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

SUBSIDIES AND COUNTERVAILING DUTIES

United States

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 United States and is reproduced hereunder.

UNITED STATES SUBMISSION ON SUBSIDIES AND COUNTERVAILING DUTIES

The United States reaffirms its belief that the negotiating framework set forth in its submission to the Sub-Group last November (MTN/NTM/W/26) offers a logical approach for negotiating an international code on subsidies and countervailing duties covering all products. The United States would like to supplement its November submission with the following comments in order to reiterate in writing certain points that it has made orally, in response to other delegations' submissions and questions, at the last two meetings of the Sub-Group and to further elaborate on a number of the key issues involved in the work of the Sub-Group.

Differentiation of subsidy practices

It is possible to differentiate between subsidy practices by type and by effect. There are three types of subsidies.
1. Some subsidy practices are purposely designed or utilized to increase the competitiveness of a country's producers in international markets, thereby distorting international trade. For example, direct export payments or payments conditioned on export performance are clearly designed to stimulate sales in foreign markets.

2. Some subsidy practices are designed to achieve domestic economic, social or political objectives but may, nevertheless, distort international trade.

3. Some subsidy practices have little or no impact on the flow of international trade.

If a subsidy practice in one country distorts international trade, it can have one or more effects. The subsidized product, if exported, can displace the sales of a producer in an importing country or the sales of an exporter of another country in third-country markets. Furthermore, the subsidized product can, if consumed domestically, displace the sales of an exporter of another country in the subsidizing country itself.

The United States believes that there is a need for effective international discipline on the use of subsidies that distort international trade. For this purpose, new rules reflecting the differences in subsidy practices as they relate to international trade are essential. These rules should apply equally to all products.

**Reasons for prohibiting certain subsidies**

The United States recognizes that, as a practical matter, it would be impossible to prohibit all subsidy practices that distort international trade. There are good reasons, however, to prohibit a much wider range of subsidy practices than are presently banned. These reasons include:

1. A subsidy given to a producer in one country artificially improves the relative competitive position of that producer in international markets.

2. A country undertaking the obligation under Article II of GATT not to increase a tariff that is negotiated downward and/or bound anticipates that this tariff treatment will not be undermined by another country's use of a subsidy.

3. A country giving reciprocity for tariff concessions from another country anticipates that the benefits of these concessions will not be undermined by a third country's use of a subsidy.
4. A country giving reciprocity for tariff concessions from another country anticipates that the benefits of these concessions will not be undermined by the use of a subsidy that reduces imports in the country giving the concession.

5. A subsidy can undermine a safeguard action taken under Article XIX.

6. A subsidy can undermine a tariff that has been renegotiated or modified under Article XXVIII and for which compensation has been given.

7. If a country's subsidy programmes distort international trade, its trading partners have to adjust to those programmes by reallocating resources, reducing production, or lowering prices.

Criteria for prohibiting certain subsidies

The United States believes that new rules should prohibit a wider range of practices than those presently banned under Article XVI. The United States believes that the criteria set forth in its November submission (MTN/NTM/W/26, page 8) are a good basis for determining whether or not a subsidy should be prohibited. The United States approach of prohibiting subsidy practices on the basis of agreed criteria is far more practical than trying to list all those practices that should be prohibited. Governments could always devise subsidy programmes not included on any list that might be developed.

The criteria presently set forth in Article XVI to prohibit subsidies are far too narrow. The present prohibition applies only to non-primary products. There should be uniform criteria for all products. Furthermore, the present prohibition applies only to those subsidies that result in the sale of a product for export at a price lower than the comparable price charged for the like product in the domestic market. It excludes subsidies that are highly trade-distorting but for which no dual pricing exists, either because the subsidy has resulted in lower prices both in the domestic market and for export, or because the subsidy does not result in lower export prices. The latter situation may occur, for example, if the firm utilizes the subsidy not to lower export prices but to expand export capacity, to extend international distribution networks, or to advertise more heavily abroad.

The United States is in general agreement with the Canadian statement on prohibited subsidies (MTN/NTM/W/26/Add.1, paragraphs 6-7). Furthermore, the United States believes that the Australian submission has many useful points with regard to a discussion on prohibited subsidies (MTN/NTM/W/43, paragraphs 5, 6, 7, 11, 13, 14). Regarding the Japanese comments on prohibited subsidies (MTN/NTM/W/26/Add.2, Part 3) the United States believes that the
suggested approach may be a useful technique in illustrating the kinds of subsidy practices that are to be prohibited. However, as noted earlier, this approach alone would not provide a comprehensive solution.

Ensuring that countries do not use prohibited subsidies

Under present GATT rules there is no effective means to enforce the ban on certain subsidies. In this regard, a fundamental problem, in the United States view, is the failure to establish a consistent relationship between Articles VI and XVI. Article VI requires that an injury test be applied even in those cases of countervailing action where the subsidy in question is prohibited under the provisions of Article XVI. The United States finds it difficult to support a set of rules that prohibits certain subsidies on the one hand and, on the other, places conditions on responding to the use of such subsidies. The United States believes that, under the new rules, if one country adopts a prohibited subsidy, any other country should be allowed to neutralize that subsidy through the use of countervailing duties, thereby restoring the market-place to the condition that would have prevailed in the absence of the subsidy. Prohibited subsidies should, therefore, be susceptible to countermeasures, in an amount not to exceed the amount of the subsidy, without regard to the question of injury. In third country market situations, any affected supplying country should be allowed to take appropriate countermeasures against the subsidizing country.

Responding to other subsidies

The United States considers that a differentiation of other subsidies is appropriate in order to give recognition to the difference between those other subsidies that distort the flow of international trade and those that have little or no impact on international trade. Other subsidies that distort international trade should be subject to offsetting measures only under certain conditions, such as an injury test. Other subsidies that have little or no impact on international trade should not be subject to offsetting measures.

Special rules for certain subsidies

Certain subsidy practices pose particularly difficult problems for which special rules may be more desirable than general rules. These rules could, for example, define agreed standards or levels for those subsidy practices. The use of special rules would offer the flexibility that may be necessary to effectively deal with the economic, social and political complexities often associated with problems that arise in the area of subsidies and countervailing duties.
Tax practices

Current GATT rules on subsidies and countervailing duties have specific provisions that deal with various tax practices. The United States believes that new rules on subsidies and countervailing duties must also contain provisions that deal with the impact of varying tax practices on international trade.

Subsidization in third country markets

A growing problem in international trade is the increasing number of cases in which the sales of non-subsidized goods of one country are being displaced by the sales of subsidized goods of another country in third country markets. Whereas a government can take action in its own markets to shield its producers from subsidized foreign competition, that government has ineffective recourse under current GATT rules to deal with subsidization in third country markets.

In order to offset damages done to a non-subsidized supplier by a subsidized supplier, an importing country may, under the provisions of Article VI:6(b), impose countervailing duties against the subsidized supplier without a domestic injury test if the Contracting Parties waive the requirements of Article VI:6(a). However, only the importing country may apply for such a waiver. Article VI:6(c) allows for such countervailing action in an emergency but this is subject to an override by the Contracting Parties. Neither of these clauses has any practical significance since a waiver of Article VI:6(a) has never been sought.

Given the inadequacies of Article VI in this regard and to ensure that countries do not use prohibited subsidy measures in third country markets, countries that are or might be adversely affected by such subsidization should be allowed to take appropriate countermeasures. Such measures might include the withdrawal of concessions or the imposition of restrictions by the affected supplier against the subsidizing country.

The United States considers that the Australian submission (MTN/NTM/W/43), in particular, offers some helpful and interesting comments (especially in paragraphs 2, 4, 12 and 15) on the problem of subsidized competition in third country markets and how to deal with it. With regard to the Australian suggestion that the importing country itself should be required to apply countervailing duties in third country markets, the United States does not believe that this is a feasible solution to the problem and suggests that the remedies outlined above offer a more practical approach.
Developing countries

The United States has indicated that it is willing to negotiate provisions for special and differential treatment for developing countries in the context of new international rules on subsidies and countervailing duties (MTN/NTM/W/26, page 9). Of the ways in which differential treatment might be provided in the context of an international code on subsidies and countervailing, the United States is willing to explore, inter alia, the following possibilities:

1. Certain subsidy practices could be designated as conditional for certain developing countries when they are prohibited for developed countries.

2. If special rules for certain subsidies are negotiated, different criteria or limits could be established for developing countries than for developed countries.

The United States believes that any approach for dealing with developing countries must be flexible in order to deal with the particular situations and stages of growth in individual developing countries. In this regard, it has been the United States experience that some developing countries are already internationally competitive in many products. In such cases, special and differential treatment would result in unfair competition. Any rules for special and differential treatment for developing countries should be structured in such a way as to permit individual developing countries to progressively accept in full over a definite period of time the obligations incumbent upon the developed members of the world trading system.

The United States has carefully studied the submissions of Brazil (MTN/NTM/W/26), India (MTN/NTM/W/26/Add.3) and Venezuela (MTN/NTM/W/43/Add.1). An argument put forth in these submissions and by other developing countries is that developing countries are free to subsidize since they have not signed the protocol giving effect to Article XVI:4. We agree that those developing countries that did not sign this protocol have no obligation with respect to it. However, all Contracting Parties have obligations under Article XVI. For example, all Contracting Parties must notify and consult on their subsidy practices in accordance with Article XVI:1. Moreover, under Article XVI:2 all Contracting Parties "recognize that the granting of subsidies on the export of any product may have harmful effects for other Contracting Parties, both importing and exporting, may cause undue disturbance of their normal commercial interests, and may hinder the achievement of the objectives of this Agreement." Finally, all Contracting Parties, under Article XVI:3, "should seek to avoid the use of subsidies on the export of primary products."
With regard to certain developing countries' remarks that the United States has failed to carry out the provisions of Article XXXVII:3(c) concerning the imposition of countervailing duties against developing country exports, the United States believes that within its own legal limitations, as recognized in Article XXXVII:1, it does carry out such provisions.

In conclusion, although the United States cannot agree with all the points made in the developing country submission, it does believe that special and differential treatment for developing countries is both feasible and appropriate in certain cases in the area of subsidies and countervailing duties. The United States is prepared to negotiate such treatment in the context of a revised and more effective set of rules covering subsidies and countervailing duties.

Notification

One of the weaknesses in GATT Article XVI is that notification of subsidy programmes that affect, or could affect, international trade is limited to self-notification by a country of its own programmes. The United States believes that new rules should also allow countries to notify other countries' subsidy programmes. It is of course well established that a contracting party can be required to consult concerning a subsidy, whether or not it has been notified.

Impact on trade of State industries and industries with government participation

Governments around the world are increasingly involved in their economies, not only through the application of fiscal, monetary and regulatory policies but also through direct financial participation in the production and distribution of goods that enter into international trade. At times it may occur that a government-owned enterprise, or an enterprise with heavy government participation, can operate without regard to profit, or even at a loss, with the government covering the loss through revenues generated elsewhere. In such cases, a subsidy element is probably involved. This is a problem that requires further attention in order to determine what provisions the new rules should incorporate to specifically deal with such cases.