Multilateral Trade Negotiations
Group "Non-Tariff Measures"
Sub-Group on Subsidies and Countervailing Duties

SUBSIDIES AND COUNTERVAILING DUTIES
European Communities

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 the European Communities and is reproduced hereunder.

MULTILATERAL NEGOTIATION ON SUBSIDIES
Viewpoints Proposed by the European Community

Preliminary remarks

1. The Community recalls that, as a first contribution to the work of the Sub-Group "Subsidies and Countervailing Duties", it has already submitted a communication centred on the problem of countervailing duties, to a solution of which the Community attaches the utmost importance (document MTN/NTM/W/26/Add.l of 31 October 1975). The GATT secretariat having asked contracting parties to specify also their positions with regard to the provisions of Article XVI of the GATT concerning subsidies, the Community hereby transmits the viewpoints which it proposes in this field and which it considers as being complementary to the ideas set out with regard to countervailing duties.
2. This note does not concern itself with subsidies granted in the agricultural sector, which will be treated in the "Agriculture" Group, where the Community reserves the right to make proposals at the appropriate time.

I. GENERAL CONCEPTION AND APPROACH OF THE GATT

The provisions of Article XVI of the GATT rest on two simple observations. The first is based on a recognition of the existence, possibly regrettable but nevertheless real, of subsidies, i.e. of a certain degree of intervention by the State and by public authorities in the functioning of the modern economy and even in international trading markets. From this observation, the evidence and the universality of which have not ceased to increase since the coming into force of the GATT, the authors of the provisions drew one conclusion: the need to discipline, to limit and, in certain specified cases, to abolish the practices concerned.

The first basic observation, the existence of subsidies, is accompanied by a corollary which does not result from the provisions of Article XVI but, paradoxically, from their silence: the absence of a general judgment and, consequently, of an a priori condemnation\(^1\) of subsidies, in contrast to the provisions of Article VI paragraph 1 concerning dumping which causes material injury. Three conclusions may be drawn from this observation.

Firstly, the need to introduce some discipline into this field is given effect to, in the provisions of paragraph 1, by the obligation on contracting parties to make known periodically all subsidies which have the effect of stimulating exports or of replacing imports and to engage in consultations with the contracting parties interested or with the CONTRACTING PARTIES at their request in any case in which subsidization causes serious prejudice to the interest of any other country.

Secondly, while the GATT refrained from a judgment on subsidies, it did recognize that, because of their consequences, their impact on world trade should be limited. This overriding idea is to be found in most of the provisions of Article XVI whether referring to subsidies in general or to export subsidies: a subsidy should not cause serious injury nor have injurious

\(^1\) Except under the conditions specified in paragraph 4 thereof
effects on other contracting parties, nor cause unjustified disruption in world trade nor, so far as primary products are concerned, result in the exports of one contracting party having more than an equitable share in world trade in such products.

The last conclusion drawn by the authors of Article XVI i.e. the prohibition, in certain specified cases, of export subsidies is set out in paragraph 4 and requires the contracting parties to cease to grant any form of subsidy on the export of any product other than a primary product which results in the sale of such product for export at a price lower than the comparable price charged for the like product in the domestic market; this obligation is valid in respect of those countries which accepted the 1960 Declaration, and in particular the list of illicit practices drawn up for its application.

This prohibition rests on the concept that certain types of subsidy, because of their effect on the formation of export prices, particularly threaten to distort international competition and thereby to have injurious consequences for other contracting parties.

II. DIFFICULTIES IN THE APPLICATION OF ARTICLE XVI

The balance and realism of Article XVI have not, however, permitted the solution of the problems posed.

Firstly and in spite of the limitation on the effect of prohibition in 1955 by the introduction of the double price criterion, States did not show themselves to be disposed to accept a binding discipline. Furthermore, when (in 1959 and 1960) the rules of Article XVI were re-examined by a working group of the GATT, the participating countries, whilst they established a list of prohibited practices, underlined the fact that this list should not be considered as a complete one and that the practices set out were not ipso facto, but only in general, subsidies within the meaning of Article XVI(4). Finally, this list was only signed by seventeen of the contracting parties.

Finally, the very development of the economy and of modern trade relations, characterised in many countries by the growing intervention of public authorities, has made the application of Article XVI even more difficult and has even made certain inclusions in the list of 1960 appear anachronistic. Consequently, the relevant provisions have not always been totally respected by the contracting parties. Others have been carefully circumvented.
III. POSSIBLE SOLUTIONS

In spite of, but also because of, these difficulties, the European Community is prepared to seek the necessary solutions and, in particular, a better international discipline in the context of and in the spirit of Article XVI, the general concept of which it still regards as being valid.

1. The normative approach

A first approach, which is at present proposed by one contracting party, would consist in the establishment of a list in which subsidies would be classified by category, either simply prohibited or actionable under certain conditions, the only authorized measures being those which would figure in a strictly limited positive list.

Experience of the 1960 list has, however, shown that a prohibition based on a list of practices strictly defined or designated by name would not be of any great efficacy in the absence of procedures which would allow of a case-by-case determination of the injurious nature of a measure. Furthermore, such a list would require constant amendment in order to take account of changes in the legislation and practices of contracting parties and the risk would remain that subsidies would reappear in a disguised form or under a different presentation.

Secondly, subsidies themselves are often not a cause but rather the result of phenomena related to differences in the economic, social, regional and monetary positions and are aimed at remedying disequilibrium. In other words, a radical suppression of subsidies could not be envisaged unless the factors which make them necessary are likewise suppressed.

Furthermore, it must be observed that subsidies, in the classic sense, are only one element, and, in many cases, not the most important element in "distortion of international competition". For example, aids for research and development and price control of certain products on national markets which have not up to now been considered as export subsidies properly so-called nevertheless have similar consequences.

Such a list would also presuppose a very great harmonization of fiscal, social, monetary and other policies by the contracting parties. However, even though such a harmonization could be envisaged, and would even be desirable, in certain specific fields, it would be hopeless to expect rapid global solutions.
The Community is of the opinion, therefore, that a dogmatic enumerative approach is inadequate. More realistic solutions should be sought.

2. **Pragmatic approach**

The approach proposed by the Community could be as follows:

- respect for the rules of the GATT, in particular Articles XVI and VI, the pragmatic basic concept of which rests on the idea of injury, should be re-affirmed;
- establishment of improved discipline by means of the institution of new international procedures.

**A. Re-affirmation and clarification of existing rules**

The Community is of the opinion that the basic concept of Article XVI should be re-affirmed, particularly because of the stress it lays on the central concept of serious injury and this notion gives their sense both to the provisions on subsidies in general (Article XVI A) and to those on export subsidies (Article XVI B).

With regard to Article XVI B, the Community confirms that it adheres to the present distinction between export subsidies for primary products and export subsidies for other products. With regard to the latter, the Community's view is that the provisions of Article XVI(4) remain applicable.

While a real harmonization at international level would seem to be necessary and timely, specific solutions for particular cases could be envisaged. The work being done with a view to a gentleman's agreement on export credit terms and in the OECD group on "export credits" are examples of work in progress, account of which should be taken.

**B. Improvements and innovations at procedural level**

The objective would be to guarantee improved international discipline with regard to the provisions contained in the General Agreement. To this end a double approach could be adopted: on the one hand, to give increased guarantees against distortions of international competition resulting from the use of subsidies; on the other hand, to exclude the unilateral application of defensive measures leading to the establishment of new protectionist barriers.
For these reasons the Community considers that improvements and innovations could be effected in the fields of notification, consultation and international surveillance of subsidies and in the remedies to be adopted for the possible injurious effects of illegal practices.

(a) Notification procedure

On the first point, the obligation to notify subsidies which, directly or indirectly, have the effect of increasing exports or of replacing imports should be re-affirmed and an adequate international procedure should be set up to guarantee that this obligation is respected. Since the self-accusatory nature of the present notification system limits its effectiveness, a special procedure for explanation at the request of a third country affected by any measure, could be set up.

The notification would have to include the information necessary in order to appreciate the possible impact on international trade of a subsidy.

(b) Consultation and international surveillance procedure

The procedure which would, of course, be based on the information gathered during the notification and explanations could be carried out in two phases:

- a first, bilateral, phase during which the procedures would put in contact the two or more countries involved, i.e. the country or countries granting the subsidy and the importing country or countries and, if necessary, the other exporting country or countries which could be affected by the subsidy;

- a second, multilateral, phase during which the problem would be placed before a GATT body specially created to ensure that the provisions of Article XVI were respected and to conciliate on the differences. This procedure could provide for a recourse to the forum of the CONTRACTING PARTIES.

A combination of these two approaches and of their respective advantages (the discretion of bilateralism and the guarantees of multilateralism) could be found.

At the bilateral level, it would have to be provided that consultations should commence after the introduction of a formal request by the importing country or by an affected exporting country. Such a request for consultations addressed to the contracting party granting the subsidy would require to specify the practice concerned and to include indications of the actual or foreseen trade effects resulting therefrom.
The contracting party granting the subsidy should be required to lend itself to such consultations. At the expiration of a fixed time-limit the affected party could, in the event of breakdown in the consultations, in accordance with a procedure to be defined, bring the matter before either the CONTRACTING PARTIES or a specially created GATT body, the composition and constitution of which would have to be defined in the light of the experience gained, in particular, in the Anti-Dumping Committee and the Textiles Surveillance Body. Such a body could have the power to make recommendations to the contracting party granting the subsidy.

If the contracting party in question does not, within a time-limit to be determined, declare itself to be disposed to accept such recommendations, the affected party could, under the conditions and within the limits fixed in the General Agreement for an autonomous intervention by a contracting party, and with a view to re-establishing the balance of rights and obligations of the contracting parties, apply countervailing duties or suspend concessions or other advantages resulting from the General Agreement. It follows that the affected contracting party would be required to refrain from taking unilateral action until such time as the GATT body had handed down its decision.

The rights and obligations of the new discipline would, of course, be limited to Signatory Parties, Articles XXII and XXIII remaining applicable, in particular, for non-adherent countries.

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The Community recalls that discussions of the problem of subsidies can only be undertaken and pursued if it is accompanied by strictly parallel progresses in the application of the GATT rules on countervailing duties. It recalls that it has submitted formal proposals in this regard which it only wishes to complete in the light of discussions (see document MTN/MTN/W/26/Add.1).