NOTIFICATIONS UNDER ARTICLE XVI:1

Addendum

The following preliminary comments have been received from the Delegation of the United States.

In preparing preliminary comments on the points listed in the Secretariat's note of 30 January (SCM/49), the United States Delegation has been guided by its desire for the maintenance of transparency in notifications of subsidies under GATT Article XVI:1. However, while recognizing the value of transparency in notifications, the U.S. Delegation understands some of the practical concerns which have been raised by other signatories in respect of self-notification. In this context, the U.S. Delegation offers the following comments on points raised in SCM/49.

1. Improved Transparency and Greater Uniformity of Notifications:

(a) The content of notifications should be sufficiently specific to enable representatives of other countries to understand how subsidy programs operate and make their own evaluation of the programs' possible effects on international trade.

(b) While we do not know if it would prove to be possible to establish criteria which would give clear guidance on the type of measures which should be notified, the U.S. Delegation nevertheless believes that an effort should be made to develop such criteria.

(c) Whenever there is a reason to believe that a subsidy might have a trade effect (direct or indirect), it should be notified. In case of doubt, the measure should be notified.

(d) The decision to notify or not should be left to the judgment of the notifying country. Where other signatories have reason to believe that a subsidy affecting trade has not been notified, they should avail themselves of the cross-notification possibilities under Article 7 of the Code.
(e) It is, in our view, desirable to notify all measures which could possibly constitute a subsidy in terms of Article XVI:1. In this connection, we would note that the illustrative list of export subsidies annexed to the Code describes both subsidies which are prohibited by Article 9:1 of the Code and subsidies which, while technically "export subsidies", are not prohibited by Article 9:1. As both categories of export subsidies clearly are operated for the purpose of affecting trade, practices in both categories are clearly covered by Article XVI:1 and should be notified.

(f) The fact that a subsidy may be maintained for the purpose of achieving social objectives does not, in itself, mean that the measure does not also have a trade effect. Many such subsidies have meaningful trade effects and should therefore be notified. The U.S. Delegation does not share the view expressed by the EEC in SCM/49/Add.1 that, "in principle, subsidies with social objectives, ...do not have any meaningful trade effects."

(g) Subsidies granted at the provincial level should be notified when they affect trade.

2. Private Sector vs. State-Owned Sector:

It has been suggested that part of the problem with the existing questionnaire is that notifications by countries with a strong private sector are made on a different basis than those notifications by countries with a strong state-owned sector (SCM/M/16, para.51). We suggest that the problem is better stated as "private sector firms" vs. "public sector organizations".

Governmental, quasi-governmental or government-supported private monopoly trading companies may be characterized by subsidy elements which are difficult to determine. The goal of a private sector firm is to make a profit; it works toward this goal in a competitive environment where, under normal circumstances, it competes with other firms on a more or less equal footing. A public sector organization, however, often has goals other than to maximize profits -- such as to guarantee farm income, to dispose of surpluses, or to stabilize a market. Nevertheless, the public sector organization competes commercially with other trade organizations and private sector firms and to do so (given its goals) it is likely to rely on continuing governmental support (support which is not available to private sector firms).
Bearing this in mind, governmental, quasi-governmental or
government-supported private monopoly institutions or agencies that
buy or sell, and/or lay down regulations covering private trade, may
have policies or engage in practices that could have meaningful trade
effects and which could fall under Article XVI:1. It is these
policies and practices which should be notified. Examples include
certain types of government funding (e.g., export credit programs,
soft loans) and whether exports are sold at a loss, etc.

3. Procedures Under Article 7 of the Agreement:

(a) The United States views the procedures under Article 7 as
essential in effectively filling any gaps in incomplete notifications
of subsidies. In some ways, these procedures are potentially more
effective than those in Article XVI:1 itself. Cross-notifications,
however, should be used for dealing with specific practices that are
believed to cause problems for other signatories, and not for
unreasonable investigations.

(b) The United States believes that the procedures of Article 7 are
bilateral at the first stage, although they clearly provide that a
signatory can bring to the attention of the Committee any practice
that it considers should have been notified and was not. Further
clarification on appropriate action by the Committee in such a case
would be useful. It might also be useful for the Committee to
attempt to reach a consensus on how the bilateral procedure under
Article 7 should be implemented in practice.

4. Lack of Self-Incrimination:

It should be generally recognized by all signatories that
notifications do not have any effect of self-incrimination.

5. Timing and Frequency of Notifications:

(a) The United States believes that there is no need to extend the
period between full notifications.

(b) The United States believes that there is no need to extend the
period for updating full notifications.
6. **Improving the Questionnaire on Subsidies:**

In general, the United States considers the present questionnaire to be useful and the details provided (when the questionnaire is followed) to be informative. The Contracting Parties have made clear the extent of notification desired, as well as how the questionnaire should be answered. The major problem we see is the lack of cooperation among Contracting Parties (and Code signatories) in submitting notifications that meet these standards. In other words, while the guidelines are clear, many Contracting Parties (and Code signatories) either ignore them or make only half-hearted attempts in their notifications.

As for improving the existing questionnaire, it must be remembered that the questionnaire is one intended for use by all GATT Contracting Parties, and not merely the signatories to the Code. As a result, it might be more appropriate for signatories to consider improvements on the questionnaire for the purposes of the Code, recognizing that any modifications to the existing questionnaire, as such, is a question for the Contracting Parties.

Regarding the specific points raised in SCM/49,

(a) The U.S. Delegation believes it would be useful for the questionnaire to be examined by the Committee to determine whether it should be revised for the purposes of the Code.

(b) We would support revising the questionnaire in such a way as to simplify the task of preparing notifications and to reduce the margin for subjectivity, however, the concept, as stated, is vague.

(c) We do not know if it is possible to quantify the trade effects of a subsidy in every instance (and we suspect that it sometimes is not). However, notifying countries should at least attempt to provide a good estimate of trade effects in quantitative terms.

(d) The unit amount of a subsidy should be indicated whenever possible. Clearly, at times this is not possible (for example, in the notification of a general export credit program). Where a subsidy is commodity- or sector-specific, countries should provide details by commodity on the amount of the subsidy and the value of trade affected. Aggregate figures for broad sectors such as "Fruits and Vegetables" and "Grains" are not very useful.

(e) Where specific points in the questionnaire have not been addressed in a notification, an explanation should be provided in the notification itself.