

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## Multilateral Trade Negotiations

### GROUP 3(b) - SUBSIDIES AND COUNTERVAILING DUTIES

#### DRAFT REPORT TO THE TRADE NEGOTIATIONS COMMITTEE

1. In conformity with the decision taken by the Trade Negotiations Committee at its July meeting, the Group met on 3-4 October 1974 in order to consider proposals concerning differentiated treatment for developing countries in the field of subsidies and countervailing duties.
2. The Group had before it a working document submitted by the delegation of Brazil on this question (MTN/W/5). The delegate of Brazil explained that the working paper had been presented in response to requests for constructive proposals. He emphasized that the main purpose of the proposals was to present a basis for possible negotiations which should lead to a new balance of rights and obligations and the acceptance of the idea of differentiated treatment for developing countries in the field of subsidies and countervailing duties.
3. Delegations from developing countries supported the proposals made by Brazil. They stressed that the present stage of their countries' economic development necessitated the subsidization of their exports in order to compensate for the handicaps under which such exports were labouring and to penetrate foreign markets. They considered that Part IV of the General Agreement and more specifically Article XXXVII:3(c) constituted the necessary legal basis for such action. Similarly, it would be unfair for developing countries which exported mainly primary products to be restricted in the area of non-primary products when developed countries

continued to subsidize their exports of primary commodities. In this connexion, some developing countries demanded that restrictions be imposed on the subsidization of primary products by developed countries in view of the harmful effects of these subsidies on the exports of the same products by developing countries.

4. These delegations referred to the text of a draft resolution presented by developing countries to the UNCTAD Committee on Manufactures, and particularly to the guidelines, namely that (a) existing prohibitions on the use of subsidies by the developed countries should be extended to cover trade in primary products in order to prevent detrimental effects on the exports of developing countries; (b) the rights of developing countries to apply export subsidies to their manufacturing exports should be clearly recognized; (c) countervailing duties should not be applied to imports originating from developing countries; (d) in exceptional circumstances countervailing duties may be applied to imports from developing countries, but these should be precisely defined, and special procedures should be drawn up in the case of such application; (e) more flexible criteria should be drawn up for the application of countervailing duties by developing countries against imports from developed countries.

5. One delegation from a developing country stated that the General Agreement distinguished between three different categories of subsidies and that the type of permitted response (if any) to a given subsidy practice depended upon the trade effects of the subsidy.

6. Other delegations, whilst welcoming the initiative of the Brazilian delegation, said that it would be premature to comment on these proposals in detail at this stage. They felt that before one could determine whether and how differentiated treatment could be accorded to developing countries, it was necessary to formulate the main outlines for a general solution to the question of subsidies and countervailing duties. Some of these delegations were of the opinion that a general solution to the question of countervailing duties might make it unnecessary to formulate special provisions for the developing countries.

7. Some delegations raised the question whether the area of subsidies and countervailing duties was in fact one which was suitable for the application of differentiated treatment to developing countries. They stressed that developing countries should have an interest in an effective solution of the problem of subsidies under which any adverse effects of subsidies on their exports would be eliminated. These same delegations also expressed doubt as to the advisability of encouraging developing countries to grant unlimited subsidies to their exports and wondered whether such subsidies were in all cases in the interest of developing countries. They also drew attention to the dangers of competition in export subsidization between the developing countries themselves, bearing in mind their different levels of development.

8. Some delegations stated that they could not accept the Brazilian interpretation of the legal situation in GATT as expressed in paragraph 3 of document MTN/W/5. While it was true that developing countries had not acceded to the Declaration giving effect to the provisions of Article XVI:4, this did not mean that countervailing action could not be taken in response to subsidies granted

by these same countries. This implied that countervailing duties could not be imposed against exports from those industrialized countries who had not accepted the 1960 Declaration which was clearly not the case. These delegations also stated that the provision of Article XXXVII:3(c) was in fact operative for them and consequently they could not accept the contention that this provision was a "dead letter".

9. Some delegations posed a number of questions in regard to the nature of the proposed "positive list" of subsidy practices referred to in paragraph 9 of the Brazilian paper. For example, did the drawing up of such a list imply that there would be no limit to the level of subsidies which might be granted by developing countries? Which subsidies would be included in such a list? Was it intended that all practices included in such a "positive list" would invariably be permitted, even if they caused injury to industries in importing countries? Would such subsidies be granted for products included in the Generalized System of Preferences? Some delegations stated that for them it would be out of the question to give a "carte blanche" for the imposition of export subsidies in cases where such subsidies caused injury to their industry; consequently they could not accept the link between such a "positive list" and the banning of countervailing action.

10. On the question of the proposed standstill on countervailing action against exports from developing countries referred to in paragraph 12 of the Brazilian paper, some delegations stated that whilst they were prepared to consider this suggestion in a positive spirit, they did not feel that there were many great practical difficulties facing the developing countries in this field at the present time. A number of delegations stated, however, that they could give their support to this idea.

11. Some delegations thought that the Group should consider the need for the establishment of some mechanism at an international level which could examine particular cases of subsidization according to given criteria. For example, subsidization could be allowed in order to compensate for certain structural handicaps, but would not be allowed in order to improve a country's competitive position. Some developing countries expressed interest in the idea of a multilateral surveillance mechanism in the field of subsidies and countervailing duties.

12. Delegations from developing countries could not agree that it was premature to discuss the question of differentiated treatment for developing countries. They felt that the Tokyo Declaration gave the Group a clear mandate to take up this question and that the developing countries could not be expected to wait until problems had been solved between the developed countries before solutions were found to their own urgent problems. They maintained that in the area of subsidies and countervailing duties differentiated treatment for developing countries was feasible and appropriate. Subsidies were crucial for the marketing of many of their exports to other countries. They also referred to the fact that in many cases subsidies were required in order to attract foreign capital and technology.

13. One delegate from a developing country stated that in his view developing countries would have to continue applying subsidies to products included in the Generalized System of Preferences bearing in mind the need to compensate their exporting industries for any erosion which might take place in the preferential margins of the Generalized System of Preferences as a result of the tariff

concessions which may be granted in the context of the multilateral trade negotiations.

14. The delegate of Brazil, in commenting on some of the remarks made, stated that the real problem in the legal sphere was the absence of a link between Article VI and Article XVI. The main thrust of the proposals that had been put forward by his delegation was the establishment of the right of developing countries to subsidize their exports free from the threat of the imposition of countervailing duties. He admitted, however, that there were limitations to this principle, and this would be one of the points to be determined in the negotiations. He stressed that the "positive list" had been put forward as a working hypothesis and all the related questions such as the contents of the list or the level of subsidization to be permitted should be the subject of negotiations. He thought that the main area to which such a "positive list" of subsidy practices would apply would be that of manufacturers and semi-manufacturers. Another delegation from a developing country expressed the view that differentiated treatment should likewise be extended to exports of agricultural products.

15. It was generally agreed that the question of differentiated treatment for developing countries in the field of subsidies and countervailing duties should proceed in parallel with the general discussion. It was also agreed that the Brazilian proposals should remain on the table for further discussion, clarification and refinement.