

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Subsidies and  
Countervailing MeasuresUNIFORM INTERPRETATION AND EFFECTIVE  
APPLICATION OF THE AGREEMENTStatement by the Chairman at the Meeting of 5 December 1984

1. Past discussions in the Committee have shown that there were divergent views among signatories on fundamental provisions of the Code. These divergencies created uncertainty as to rights and obligations, seriously affected the application of the Code and practically blocked dispute settlement procedures. There is, however, I think, a unanimous recognition of the importance of the efficient functioning of the Committee and a strong wish to render the Code again fully operational. In this relation a number of delegations proposed that the Committee undertake a review of those provisions of the Code which created problems in order to arrive at their uniform interpretation and application. Starting from these proposals, the Committee authorized the Chairman to hold, as a matter of urgency, informal consultations with a view to proposing an appropriate solution. In pursuance of this mandate my predecessor, Mr. Ikeda, and I have held a series of bilateral and plurilateral consultations. As a result of these consultations I have prepared a report (SCM/53) which, in my view, might be the basis of a satisfactory solution.

2. I would like, from the outset, to make one point very clear. The purpose of these consultations was not to amend the Code or create new rights and obligations. The purpose was to clarify the existing rules and to arrive at their uniform application. With one exception, namely that concerning Article 9, all these clarifications do not go beyond what a reasonable panel could do on its own. But even in the case of Article 9 there are no new rights, only existing rights have been reformulated in such a way as to ensure more clarity and better transparency. You will see from the detailed analysis of my proposals that they are based on logic, common sense and the perceived spirit of the Code. They do not produce new obligations - only increased clarity which should bring about better disciplines in the application of the Code.

3. Another important point I would like to make is the relationship between this exercise and that which is going on in other GATT bodies, in particular the Committee on Trade in Agriculture. First, let me say that as signatories of the Subsidy Code, a multilaterally negotiated legal instrument, which is primarily charged with the responsibilities in the field of subsidies, we have an obligation to ensure the effective operation and application of this Code. This is clearly spelled out in Article 16 of the Code. This Committee has a special responsibility with respect to all sorts of subsidies and none of the other GATT bodies can deal with this matter in such a comprehensive

manner as the Committee on Subsidies. The possibility that developments elsewhere on subsidies may take place in the rather distant future, or sooner, cannot justify the Committee's inertia. This Committee cannot stay idle and wait for an external rescue, especially if such a rescue is not promptly forthcoming. It must take concrete actions to overcome difficulties which have been created by divergent views on fundamental issues in the Subsidy Code. Secondly, other GATT bodies deal with the matter in a less complete manner, from the Subsidy Code perspective. For example the Committee on Trade in Agriculture discusses agricultural products which constitute only a part of products covered by Article 10 and an even lesser part of products covered by Article 9. In other words the sectoral approach, commendable and appropriate as it maybe, is not sufficient for the purposes of this Code as it extracts only some elements from the Code. Thirdly, and most importantly, our exercise is limited to the Subsidies Code only and its only aim is to clarify certain existing provisions and to facilitate the application of the Code. As no new obligations result from it, it cannot affect the rights and obligations of the contracting parties under relevant GATT provisions nor can it affect any balance of obligations or any compromise which may be laboriously worked out in future negotiations, for example in the Committee on Trade in Agriculture. Furthermore, this exercise does not jeopardise any bargaining position delegations may have elsewhere. Finally on this point, although the exercise is limited to the Code, the fact that certain provisions have been clarified and their application rendered more effective should give a good example to other GATT bodies and facilitate their efforts in finding a global solution in a given sector, applicable to all contracting parties. I have carefully examined, and consulted some signatories on all aspects of the relationship between this exercise and the work of other GATT bodies and the general conclusion was that this exercise can only help.

4. After these explanations, let me turn now to different parts of the report. It seems that they are self-explanatory. Nevertheless I would like to highlight certain points.

- (a) Article 8 - the proposed text does not intend to achieve anything else but to make it clear that serious prejudice that would be found under Article XVI:1 can also be found under Article 8. Indeed, given the objectives of the Code ("desiring to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory..."), one can hardly imagine a legal situation under which, in exactly the same case, one would find serious prejudice in terms of Article XVI:1 but not in terms of Article 8 of the Code. Any other interpretation would mean that the Code is, in fact, weaker than Article XVI:1 and, instead of strengthening disciplines, it rather weakens them. Neither the negotiating history nor the language of Article 8 justifies such an interpretation.
- (b) Article 9 is probably the most complicated issue. It was essential to have clarity as to the starting point and as to what should be achieved. The approach is this: we know what Article 9 says but we also know what it should say and we have to find a way for it to say what we want it to say. This approach seems to be logically more sound and legally much neater than another approach that would pretend, from the very beginning, that Article 9 says something else than what it actually

says. Starting from these premises a number of alternatives to arrive at the desired solution have been considered. The proposed solution seems to be the most convenient, although it may seem a little bit complicated. It does not require amending the existing Code provisions. Indeed it builds on them, in particular on paragraphs (d) and (i) of the Illustrative List. To be more specific - certain possibilities which, under certain conditions, exist under the present wording of paragraph (d) have been transferred to paragraph (i). At the same time those elements of paragraph (d) which make Article 9 meaningless have been eliminated. The proposed interpretative decision assimilates certain rights from paragraph (d) and follows the logic and the language of paragraph (i) of the Illustrative List as closely as possible. You will see that several, very technical issues still remain open but the interpretative decision makes it clear that a group of experts, to be established by the Committee, will have promptly to clarify them and propose appropriate solutions.

- (c) As to Article 10 - no modification of the existing obligation has been proposed but an attempt has been made to clarify certain concepts, the vagueness of which have always caused problems. For example it should be clear that special factors must be really special and that one does not confuse them with normal commercial considerations. Another example is the proposed understanding in paragraph 15 of SCM/53. It does not add anything to the existing obligations. It only paraphrases the present language of Article 10:1 and removes certain ambiguities related not to the substance but to proceedings in case this paragraph has to be applied. Furthermore, the relationship between paragraphs 1 and 2 of Article 10 has been somewhat clarified and more precision has been given to paragraph 3. Another example is the attempt to specify the rôle of special transactions in the concept of world market. As I have said before, all these clarifications do not go beyond what is strictly necessary to make Article 10 operative.

5. These are only preliminary comments. It is not possible for me to summarize, in a short statement, all the intellectual input that, over months and months, went into this proposal. I perfectly understand that, at first glance, some solutions proposed here may appear too simplistic or too complicated, that some people may wish to go, as I have done, through alternative solutions, but I think that finally we shall all come to the same conclusion, namely that as long as we have to stay within the existing framework of the Code rights and obligations, this proposal is simple, logical and effective for rendering the Code operative again. I should also add that one should not look at the proposed solutions from an immediate tactical viewpoint but from a long perspective one. The real question is: do we want to preserve the basic philosophy of this Code and of the relevant GATT provisions or do we prefer to sacrifice it for short-term, subjective interests.