6 above:

(i) On point (c), it was noted that "transport of freight charges" were not to be understood to include ship-building subsidies.

(ii) On point (j) some delegations pointed out that a situation as described in this paragraph could not lead to trade damage in the sense of Article XVI:2.

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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 licences and permits

(viii) Registration and other motor vehicles taxes.
(iii) On point (1), some delegations were of the view that this point should not be included in a list of prohibited practices because "special government subsidies" were either outright subsidies and were therefore covered under other points, or they were measures taken for domestic reasons and as such did not constitute subsidies. A number of delegations thought that the measures in question should be considered in the light of their implications, and that the matter needed further reflection. One delegation specified that the provision should not include any temporary measures taken by government in view of compensating exporters for losses incurred as the result of changes in the exchange rate (e.g. when an export contract is closed at one rate of exchange, but payment is later effected at a different rate).

(iv) On point (r), some delegations recalled the findings of the Working Party on Border Tax Adjustments with regard to "taxes occultes". (BISD 18th Supplement page 101, paragraph 15).

(v) On point (s), some delegations were of the view that this practice did not constitute an export subsidy. They recalled the extensive work undertaken on the subject in the Working Party on Border Tax Adjustments, and the view held by most members of that Working Party that the present rules served the purposes of trade neutrality of tax adjustment appropriately and that no motive could be found to change them. (L/3464, paragraph 9).

(vi) With regard to point (t), one delegation drew attention to the fact that, whereas the 1960 list contained two criteria on this point, namely that of price differential for raw materials between export business and domestic business, and that of prices below world prices, in the present formulation of the second alternative only the former criterion had been retained.

B. Domestic subsidies that stimulate exports and subsidies with import substitution effect

8. Many delegations expressed reservations on the proposal made by one delegation at the previous meeting of the Working Group that a list be drawn up of prohibited practices in the field of domestic subsidies that stimulate exports. The reservations applied in particular to the general criteria contained in the proposal, namely a "de minimis aid", and the statement that "the percentage of the output exported is significant". While they agreed that the procedure laid down in Article XVI:1 was not altogether satisfactory, these delegations felt that the solution of the problem was to improve that procedure rather than to create new commitments.

9. The delegation which had proposed a definition of domestic subsidies that stimulate exports assimilable to export subsidies recognized the difficulties of formulating such a definition, but expressed the hope that the Working Group would take a decision on the principle of drawing up such a list of prohibited practices.
and produce a precise definition of the criteria for subsidies that stimulate exports. In that context it proposed that the following further point should be added to the list proposed previously (Spec(73)18, paragraph 10): "Grants, loans on concessionary terms and reduced taxes". On the other hand the same delegation argued strongly that the proposed solution of improving the procedures laid down in Article XVI:1 might prove fruitful but that its aim was more ambitious, which explained why it had made concrete proposals.

10. Some delegations pointed out that recourse to the provisions of Article VI on countervailing duties was the appropriate procedure in the event of a determination that a domestic subsidy that encouraged exports was causing a material injury. Recourse to Articles XXII and XXIII was still possible in order to settle problems arising from a subsidy of any kind, including subsidies with import substitution effect and in order to ensure observance of obligations under Article XVI:4. Another delegation said in reply to those suggestions that countervailing duties did not constitute an adequate remedy for the specific problem envisaged and that in any case, recourse to Articles XXII and XXIII had proved unfruitful in the past in concrete cases of export subsidies. Moreover, a procedure based on Article XXIII and concerning the same subject had just been introduced by the authorities of that same delegation vis-à-vis another contracting party.

11. The proposal to draw up a list of prohibited practices in regard to domestic subsidies that stimulate exports prompted some delegations to point out that domestic aids were more often than not tied to a policy of regional development coming exclusively within the jurisdiction of States anxious to offset the geographical handicap affecting certain industries and hence came outside the field of application of Article XVI. Another delegation replied that in several instances, in particular where a significant part of the production of an undertaking enjoying government aid say, 60 to 80 per cent, went into exports, serious problems arose in international trade and solutions must be found for that type of situation within the framework of GATT.

C. Countervailing duties

12. One delegation recalled the proposal it had made at the previous meeting of the Working Group to the effect that the problem of countervailing duties would be solved if a satisfactory solution were found for that of export subsidies. Since there is a close connexion between the two categories of measures, the same delegation raised the question whether a code relating to countervailing duties, as had been proposed by certain delegations, would apply merely to the export subsidies included in the list of prohibited practices drawn up by the Group, or to all subsidies.
Those delegations which previously had supported the idea of drawing up a code replied that it would apply to any recourse to the provisions of Article VI in respect of the application of countervailing duties. There was after all no interdependence between Articles VI and XVI of the General Agreement, since the object of the former is to limit the action of governments in regard to countervailing duties so as to avoid measures of a protectionist nature. The same delegations added that the basic feature of Article VI and of any code was proof of injury. They also pointed out that the list of prohibited practices in regard to export subsidies was not exhaustive and that, moreover, difficulties of interpretation would be bound to arise, and those additional factors indicated the need to draw up a countervailing duty code.

The delegation referred to in paragraph 12 could not accept this interpretation, pointing out that it was hardly reasonable to expect a government to prove the existence of injury before applying countervailing duties in the event of the government of another country subsidizing the exports in question in violation of its obligation under the General Agreement. The delegations which had made statements previously then pointed out that acceptance of such an interpretation would make it possible for a contracting party to serve its own interests since it would be in a position to interpret the obligations of another party unilaterally.

It was finally agreed that the secretariat, in order to establish a basis for discussion for future work, should produce a working document designed, in accordance with the scheme proposed previously by one delegation (COM.IND/W/98, Annex III), to adapt certain provisions of the anti-dumping code to countervailing duties.