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A Fresh Look at Provisions of the GATT

At the GATT Minsterial Meeting in November 1967, it was agreed that new Committees in industry and agriculture would be established to examine nontariff barriers (NTB's) and other trade restrictions. The rules, laws, administrative practices, commercial practices, and preferences employed around the trading world are numerous, insidious and always difficult to identify. Therefore, the first task was to establish a useful if incomplete catalog of these nontariff barriers. This has been accomplished. The GATT Committees are now turning to the more difficult task of preparing for the negotiation of the reduction and removal of these nontariff barriers.

The normal objective in negotiating bilateral or multilateral trade provisions is to achieve a neutral trade effect. This means that one nation will agree to make an adjustment involving a certain amount of trade, on the condition that another country makes a compensating gesture involving an opposite and equal amount of trade. In negotiating the removal of illegal nontariff barriers, this principle of balance must be set aside. It is clearly unfair to have a country impose a nontariff barrier and then, as a condition for its removal, demand a compensating trade benefit.

At the November 1967 GATT Ministerial Meeting it was also agreed to establish a Working Party on countervailing duties, export subsidies and other export incentives. During the Kennedy Round negotiations, many countries complained about the countervailing duty law of the United States and its exemption from the provisions of the GATT. This legislation, passed in 1896, requires the United States to impose an equal and compensating import levy (countervailing duty) for an export subsidy (bounty or grant) used by a foreign nation to aid its exporters. This requirement to countervail is unrelated to the degree of trade injury to the United States resulting from the foreign subsidy.

The GATT recognizes countervailing duty practices and the laws that many countries have in this field. However, the GATT authorizes a nation to countervail only to the extent that it is injured, and then only after efforts to achieve removal of the export subsidy through normal GATT procedures have failed.

In view of the 1947 GATT Agreement and our prior legislation, the United States is not covered by the GATT provisions. The absence of an injury requirement in our legislation is heavily criticized by foreign countries—some call it a major United States nontariff barrier. During the course of the Kennedy Round we agreed to discuss this subject with other countries. This was in keeping with the tradition that trading partners, when they have differences, should be willing to discuss them freely. We have refused, however, to have our countervailing duty law subjected to multilateral review, without simultaneous detailed examination of export subsidies of other countries, which are