1. At its meeting in November 1975 the Sub-Group "Subsidies and Countervailing Duties" reiterated its agreement that participants be invited to submit comments on problems encountered in the areas of subsidies and countervailing duties as well as any specific proposals for appropriate solutions to these problems including, where feasible, draft texts or suggestions. It was also understood that delegations which had already submitted comments or proposals might wish to revise them in the light of the discussion. The Sub-Group also invited participants to submit in writing any additional observations or questions they might have in respect of submissions by other members (MTN/NTM/10, paragraph 2 and GATT/AIR/1242).

2. A communication has been received from Mexico and is reproduced hereunder.

3. Delegations wishing to respond to these invitations are requested to do so without delay.

At international level, the efforts of the governments of developing countries to promote their industrialization and their exports are frustrated by the fact that other countries can take or threaten to take measures of a restrictive kind.

Specifically, the problem of the application of countervailing duties is a matter of concern for developing countries in the short term as well as in the medium and long term. It has been found that nothing affects the export trade of these countries so much, and that the threat or the actual application of a countervailing duty or duties has harmful effects on production programming.
Indeed, producers in a developing country whose government has been notified that a countervailing duty might be applied in respect of it are faced with a threat that changes their future prospects. Because of this change, and being in a situation of uncertainty, they cut down - or sometimes hold down - production, thereby slowing the investment rate in the activity concerned, with resulting idle capital as well as labour resources. Because of the well-known rigidities existing in the production structure of the majority of developing countries, the producer or producers cannot easily re-allocate these resources to new activities. In the short term too, the governments of developing countries are adversely affected by any threat by another country to impose a countervailing duty. Indeed, in discussions and bilateral negotiations designed to seek solutions in the event of the application or threat of application of countervailing duties, the developing country usually finds itself at a disadvantage vis-à-vis the developed country because it lacks negotiating power and cannot hold off pressure from the stronger party, and furthermore because the criteria governing such negotiations are purely ad hoc. So that instead of these negotiations taking place within the framework of internationally accepted objective criteria, they are conducted in a highly subjective context and in many instances the outcome depends on other elements that are alien to the strict problem of countervailing duties and are more closely linked to the situation of the product in the market of the importing country, increases in sales, increases in imports, the "restrictive" or "liberal" climate prevailing in the importing country and/or the political will of the country wishing to apply the countervailing duty.

When a countervailing duty has been applied, three main negative effects can be observed in the short term for developing countries - namely in respect of production, exports and supply surpluses. The first of these has already been mentioned and the same situation arises in the event of threat of application of a countervailing duty. Exports will tend to decline, if not disappear completely, because the exporting country's competitive margin is impaired as the price of the product in the foreign market is increased. Lastly, the application of a countervailing duty generates supply surpluses in the short term that it is very difficult, often even impossible, to place in other markets, resulting in substantial losses of foreign exchange export earnings for the country affected, and furthermore in respect of producers' profits so that the latter will have less incentive to produce more.

In the long term, the constant possibility that a countervailing duty may be applied unilaterally and on the basis of purely internal criteria of the country imposing the measure has substantially inhibited the free adoption by developing countries of their promotion policies in respect of production, exports and development in general.
Mexico has presented in detail its position regarding the bases for negotiation of a code on countervailing duties. In brief, at this meeting the Mexican delegation wishes to reaffirm its view that it is necessary to establish a set of rules in the course of these multilateral trade negotiations, under which countries would undertake to observe objective and internationally accepted criteria whenever the need arises to consider the possibility of applying countervailing duties; and furthermore to establish special procedures and differentiated treatment in favour of developing countries, taking into account the existing problems and designed to contribute to overcoming those problems for the benefit of those countries.

Specifically, Mexico considers that any procedure that may be adopted for the solution of problems in the field of countervailing duties should include the following elements, inter alia:

1. The basis should be the general principle of exemption for developing countries.

2. In pursuance of that principle, Article VI of the General Agreement should be amended in line with the provisions of Article XXXVII:3(c), so as to stipulate differentiated treatment in favour of developing countries.

3. The most practical solution would be to draw up a code independent of the General Agreement, reflecting the spirit and the letter of Article VI, amended as indicated in paragraph 2 above. This code would be open to acceptance by all members of the Trade Negotiations Committee.

4. The code should regulate and define in detail those cases in which a countervailing duty may be applied and also, in each case and in each article establishing general rules, all relevant elements for special and differentiated treatment in favour of developing countries.

5. In parallel with the establishment of the code proposed in paragraphs 3 and 4, a multilateral surveillance body should be set up, in which there would be adequate representation of developing countries, to exercise continuing surveillance over the proper operation of the proposed code.

6. Without prejudice to the definitive form of the proposed code, it should contain, in addition to the concepts and special rules corresponding to differentiated treatment as mentioned in paragraph 4, an operative part providing special procedures in favour of developing countries such as, inter alia:

(a) No procedure for the application of countervailing duties may be initiated against a developing country by reason of a mere presumption of "threat of injury".
Material injury must be shown to exist in an entire representative industrial sector, not merely in one undertaking or group of undertakings.

Consultations must be held among interested countries at the time when the existence of injury is examined.

If no agreement is reached under sub-paragraph (b) above, the matter may be brought before the multilateral surveillance body.

Where injury has been found to exist a reasonable period of time must be allowed so that the developing country that could be affected by the countervailing duty can take appropriate action to avoid application of the duty.

With respect to subsidies, Mexico considers that in the present multilateral trade negotiations there should be recognition of the need of developing countries to grant subsidies in order to promote their economic development.

Likewise, Mexico considers that in this respect special treatment should be provided for developing countries, and therefore presents the following suggestions:

1. It would be important to establish as a general principle that developing countries can grant subsidies of any kind, whether for domestic reasons or in connexion with export promotion, in the context of their development and industrialization policy.

2. Article XVI:1 and 3 of the General Agreement should be amended so as to prohibit the grant of export subsidies by developed countries in respect of their primary products, in order that developing countries producing the same primary products may not be faced with ruinous competition; and even if developing countries are not bound by paragraph 4 because they have not signed the relevant Declaration, this paragraph should be amended so as to allow them de jure to apply any measure likely to encourage and promote their exports of manufactures and semi-manufactures; that amendment should be based on Article XXXVI:3 and 5 of the General Agreement, which already envisage special treatment in favour of less-developed economies.

3. As regards subsidies affecting exports of third countries, the following mechanism could be adopted:

(a) Developing countries should be allowed to utilize subsidies regardless of the effects that these could have on exports from developed third countries, and the latter should not take any measures or present any complaint, even if indirectly affected.
(b) Where subsidies granted by developed countries affect exports from developing third countries, the latter may request the importing country, whether developing or developed, to take measures.

(c) If, furthermore, subsidies are granted by developing countries and are shown to constitute an unfair practice under the rules established, and injury is shown to be caused thereby to the exports of another developing country, there should be provision for consultations between these countries in order to seek satisfactory solutions.

4. Lastly, as in the case of countervailing duties, when general rules on subsidies are drawn up, agreement should be reached simultaneously on special rules for developing countries, without separating them from the general rules. Each general principle should be accompanied by appropriate elements affording differentiated and more favourable treatment for developing countries.

Below are some comments on the observations presented in writing by various delegations.

The Austrian delegation mentions a code or interpretative notes to the relevant articles of the General Agreement. Other delegations (Canada, EEC) state that Articles VI and XVI have not been fully applied and that, furthermore, they are imperfect. In the view of my delegation it would be wise, therefore, to establish independent and compulsory rules for everyone because in the case of countries like Mexico which are not members of GATT it could be very difficult to observe a particular article of the General Agreement.

The Mexican delegation reaffirms its traditional support for the proposals made by the Brazilian delegation. With respect to paragraph 11(b) developing countries should be exempted in principle and, in exceptional cases and where injury has been proved, there should be consultations with a view to reaching agreement to prevent the application of countervailing measures, so as to give developing countries the possibility of taking steps to alleviate the injury.

Nevertheless, as regards paragraph 12 of the document, we do not accept the idea of a positive list because we believe it would be in the interest of the developing countries themselves to act on the basis of exemption.

With reference to paragraph 16, we consider that the standstill must be absolute so long as no new rules are adopted, and we could not accept any exceptions in the undertakings entered into by the developed countries. This would be inconsistent with the undertaking given by the developed countries in OECD, and reaffirmed at the last two sessions of the CONTRACTING PARTIES.
In connexion with the document presented by the United States, we agree with that delegation's statement that subsidies can affect normal market forces. This is certainly so in the case of equal countries but, as has been pointed out by India and also Canada, other forces and tendencies operate among unequal countries, and consequently this assertion cannot be applicable to the export trade of developing countries.

With respect to sales of subsidized products to third countries, this can operate in favour of developing countries if it is applied as differential or special treatment, but not in a general form as the United States propose. It must be taken into account that one of the principal objectives of our development policies is diversification of our markets.

As regards the import replacement argument, this runs counter to development policies in which import replacement is a first step in the industrialization process of the country concerned, and the remarks made by the United States delegation are therefore totally unacceptable.

We understand that the categorization of subsidies proposed by the United States is designed to establish norms for relations among developed countries and no doubt we cannot oppose this, particularly if the developing countries are to be exempted from such norms through differentiated treatment. The United States delegation itself points out that subsidies linked to socio-economic goals will require special rules, and we are in agreement. This is precisely the case for the subsidies of developing countries.

As regards the possible framework for a solution (prohibited, conditional, permitted), the Mexican delegation considers that it would be premature to express an opinion on this occasion. In any case, it must not be applicable to developing countries, and if this idea were approved as a working basis, consideration would have to be given simultaneously to a different categorization for developing countries.

Just one word more on subsidized competition to third-country markets, as mentioned in the United States paper. This is unacceptable where exports of developing countries are concerned. In earlier paragraphs we have indicated the criteria that should be applicable to developing countries in such cases.

As regards the reference to treatment of developing countries, and specifically that this treatment should be geared to periods linked to achieving particular development objectives to the various statements already made by my delegation concerning what we understand by "special treatment" I shall merely add that, as the Indian representative said yesterday, what we need is not equal treatment but equitable treatment so long as we are developing countries. We must immediately reject the view of the United States delegation that a developing country will have to relinquish certain benefits when it becomes competitive in certain sectors, for
two reasons inter alia: first, no criteria exist for determining the "level of competitiveness" of a country which furthermore take into account the dynamism of economies, so that at best the analysis would be partial. Second, it is ultimately the government of the developing country concerned that must determine whether its exports still need support, and it must not be obliged to observe criteria established by other countries. The day when my country reaches the level of development of the United States, we shall be perfectly in agreement with that country's observations in this respect.

What the Canadian delegation has stated in its paragraphs 1, 2, 3 and the last part of 9, confirms our view that everything negotiated should be embodied in a new code; the experience of Canada seems to have been that neither the relevant articles of the General Agreement nor the Anti-Dumping Code have been observed. That is why we are pressing for revision of the General Agreement.

In particular, we share the view expressed by Canada in paragraph 4, and agree that in any case the existence of injury and its gravity must be determined by means of an appropriate - we would say strict - examination.

In addition, the Mexican delegation supports the views set forth in paragraph 12 of the Canadian delegation's submission.

It is clear to us that in regard to special treatment for developing countries, new rules are needed and as the Canadian delegation states, it will not be sufficient - and in any case not automatic - for our interests to be taken into account through an adequate definition of "material injury" and a system of international surveillance; that is why we do not accept such interpretations which, at best, seem optimistic. We are not opposed to special rules in favour of developing countries being formulated in the light of the general rules, and in this respect our position has been clearly indicated.

In connexion with the comments presented by the EEC, my delegation wishes to reaffirm that Mexico can accept virtually any working hypothesis and or working basis, provided it is understood that in the basic definitions, provision must be made for the appropriate differentiations in favour of developing countries.

In connexion with the EEC's comments on Article VI, we have stated time and time again that we want this Article to be amended, at least so as to incorporate in it the elements set forth in Article XXXVII:3(c). That is why we are not in agreement with the Community regarding the merits of Article VI.

As regards the definition of subsidy, that will depend on whatever this Group decides regarding the procedure to be followed. My delegation is prepared to accept any procedure that takes account of the positions that we have reiterated so many times.
With respect to injury and the criteria mentioned in section IV of the EEC document, while we agree that prior determination of injury is necessary we do not believe that this procedure should be linked with machinery already existing, for example in the Multifibre Arrangement which is designed for other purposes. Here we must formulate rules to govern the application of subsidies and also the application of countervailing duties, not establish new formulae to restrict trade as in the case of the Multifibre Arrangement.

We have no opinion to present on the concept of threat of injury in section V, because we have already stated that in the case of developing countries, only the concept of proven injury can ultimately be valid.

The suggestions concerning internal procedures (section VI) and international procedures (section VII) seem to us to afford a constructive basis for negotiation.

As regards the Community's interpretation as to how to respond to the problems of developing countries, through general solutions, I can only reiterate what all the developing countries have stated: we demand special treatment contractually established and accepted.

With reference to the comments presented by the Japanese delegation, in order not to be repetitive I should merely like to record our agreement with what is stated in paragraph 5(1), to the effect that solutions to the problems of subsidies must not be sought in relation to countervailing duties. As I said yesterday, that could only complicate the negotiation: since these are separate matters, they must be dealt with separately, and if so desired in parallel.

The Mexican delegation also wishes to express its interest in what is stated in paragraph 2(2) of the document presented by the Japanese delegation concerning sales to third countries. In this respect, it must be taken into account that the appropriate solution for developing countries is to seek to diversify their markets and not to increase their sales excessively in their traditional markets where exports are affected to a greater extent by various additional restrictions.

Unfortunately, the Japanese document makes no express reference to that delegation's views concerning differential treatment. This is very disappointing but we suppose that Japan, like all the other developed countries, will take up this question with the priority that we have demanded, so that parallel progress can be achieved in the negotiations.

With respect to the observations presented by the Australian delegation, the Mexican delegation considers that the ideas put forward are of interest to this Sub-Group on Subsidies and Countervailing Duties and that they should be dealt
with by this Sub-Group, independently of any simultaneous consideration of the problem in Group "Agriculture" as is the practice in such cases.

Lastly, I should like to express my delegation's support for the observations presented by the delegations of India and Venezuela.