

**AGREEMENT ON INTERPRETATION AND APPLICATION OF
ARTICLES VI, XVI AND XXIII OF THE GENERAL AGREEMENT
ON TARIFFS AND TRADE**

**ACCORD RELATIF A L'INTERPRÉTATION ET A L'APPLICATION DES
ARTICLES VI, XVI ET XXIII DE L'ACCORD GÉNÉRAL
SUR LES TARIFS DOUANIERS ET LE COMMERCE**

**ACUERDO RELATIVO A LA INTERPRETACIÓN Y APLICACIÓN DE LOS
ARTÍCULOS VI, XVI Y XXIII DEL ACUERDO GENERAL SOBRE
ARANCELES ADUANEROS Y COMERCIO**

GENERAL AGREEMENT ON TARIFFS AND TRADE
ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS
ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES
ADUANEROS Y COMERCIO

12 April 1979
Geneva

AGREEMENT ON INTERPRETATION AND APPLICATION OF
ARTICLES VI, XVI AND XXIII OF THE GENERAL AGREEMENT
ON TARIFFS AND TRADE

The signatories¹ to this Agreement,

Noting that Ministers on 12-14 September 1973 agreed that the Multilateral Trade Negotiations should, inter alia, reduce or eliminate the trade restricting or distorting effects of non-tariff measures, and bring such measures under more effective international discipline,

Recognizing that subsidies are used by governments to promote important objectives of national policy,

Recognizing also that subsidies may have harmful effects on trade and production,

Recognizing that the emphasis of this Agreement should be on the effects of subsidies and that these effects are to be assessed in giving due account to the internal economic situation of the signatories concerned as well as to the state of international economic and monetary relations,

Desiring to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory to this Agreement, and that countervailing measures do not unjustifiably impede international trade, and that relief is made available to producers adversely affected by the use of subsidies within an agreed international framework of rights and obligations,

Taking into account the particular trade, development and financial needs of developing countries,

Desiring to apply fully and to interpret the provisions of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade² (hereinafter referred to as "General Agreement" or "GATT") only with respect to subsidies and countervailing measures and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation,

Desiring to provide for the speedy, effective and equitable resolution of disputes arising under this Agreement,

¹The term "signatories" is hereinafter used to mean Parties to this Agreement.

²Wherever in this Agreement there is reference to "the terms of this Agreement" or the "articles" or "provisions of this Agreement" it shall be taken to mean, as the context requires, the provisions of the General Agreement as interpreted and applied by this Agreement.

11. In cases where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the provisions of this Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the country of importation.
12. An investigation shall be terminated when the investigating authorities are satisfied either that no subsidy exists or that the effect of the alleged subsidy on the industry is not such as to cause injury.
13. An investigation shall not hinder the procedures of customs clearance.
14. Investigations shall, except in special circumstances, be concluded within one year after their initiation.
15. Public notice shall be given of any preliminary or final finding whether affirmative or negative and of the revocation of a finding. In the case of an affirmative finding each such notice shall set forth the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons and basis therefor. In the case of a negative finding each notice shall set forth at least the basic conclusions and a summary of the reasons therefor. All notices of finding shall be forwarded to the signatory or signatories the products of which are subject to such finding and to the exporters known to have an interest therein.
16. Signatories shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports will be available in the GATT secretariat for inspection by government representatives. The signatories shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months.

Article 3 - Consultations

1. As soon as possible after a request for initiation of an investigation is accepted, and in any event before the initiation of any investigation, signatories the products of which may be subject to such investigation shall be afforded a reasonable opportunity for consultations with the aim of clarifying the situation as to the matters referred to in Article 2, paragraph 1 above and arriving at a mutually agreed solution.
2. Furthermore, throughout the period of investigation, signatories the products of which are the subject of the investigation shall be afforded a

reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.¹³

3. Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a signatory from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

4. The signatory which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the signatory or signatories the products of which are subject to such investigation access to non-confidential evidence including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

Article 4 - Imposition of countervailing duties

1. The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less are decisions to be made by the authorities of the importing signatory. It is desirable that the imposition be permissive in the territory of all signatories and that the duty be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry.

2. No countervailing duty shall be levied¹⁴ on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.¹⁵

¹³It is particularly important, in accordance with the provisions of this paragraph, that no affirmative finding whether preliminary or final be made without reasonable opportunity for consultations having been given. Such consultations may establish the basis for proceeding under the provisions of Part VI of this Agreement.

¹⁴As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty on tax.

¹⁵An understanding among signatories should be developed setting out the criteria for the calculation of the amount of the subsidy.

Signatories recognize, nevertheless, that the enumeration of forms of subsidies set out above should be reviewed periodically and that this should be done, through consultations, in conformity with the spirit of Article XVI:5 of the General Agreement.

4. Signatories recognize further that, without prejudice to their rights under this Agreement, nothing in paragraphs 1-3 above and in particular the enumeration of forms of subsidies creates, in itself, any basis for action under the General Agreement, as interpreted by this Agreement.

Article 12 - Consultations

1. Whenever a signatory has reason to believe that an export subsidy is being granted or maintained by another signatory in a manner inconsistent with the provisions of this Agreement, such signatory may request consultations with such other signatory.

2. A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

3. Whenever a signatory has reason to believe that any subsidy is being granted or maintained by another signatory and that such subsidy either causes injury to its domestic industry, nullification or impairment of benefits accruing to it under the General Agreement, or serious prejudice to its interests, such signatory may request consultations with such other signatory.

4. A request for consultations under paragraph 3 above shall include a statement of available evidence with regard to (a) the existence and nature of the subsidy in question and (b) the injury caused to the domestic industry or, in the case of nullification or impairment, or serious prejudice, the adverse effects caused to the interests of the signatory requesting consultations.

5. Upon request for consultations under paragraph 1 or paragraph 3 above, the signatory believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

Article 13 - Conciliation, dispute settlement and authorized countermeasures

1. If, in the case of consultations under paragraph 1 of Article 12, a mutually acceptable solution has not been reached within thirty days³⁰ of the

³⁰ Any time periods mentioned in this Article and in Article 18 may be extended by mutual agreement.

request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Part VI.

2. If, in the case of consultations under paragraph 3 of Article 12, a mutually acceptable solution has not been reached within sixty days of the request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Part VI.

3. If any dispute arising under this Agreement is not resolved as a result of consultations or conciliations, the Committee shall, upon request, review the matter in accordance with the dispute settlement procedures of Part IV.

4. If, as a result of its review, the Committee concludes that an export subsidy is being granted in a manner inconsistent with the provisions of this Agreement or that a subsidy is being granted or maintained in such a manner as to cause injury, nullification or impairment, or serious prejudice, it shall make such recommendations³¹ to the parties as may be appropriate to resolve the issue and, in the event the recommendations are not followed, it may authorize such countermeasures as may be appropriate, taking into account the degree and nature of the adverse effects found to exist, in accordance with the relevant provisions of Part VI.

³¹In making such recommendations, the Committee shall take into account the trade, development and financial needs of developing country signatories.

PART V

Article 16 - Committee on Subsidies and Countervailing Measures

1. There shall be established under this Agreement a Committee on Subsidies and Countervailing Measures composed of representatives from each of the signatories to this Agreement. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any signatory. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the signatories and it shall afford signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.
2. The Committee may set up subsidiary bodies as appropriate.
3. In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a signatory, it shall inform the signatory involved.

PART VI

Article 17 - Conciliation

1. In cases where matters are referred to the Committee for conciliation failing a mutually agreed solution in consultations under any provision of this Agreement, the Committee shall immediately review the facts involved and, through its good offices, shall encourage the signatories involved to develop a mutually acceptable solution.³⁴

2. Signatories shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

3. Should the matter remain unresolved, notwithstanding efforts at conciliation made under paragraph 2 above, any signatory involved may, thirty days after the request for conciliation, request that a panel be established by the Committee in accordance with the provisions of Article 18 below.

Article 18 - Dispute settlement

1. The Committee shall establish a panel upon request pursuant to paragraph 3 of Article 17.³⁵ A panel so established shall review the facts of the matter and, in light of such facts, shall present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by this Agreement.

2. A panel should be established within thirty days of a request therefor³⁶ and a panel so established should deliver its findings to the Committee within sixty days after its establishment.

3. When a panel is to be established, the Chairman of the Committee, after securing the agreement of the signatories concerned, should propose the composition of the panel. Panels shall be composed of three or five members,

³⁴In this connexion, the Committee may draw signatories' attention to those cases in which, in its view, there is no reasonable basis supporting the allegations made.

³⁵This does not preclude, however, the more rapid establishment of a panel when the Committee so decides, taking into account the urgency of the situation.

³⁶The parties to the dispute would respond within a short period of time, i.e. seven working days, to nominations of panel members by the Chairman of the Committee and would not oppose nominations except for compelling reasons.

preferably governmental, and the composition of panels should not give rise to delays in their establishment. It is understood that citizens of countries whose governments³⁷ are parties to the dispute would not be members of the panel concerned with that dispute.

4. In order to facilitate the constitution of panels, the Chairman of the Committee should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade relations, economic development, and other matters covered by the General Agreement and this Agreement, who could be available for serving on panels. For this purpose, each signatory would be invited to indicate at the beginning of every year to the Chairman of the Committee the name of one or two persons who would be available for such work.

5. Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

6. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee.

7. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any signatory with an interest in the matter has a right to enquire about and be given appropriate information about that solution and a notice outlining the solution that has been reached shall be presented by the panel to the Committee.

8. In cases where the parties to a dispute have failed to come to a satisfactory solution, the panels shall submit a written report to the Committee which should set forth the findings of the panel as to the questions of fact and the application of the relevant provisions of the General Agreement as interpreted and applied by this Agreement and the reasons and bases therefor.

³⁷The term "governments" is understood to mean governments of all member countries in cases of customs unions.

9. The Committee shall consider the panel report as soon as possible and, taking into account the findings contained therein, may make recommendations to the parties with a view to resolving the dispute. If the Committee's recommendations are not followed within a reasonable period, the Committee may authorize appropriate countermeasures (including withdrawal of GATT concessions or obligations) taking into account the nature and degree of the adverse effect found to exist. Committee recommendations should be presented to the parties within thirty days of the receipt of the panel report.