RESEARCH SEMINAR IN INTERNATIONAL ECONOMICS

Department of Economics
The University of Michigan
Ann Arbor, Michigan 48109-1220

SEMINAR DISCUSSION PAPER NO. 194

CODES OF CONDUCT

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To be published in The World Bank
Handbook on Multilateral Trade Negotiations

March 13, 1987

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I. Introduction

A major accomplishment of the Tokyo Round of Multilateral Trade Negotiations, which was concluded in 1979, was the negotiation of eleven stand-alone general treaty agreements. Nine of these agreements dealt wholly or in part with nontariff measures and two with tariffs. There were six nontariff barrier (NTB) specific agreements: these related to antidumping, subsidies, standards, government procurement, customs valuation, and import licensing procedures. Three additional nontariff agreements were sector specific and related to civil aircraft, dairy products, and bovine meat. In this paper, the word "codes" will refer to the six NTB specific agreements mentioned together with the civil aircraft agreement.[1]

In what follows, we first review briefly how the codes relate to the GATT and then devote separate sections to a summary description and assessment of the individual codes. Specific issues of special interest to developing countries will be noted where relevant. We end with some conclusions and suggestions for improving the operation of the existing codes and the possible design of new codes which may be useful in light of the forthcoming Uruguay Round negotiations.

II. Relation of the Codes to the GATT[2]

The Tokyo Round codes form an extension of the GATT in that they explicitly extend trade discipline, or define more precisely existing discipline and rules, to specific NTBs. Most of the subjects addressed by the codes were already governed by the GATT to

a greater (antidumping, subsidies, customs valuation, and licensing) or lesser (government procurement, standards, aircraft trade) extent. It should be emphasized that the difference between the "GATT approach" and the "codes approach" is one of degree. In large part the use of codes as an instrument stems from the fact that amendment of the GATT has proven very difficult to realize. The basic principles of the GATT — nondiscrimination, use of tariffs rather than less transparent restrictive measures, sanctioning of measures against unfair trade, and surveillance and consultation regarding restrictive actions — also generally apply to the codes. The codes go a step further, however, in that procedures and provisions are more detailed and specific. Although only signatories are bound by them, the codes are intended to be applied in a nondiscriminatory fashion. However, the United States decided to apply the subsidies, standards, and government procurement codes only to signatories, and in practice all the codes are applied in a discriminatory manner to some extent.

The codes are essentially exercises in international rule making. The primary goals of the codes are to reduce trade barriers and increase certainty and transparency through the formulation of rules regarding the use of the NTBs that they address. It should be noted that the codes often do not forbid the use of particular NTBs, but aim rather at harmonization of their use combined with a reduction of their trade-impeding effects. The codes guide (and constrain) governments regarding acceptable national policies relating to code-covered matters. Regular meetings of code signatories, code provisions requiring reporting of relevant national measures and regular exchange of information, and detailed procedures for handling disputes are crucial to the functioning of the codes and especially important in monitoring compliance with code rules.

Each code is administered by a committee composed of representatives from the signatory nations involved. These code committees meet regularly in Geneva to discuss matters relating to the implementation of code provisions. Any disputes may also be tabled at these meetings, but only if bilateral consultations were incapable of resolving the

problem. Most codes have their own dispute settlement mechanism through which specific, code-related disputes may be addressed and to which only signatories have access. The structure of this mechanism is based on general GATT procedures. That is, the first step in resolving disputes is through bilateral consultation. As mentioned above, if this fails the code committee can discuss the dispute. Finally, if necessary, a panel of independent experts can be established specifically to address the dispute.

The GATT Secretariat acts as the secretariat to each code committee. The customs valuation and civil aircraft codes have an additional technical subcommittee. In general, code committees may create ad hoc working groups to address specific (often technical) issues of interpretation of code provisions. Membership in the codes is substantially less than membership in the GATT. However, many nonsignatories have observer status in some or all of the codes.

Finally, it should be noted that the codes are not static agreements and can be expected to evolve over time. In fact, some of the codes explicitly incorporate provisions for further expansion of their scope (the government procurement code, for example). The "codes approach" can thus also be regarded as a *process*, as a method of gradually achieving increasing multilateral agreement regarding the rules and procedures that govern the relevant aspects of national commercial policies.

III. Description and Assessment of the GATT Codes

We turn now to summary descriptions and assessments of the operation of the individual codes. While it would be desirable to discuss the commercial impact of each code as part of the assessment, the requisite data are unfortunately not available. Thus, what follows is based primarily on qualitative information derived from the experiences that public officials and agencies and the private sector have had with the codes. This inevitably involves a considerable element of judgment and thus leaves room for

disagreement. But until more definitive information can be obtained, a qualitative assessment is the best we can do.

The Antidumping Code

The antidumping code deals with the imposition by an importing nation of antidumping duties on *dumped* products that cause, or threaten to cause, material injury to an existing domestic industry or materially retard the establishment of an industry. Dumping is deemed to occur when a product is considered to be exported by a firm at less than its *normal value*, which is defined as the comparable price of the like product charged by the firm in its domestic market (net of transport costs, etc.). The antidumping code involved a renegotiation of an earlier Kennedy Round agreement. The objective was to provide symmetry between the new antidumping and the subsidies codes and to clean up some legal problems concerning U.S. implementation of the previous antidumping code.

The new antidumping code is aimed at establishing uniformity and discipline on antidumping practices of signatory nations so as to reduce the trade-impeding effects of substantive antidumping law and the procedures themselves. The code outlines the investigation procedures and requires that both the dumping and the injury investigations be carried out simultaneously and normally be completed within one year. As of September 1, 1986, there were 33 countries bound by the antidumping code.[3]

Between 1980 and 1985, the main users of antidumping actions were Australia, the European Community (EC), Canada, and the United States, together initiating over 1,100 investigations. The majority of the U.S. actions have related to steel. Chemicals have been important in the EC, manufactured goods in Australia, and consumer goods and high technology products in Canada. Most of these actions have been directed at firms from other OECD countries, and around one-fourth of them at firms in newly industrializing countries.

The consensus among the signatories is that the antidumping code has been working reasonably effectively. Certain technical problems arising from the code were

addressed by a special technical group whose recommendations were for the most part accepted by the code committee. The comparatively smooth operation of the code can be attributed in some measure to the precision of its wording, and perhaps more importantly to the wide agreement on its interpretation. The application of the code is closely monitored by each signatory through the code committee meetings, and knowledge that this review process is held apparently encourages those signatories that use antidumping procedures to keep in compliance with the code. The general conclusion is that transparency and harmonization of antidumping procedures have increased substantially compared to the period prior to the Tokyo Round.

In the United States and Canada especially, a substantial proportion of the antidumping cases initiated have been dismissed by investigating agencies, and there has been extensive use of domestic judicial review procedures by both importers and exporters. This could be interpreted as attesting to the fairness and transparency of procedures, and indicating that the prerequisites for imposing protection have some bite to them. It is clear though that the increased openness and rigorous requirements regarding the determination of dumping and injury have come at substantial cost, both in terms of money and time. This could be detrimental especially to developing country exporters, given that they will be called upon to supply cost and price information quickly and efficiently when an action is taken in an importing country. They may not always be capable of complying adequately in time.

Many developing countries feel that dumping is not necessarily an activity to be countervailed. Given the fact that the code has no positive obligations, that is, a signatory is not obliged to have or to use antidumping legislation, there are no major disincentives to join the code. Thus, it is somewhat surprising that developing country membership remains limited. By joining, these countries would have an opportunity to participate in further development of the code and attempt to implement a Tokyo Round understanding that purported dumping by a developing country firm would not automatically justify an

investigation by an importing country. Additionally, they could then bring up specific anti-dumping cases in committee meetings and attempt to defend their interests to the greatest extent possible.

The Subsidies Code

The subsidies code is intended to insure that government subsidies do not adversely affect or prejudice the interests of exporting countries and that countervailing measures by importers do not unjustifiably impede trade. In particular, the code prohibits export subsidies on nonprimary products, recommends that domestic subsidies should not be trade distorting, permits the use of countervailing duties only if material injury to domestic producers can be shown (or threatened), condones export subsidies on primary products only if export market shares are not increased unduly or prices depressed, requires that all subsidies be notified to the GATT, and permits developing countries to use export subsidies on industrial products but urges these countries to reduce or eliminate the subsidies when they are inconsistent with their competitive and development needs.

The subsidies code does not try to eliminate all subsidies. Rather, its goal is to create international discipline on those government subsidy practices that have trade distorting effects. As in the case of the antidumping code, the injury test is a fulcrum of the subsidies code's intention to reconcile presumably legitimate national government subsidy policies with the interests of nations affected by those policies. As of September 1, 1986, 34 countries were members of the subsidies code.[4]

The United States has been by far the largest user of the countervailing duty (CVD) mechanism, initiating over 250 investigations since 1980. While a substantial number of these CVD cases were terminated, this may be attributed in large part to the introduction of trade-restricting bilateral agreements, as in the cases of many steel and textile products. Both the EC and Japan have made little use of the CVD mechanism, apparently because other policies for dealing with the disruption of producers' interests may be available and easier to implement.

The subsidies code has been characterized by numerous disputes and lack of agreement between signatories on various issues. In contrast to the other codes, use of the dispute settlement mechanism has not proved effective. It is especially noteworthy, however, that most disputes have related to agricultural products, which is a sector that in any case has largely been excluded from GATT discipline. Further, the United States has viewed the subsidies code as a vehicle to effect changes in developing country policies. The United States has therefore reserved the right to refuse the injury test to any developing country signatory that did not commit itself to alter its subsidy policies. This has been a very contentious issue. Another difficult issue has been the procedure for notification of subsidies. Countries have disagreed over which domestic programs should be classified as subsidies, and there has been resistance to providing information on subsidies when requested by other signatories. Finally, there have been a number of technical disagreements, for example, on how to calculate a subsidy that have proven difficult to resolve.

The subsidies code has had some positive effects nonetheless, in large part because it has made CVD procedures more transparent and thus constrained governments from abusing them. Furthermore, the application of the injury test by the United States is an important change since this was not required prior to the Tokyo Round. However, developing country signatories will only have access to the U.S. injury test if they make a bilateral commitment to the United States to reduce their subsidy practices. It is noteworthy in this regard that around half of all recent U.S. CVD actions were directed against nonsignatories and thus were decided without an injury test being applied. Developing countries might therefore have something to gain by joining the code. Membership would also enable them to address in committee meetings those features of the code that they find objectionable, as well as specific CVD cases.

The subsidies code has received the most negative publicity of all the Tokyo Round codes and is considered by many not to have been very successful. Perhaps the

major explanation for this perceived lack of success is that, in drafting the code, it was not possible to obtain consensus on such important issues as the appropriate use of agricultural subsidies, the definition of subsidies, and the reduction of developing country subsidies. By the same token, increasing agreement has been achieved among signatories regarding the procedures for dealing with subsidies and imposing CVDs. The problem then is that lack of agreement on certain substantive issues has devalued the agreement on procedures. The Uruguay Round provides an opportunity to address these issues and hopefully to reduce the scope for conflict and potential damages arising from the use of subsidies by governments.

The Standards Code

The standards code addresses the problem of the barriers to trade that arise due to the existence of standards, technical regulations, and certification systems. It does not develop or write standards or technical regulations. The code provides that standards should not be disruptive to trade, that countries should provide national and nondiscriminatory treatment to imported products as far as standards are concerned, that foreign manufacturers are to be granted access to domestic certification systems, and that international standards should be used as much as possible. Further, there should be prior notification and maintenance of a comment period on proposed regulations, and countries should establish inquiry points to make available information on their standards. Developing countries may request specific, time-limited exceptions from certain provisions of the code and request technical assistance in implementing the code. Only central governments are directly bound by the code, although endeavors are to be made to insure that all standards writing bodies are in compliance with the code. The code does not apply to services, technical specifications included in government procurement contracts, or standards established by companies for their own use. As of September 1, 1986, 35 countries were bound by the code.[5]

Experience with the standards code suggests that, except for a relatively short start-up period, compliance with code provisions and procedures generally has been effective. While the code was not meant to bring about a rapid harmonization of existing standards, it can be credited to some extent in increasing the internationalization of product, health, and safety standards. It has also contributed to the reduction of various trade-distorting applications of standards and in general has made it more difficult for signatories to impose technical barriers to trade. While there have been some disputes on the required use of certain production methods, inspection procedures, and delays in notifying proposed new regulations, many potential problems have been resolved either in committee meetings or by means of bilateral consultations between signatories. The details of these bilateral consultations are usually made available to those major industrialized countries not involved, and efforts are under way to require that they be communicated to all signatories. The usefulness of the bilateral and code committee discussions has been an important element in determining the perception of most signatories that the code is working as intended.

In order further to improve the operation of the standards code, attention is being directed to increasing transparency by achieving greater code compliance on the part of regional standards-writing bodies and obtaining greater acceptance of self-certification procedures and foreign-generated test data by signatories. The United States has also sought to strengthen the application of the code to high technology sectors such as telecommunications.

Nonsignatories do not have formal access to the information exchange provisions of the agreement, nor can they defend their interests in committee meetings. Joining the code may be beneficial in that it gives access to the comment procedure so that firms may have an input into the standards writing process of foreign countries. Also, at present, nonsignatories may not have access to information on proposed new standards, and they

cannot use code procedures to challenge those standards that may have a detrimental effect on their trade.

The success of the standards code can be attributed in large measure to the consensus reached among the signatories on a variety of technical issues and procedures concerning proposed new standards. There has been a marked improvement therefore in transparency as the result of the functioning of inquiry points, notification procedures, exchange of information, and resolution of potential difficulties in bilateral consultations and in committee meetings.

The Government Procurement Code

The government procurement code is among the most far reaching of the Tokyo Round agreements since it brings into the discipline of the GATT system a subject area previously exempted from the GATT itself. Prior to the Tokyo Round, a large part of the market for government procurement was closed to foreign producers by means of formal or informal systems of national discrimination in favor of domestic producers. Some countries maintained essentially closed procurement systems while others maintained implicit or explicit price preferences for domestic producers. Furthermore, state-owned or controlled enterprises often also followed discriminatory procurement practices.

The main objective of the procurement code is to subject domestic procurement to international competition. To accomplish this objective, the code established far reaching obligations of nondiscrimination for purchases by certain specified government entities, including national treatment and elaborate measures to insure transparency of tendering procedures. The tradeoff for such far reaching obligations, however, was a restrictive coverage of the code insofar as it applies only to those entities included on the schedules submitted by signatory nations. While the entity coverage was thus somewhat limited initially, it was contemplated that more entities would be added at later times upon renegotiation of the code. The code exempts purchases under SDR 150,000, and this is to

be lowered to SDR 130,000 in 1988. As of September 1, 1986, 20 countries were bound by the code.[6]

As might be expected, given the sensitive nature of procurement decisions and a tradition of *buy national* policies by many signatories, the functioning of the procurement code has not been altogether smooth. During the first few years especially, signatories notified numerous instances of noncompliance in code committee meetings. Inadequacies in publishing tender notices, maintaining response deadlines too short for bid submissions, and not notifying unsuccessful bidders were some of the issues that were brought up. A number of these difficulties were resolved after bilateral consultations and discussions in committee meetings. As countries acquired more experience in implementing the code, it became clear that many of these problems were of a start-up nature. However, some practices which are objectionable to certain countries continue to appear on the agenda of code committee meetings. Examples include the use of noncompetitive procurement procedures such as single tendering (asking only one firm to submit a bid) and the practice by some countries of splitting large contracts into smaller lots so as to fall below the threshold minimum specified in the code. In general, because noncompliance is often difficult to detect, there are problems in monitoring the implementation of the code. In addition, the code does not provide for a bid protest procedure or for an adequate remedy if a protest were to be substantiated. The problem is that bidding cannot be reopened in most cases, and the aggrieved party will therefore not be able to have a fair chance at the contract.

The code provides for the annual exchange and review of statistics by signatories. While the available data are somewhat difficult to interpret because of differing measurement concepts used, it appears that some signatories made extensive use of noncompetitive procurement procedures and frequently relied on contracts below the minimum threshold of the code. Partly as a result, the commercial impact of the code has thus been considerably below what might have been expected. In addition to the factors

just mentioned, this can also be explained by the existence of decentralized procurement systems and relatively small procurement budgets in some countries. Frequent use of single tendering procedures especially in the EC and Japan and inadequate information on available procurement opportunities have been other important factors.

The success of the procurement code should not be judged solely on its commercial impact in the first years of its implementation, however. It is of considerable importance that previously closed procurement markets are now open to foreign bidders, and the evidence suggests that the number of bidding opportunities has in fact risen substantially as a result of the code. Also, the use of single tendering has diminished and Japan, for example, has added sixteen entities to its schedule since the Tokyo Round. The potential commercial effects of the code thus remain substantial, given that the proportion of total government procurement that is covered by the code is relatively high for many signatory nations.

It is noteworthy that negotiations to broaden and improve the code and add to the entities lists were begun in late 1983 and concluded in November 1986. The amended code, which will take effect in January 1988, includes rental and leasing contracts, lowers the threshold requirement to SDR 130,000, increases the time allowed for bid submission, and requires the publication of information on winning bids. Plans are also in progress to extend the entity coverage to include telecommunications, heavy electrical and transportation equipment, and government purchases of services. Given continuing efforts to improve the implementation and expand the code, its trade creating potential may well be increasingly realized in future years.

Many developing countries were actively involved in negotiating the procurement code, and the code reflects this input. An example is that offsets and licensing of technology may be used as a basis for awarding contracts. It is thus somewhat surprising to find membership to be quite so limited. However, insofar as the code is implemented in a nondiscriminatory fashion, and given that the administrative burden of implementing the

code is substantial, the incentives for developing countries to sign the code may not be particularly great.

The Customs Valuation Code

Customs valuation is the process by which customs authorities assign a tariff classification and value to imports. Valuation procedures may become NTBs if officials assign goods to an incorrect classification to which a higher tariff applies or assign goods a value greater than appropriate. It may also be the case that the process of documenting imports is excessively time consuming and expensive. The main purpose of the customs valuation code was to establish an equitable, uniform, and neutral system of determining the value of goods for customs purposes. The code does not address tariff classification issues. The primary valuation method specified is based on transaction value as represented by the price actually paid or payable for the goods. When there is a transaction between related parties and the existence of the relationship has demonstrably affected the price reported, the code provides for a transaction value method based on identical or similar goods imported. When this is infeasible, the code allows specially constructed measures of value to be used. As of September 1, 1986, 34 countries were bound by the code.[7]

The experience with the valuation code has been remarkably successful. The code has apparently resulted in a more uniform, fair, and greatly simplified system of valuation. Most signatories appear to have implemented the transaction value method without delay or problems. Over 90 percent of customs valuation by signatories is now based on transactions value. It is now highly predictable therefore what duties will have to be paid, and both traders and customs authorities have benefitted by the greater ease of customs administration. Only relatively minor issues have been brought up in committee meetings regarding code implementation and interpretation, most of which were settled harmoniously. Compliance is generally perceived to be excellent and signatories are reportedly cooperative when problems occur and must be resolved. As indicated above,

there have been important cost savings and much greater certainty in valuation than prior to the Tokyo Round. The customs valuation code is a real success story among the Tokyo Round codes. Its technical and relatively concrete subject matter and the uniformity and transparency of procedures are the sources of its success.

In recognition of fears voiced during the Tokyo Round regarding fraudulent invoicing, especially between related parties, a Protocol to the code gives developing country signatories somewhat greater regulatory flexibility in their customs procedures. Also, technical assistance in implementing code procedures is fairly readily available. Nevertheless, developing country participation in the code remains limited, implying perhaps that fears of reduced tariff revenue, a wish to maintain discretion in valuing imports, or the administrative burden of implementing code provisions remain concerns. Given that signatories do not discriminate against nonsignatories, the primary incentives for additional countries to join the code are the provisions themselves. Of course, this should not be taken to imply that there are no benefits to membership. Adherence to the code may well be in a country's interest, given expected cost reductions and reduced complexity. The code appears to be most useful to countries that are prepared to rely on the transaction value of imports rather than resort to discretionary control over valuation. In this context, membership in the code could be helpful to a country in actually achieving a change in its valuation regime if that is what it desires.

The Import Licensing Code

The objective of the licensing code is to reduce the use of import licensing procedures as an obstacle to trade by simplifying and harmonizing the procedures that importers must follow to obtain licenses. The code specifies that signatories must publish rules for submitting license requests, clarify procedures for obtaining licenses, and not refuse licenses for minor, cosmetic reasons. The major features of the code are thus nondiscrimination and transparency. As of September 1, 1986, 36 countries were bound by the code.[8]

Code activities consist mainly of exchanging information, monitoring implementation, and compiling data on licensing systems maintained by signatories. Thus far there have been no significant licensing-related problems between signatories, and the code appears to be functioning smoothly. The main problem regarding licensing procedures is perceived to lie with nonsignatories, mostly developing countries, which use quantitative restrictions for protectionist purposes. While an import licensing system is a consequence of the use of quantitative restrictions, there does not appear to be any justification for licensing procedures to impose additional protection, over and above the quantitative restrictions. Although, as with many of the other codes, there do not appear to be many incentives for participation, often it may well be in a country's national interest to join the code. In practice, however, this will depend on what a country's objectives are concerning the effects of its licensing regime. In general, it should be noted that since the provisions of the code are not particularly onerous, no strong disincentives exist that could inhibit greater participation in this code.

The Aircraft Code

This code is aimed at the reduction of both tariffs and NTBs affecting world trade in civil aircraft. It was the only specific sector agreement negotiated in the Tokyo Round. The code provided that tariffs on a specific list of civil aircraft products, parts, and repairs were to be eliminated as of January 1, 1980, and that certain NTBs were to be reduced as much as possible. Domestic subsidies to aircraft industries and the use of special incentives to influence buying decisions were especially targeted when the code was being negotiated. It should be noted that both the subsidies and standards codes apply to civil aircraft. As of September 1, 1986, 19 countries were bound by the code.[9]

An important difficulty in assessing the code is that the United States views it mainly as a nontariff code while the European Community views it more as dealing with removal of tariffs. It is noteworthy that both the subsidies and standards codes apply to civil aircraft, and that the United States especially has attempted to pursue actively the

issue of subsidies in the context of the aircraft code. The experience with the code suggests that it has facilitated trade in civil aircraft, and, since it is implemented on a nondiscriminatory basis, it has been beneficial to other GATT members. This also means that nonsignatories do not have much incentive to join the code. It should be noted that the United States especially has not been satisfied with the code because it has not resulted in effective discipline over the use of subsidies, particularly in the case of the European Airbus, and because it has not been very effective in disciplining the use of the political marketing of aircraft. These subsidies disputes reflect a problem that also arises in the context of the subsidies code, that is, they are production and not export subsidies, and are thus not explicitly forbidden. Some observers have considered that the aircraft code might be a model for future sector-specific agreements. But the sometimes sharp division of views on the operation of the code casts some doubt on whether it provides a useful precedent.

IV. Conclusions and Suggestions for Improving the GATT Codes

The main conclusion to be drawn from our analysis is that the operation of the codes can in general be viewed in a favorable light. Some of the common themes that emerge in analyzing the individual codes are as follows:

1. *Membership and participation* – All the codes have achieved a core membership of the major industrialized countries, sufficient to allow each of them to have some impact on the issues they address.

2. *Transparency, exchange, and gathering of information* – Each of the codes has established an institutional framework that entails regular meetings of code-signatory government officials. This provides a valuable opportunity for the exchange of views and information about governmental regulation and practices and the collection of relevant data. The meetings serve to enhance the understanding among nations about previously diverging policies on specific approaches to regulating international trade.

3. *Consultation* – In the same vein, the regular meetings of officials have provided the basis for discussing and often resolving troublesome trade issues.

4. *Dispute settlement* – The dispute settlement procedures for some of the codes appear to have begun operating in a reasonably effective manner. The problem with the subsidies code reflects the lack of agreement on certain fundamental policy issues that remain unclarified in the code rather than difficulties with the dispute settlement procedures per se.

5. *Harmonization and consistency of national trade regulations* – The harmonization or bringing into conformity of heretofore varied national regulations affecting trade can have salutory effects. When divergences in these regulations are diminished, the perceptions of businessmen and the public that the trading system is fair to all and balanced reciprocally are increased. Predictability is also enhanced and transactions costs are likely to be reduced when traders can perceive greater uniformity among the various national practices. This has been the case particularly for the customs valuation and standards codes, and to some extent as well for the antidumping and procurement codes.

6. *Framework for future progress* – An important element of the codes is the establishment of a framework for generating information and the exchange and explanation of sometimes contradictory viewpoints about important areas of international trade regulation. The procurement code in particular is designed expressly to enable a remarkably stringent set of rules to apply to a limited scope of activity that can subsequently be enlarged through reciprocal negotiations. While the subsidies code is perhaps seriously flawed as it now stands, it is nevertheless an important first effort to achieve some international discipline with respect to domestic and export subsidies. Issues of subsidies touch immediately on the prerogatives of sovereign nations, and it is not surprising therefore that the issues are so troublesome. Similarly, as with other codes, we

can see the beginnings of a movement towards greater international discipline regarding national trade policies and consequent benefits to the world community.

7. *Achieving National or Regional Interests* – From the point of view of a signatory, code rules constrain both its own policies *and* those of its (signatory) trading partners. While we have in large part focused on the latter effect, in practice it may also be the case that membership of a code can help a signatory to impose discipline on itself. This has certainly been a motivation for the EC to participate in some of the codes, and it also may have been (and can be) important for certain countries in specific instances.

Of course, there are many problems remaining to be resolved and ways in which the operation of the codes could be improved. In particular, the effectiveness of some of the codes might be enhanced by increased participation especially on the part of the more advanced developing countries. This applies mostly to the subsidies, valuation, and licensing codes, where increased developing country membership could be of great significance. However, given nondiscriminatory application of most code provisions by the majority of signatories, there may in fact be limited incentives for increased membership. The U.S. practice of code conditionality in refusing to apply the subsidies code to nonsignatories without some reciprocal concessions makes it necessary for nonsignatories to consider whether the benefits that go with signing the code will be commensurate with the internal policy changes that may be required. A further issue is that the codes may involve procedures that some countries find costly to implement, and, indeed, there may be some question as to whether the present GATT Secretariat itself has sufficient staff and facilities to function effectively. Some observers are concerned about the weaknesses in the dispute settlement procedures of the individual codes and the problems that might arise in the future if the procedures are to remain code specific rather than being centralized. Finally, there is the immensely difficult question of how much conformity the GATT system should seek to impose on sovereign nations. In this connection, the experience of

the subsidies code has shown how difficult it is to exercise discipline over national policies, especially in the case of agriculture.

Despite these reservations, if a meaningful system of international discipline is to be advanced both for the unfinished business of the Tokyo Round and for the new issues to be addressed in the Uruguay Round, the "codes approach" represents a significant tool of multilateral diplomacy. The limited experience with the existing codes suggests that, in revising these codes and constructing new ones, areas of disagreement among the negotiating parties be recognized explicitly and left open for continuing negotiation. There is a danger of papering over problems in an effort to resolve an impasse and hope that the problems can be dealt with later by means of the consultation and dispute settlements process. The subsidies code is a case in point that demonstrates the futility and frustration that may ensue when there is no clear consensus on the wording and interpretation of negotiated agreements. The Tokyo Round negotiators may thus have been wise in their decision to leave the negotiation of a safeguards code to the next GATT Round. By the same token, if a codes approach is taken in the Uruguay Round for such new issues as counterfeiting, intellectual property, investment requirements, and international transactions in services, the successes and failures of the Tokyo Round codes that have been described should be kept in mind.

Footnotes

[1]The texts of the nontariff agreements are to be found in individual GATT documents published in 1979 as well as in GATT (1980).

[2]This and the next section are based on Stern, Jackson, and Hoekman (1987).

[3]The code signatories include all the major industrialized countries. Other signatories are: Brazil, Czechoslovakia, Egypt, Hong Kong, Hungary, India, Pakistan, Romania, Poland, Singapore, South Korea, and Yugoslavia.

[4]The developing country and nonmarket economy signatories included: Brazil, Chile, Egypt, Hong Kong, India, Indonesia, Israel, Pakistan, Philippines, South Korea, Turkey, Uruguay, and Yugoslavia.

[5]Australia is presently the only industrialized market economy that is not a signatory to the code. The developing country and nonmarket economy signatories included: Argentina, Brazil, Chile, Czechoslovakia, Egypt, Hong Kong, Hungary, India, Pakistan, Philippines, Romania, Rwanda, Singapore, South Korea, Tunisia, and Yugoslavia.

[6]Australia is presently the only industrialized market economy that is not a signatory to the code. Hong Kong, Israel, and Singapore are the only developing country signatories.

[7]The developing country and nonmarket economy signatories included: Argentina, Botswana, Brazil, Czechoslovakia, Hong Kong, Hungary, India, Lesotho, Malawi, Romania, South Korea, Turkey, and Yugoslavia.

[8]The developing country and nonmarket economy signatories included: Argentina, Chile, Czechoslovakia, Egypt, Hong Kong, Hungary, India, Nigeria, Pakistan, Philippines, Poland, Romania, Singapore, and Yugoslavia.

[9]Australia, Finland, New Zealand, Portugal, and Spain are presently not signatories to the code. Egypt and Romania are the only nonindustrialized signatories.

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