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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Trade in Agriculture

DRAFT RECOMMENDATIONS

Explanatory note by the Secretariat

The present note has been prepared by the secretariat, in consultation with the Chairman, in response to the request by the Committee at its meeting of 6-7 June 1984 that, in order to facilitate their further consideration, the draft recommendations in AG/W/8 should be supplemented by an explanatory note on the text and the approach which it embodies.

Introduction

1. The following general commentaries and annotations relate to operative paragraphs 1 to 3 of the draft text in AG/W/8. These paragraphs concern the substance of the proposed general approach or framework for future action. The introductory paragraph to the text on the other hand, is merely a formal recital which does not appear to warrant specific comment. Paragraph 4 relating to the institutional arrangements for carrying out the approach envisaged in paras 1 to 3 involves more general considerations on which it is not proposed to comment in the context of the present note.

2. In explaining the text in AG/W/8 and the approach it embodies, it has been necessary, in the nature of the exercise, to comment with some precision on the concepts and suggestions developed in or emerging from the Committee's discussions. In a number of areas, therefore, the present note goes somewhat further than has thus far been done in the Committee in outlining particular aspects of the approach and some of the more general considerations involved. In so doing the object of the present note is to facilitate the Committee's further consideration of the recommendations it is required to make, whilst remaining within the broad parameters of the Committee's examinations and discussions.

3. Paragraph 1 (chapeau)

Text: "The conditions should be elaborated under which substantially all measures affecting trade in agriculture would be brought under more operationally effective GATT rules and disciplines, with particular reference to improving terms of access to markets, to bringing export competition under greater discipline; and to reinforcing the linkages under Articles XI and XVI between national policies and trade measures in a manner which more clearly defines the limits to the impact of domestic agricultural policies on trade. To this end, and without prejudice to consideration of other approaches aimed at improving the rules and achieving greater liberalization for trade in agriculture, an approach should be elaborated, as a basis for possible future negotiations, under which:"

4. The first sentence of the chapeau is a thematic statement of the objectives and purposes of a general approach or framework for future action aimed at bringing trade in agriculture more fully into the multilateral trading system. Those objectives and purposes are derived from the Ministerial Declaration itself and from the Committee's consideration of conclusions (AG/W/6 para. 17 etc., and AG/W/7 paras 3, 11 and 21).

5. A major objective would therefore be to move from the present situation in which only some measures affecting trade in agriculture are subject to GATT rules and disciplines that are either less than effective or are not applied effectively, to a situation in which substantially all measures affecting trade in agriculture are subject to improved and more effectively applied ("more operationally effective") rules and disciplines. In plainer language the objective would be to restore the comprehensive character which the GATT rules were originally intended to possess and to do so in a manner which results in improved and more liberal opportunities for trade in agriculture. Thus in the elaboration of the conditions underwhich this broad objective might be realized specific reference is made to "improving terms of access to markets" and "to bringing export competition under greater disciplines": language drawn directly from the Ministerial Declaration.

6. In addition, the last phrase of the first sentence of the chapeau requires that the elaboration proposed should also be directed to, or undertaken with particular reference to, reinforcing the linkages under Articles XI and XVI between national policies and trade measures in a certain manner. The concept involved is one which has been evolved in the course of the Committee's examinations and discussion, and is referred to in some detail in the concluding remarks of the Chairman annexed to the note on the Committee's March 1984 meeting (AG/W/6) and in the note on the April meeting (AG/W/7, para. 1 et seq.) The basic notion is that a balance should be established between legitimate domestic and international trade interests; and that, for this purpose, the existing linkages in Articles XI and XVI between national policies and trade measures should be developed and strengthened in a manner which more clearly defines the extent to which the pursuit of domestic

agricultural policies should be permitted to impact on trade by restricting or displacing imports or increasing exports. The existing GATT rules as they relate to agriculture purported to strike a balance between competing domestic and international trade interests that was weighted in favour of relatively open and progressively more liberal trading arrangements. This was on the basis of what was intended to be a body of generally accepted and applied rules and disciplines, in the absence of which the proper functioning of domestic support policies or of the open trading system would be compromised. The formulation in the draft text is essentially directed towards re-inforcing the existing rules in this general sense.

7. The second sentence of the chapeau ("to this end.....etc.) calls for an approach to be elaborated or developed, as a basis for possible future negotiations, which would be directed to achieving the broadly stated objective in the first sentence. The elaboration of this inclusive approach is to be undertaken without prejudice to other possible approaches which are also aimed at improving the rules and achieving greater liberalization for trade in agriculture. It will be noted that paragraph 3 (see paragraph 56 of the present note) also provides that full account is to be taken of the factors therein referred to in the elaboration of the various elements of the proposed or recommended approach.

8. Paragraph 1 (a) (access)

> Text: ".....under which (a) all quantitative restrictions and other related measures affecting imports and exports are brought within the purview of strengthened and more operationally effective GATT rules and disciplines, including restrictions maintained under waivers and other derogations or exceptions, and the import and export activities of state trading and other related enterprises. Appropriate rules and disciplines relating to voluntary restraint agreements, to variable levies and charges, to unbound tariffs, and to minimum import price arrangements should be elaborated as part of this approach;"

9. There are, in principle, a number of possible approaches under which all, or substantially all, quantitative restrictions and other related measures might be brought within the purview of strengthened and more operationally effective GATT rules and disciplines. Against the background of the Committee's discussions, it is apparent that the approach to be developed would need to have three basic prongs or lines of action. The first would consist in bringing under a reinforced Article XI those quantitative restrictions which at present escape the disciplines of that Article as a result of various derogations and exceptions (waivers, protocols of accession, grandfather clauses etc.), as well as residual quantitative restrictions. The second would consist in bringing all related or assimilable measures which are not explicitly provided for in the General Agreement, or which escape effective disciplines because of imperfect interpretation of the existing rules, under the disciplines of a reinforced Article XI, or if that is not

appropriate, under equivalent disciplines within the framework of an appropriate GATT provision or an interpretative note or whatever (voluntary restraint agreements, variable levies and charges, unbound tariffs, MIPs). The third line of action would consist in a parallel endeavour to negotiate as an integral element of the first and second lines of action improved and more liberal opportunities for trade in agriculture.

10. Such, in somewhat more precise terms, is the general scheme as it has been developed in the course of the Committees discussions thus far. There is clearly a wide range of possibilities as to how the approach envisaged might be delineated and implemented through negotiations. The following comments are therefore no more than an indication, in very broad outline, of the structure of the approach envisaged. In this regard it may be noted that the approach envisaged in sub-paragraph 1 (a) of the draft recommendations would relate to restrictions other than those to which contracting parties may resort under other provisions of the General Agreement, such as articles XII, XVIII and XIX, although in principle the wording of the text does not exclude action considered necessary in other areas.

Quantitative Restrictions

11. In order to bring substantially all quantitative restrictions under Article XI, it is apparent that some redefinition in the existing conditions governing eligibility for the invocation of paragraph 2 (c) of Article XI may be necessary. The key issue is how to achieve this objective through a net strengthening of the basic provisions of Article XI and at the same time improving the opportunities for trade (AG/W/7, paras 12, 16 and 18). In the approach envisaged at least five improvements or modifications would need to be negotiated concurrently.

12. At present Article XI:2(c) (i) permits restrictions on imports (but not a prohibition of imports) under two main conditions. Very broadly these are: (a) that the restrictions are necessary to the enforcement of certain types of governmental measures (at present "measures which operate to restrict the quantities of the like (or directly substitutable) domestic product permitted to be marketed or produced"); and (b), in terms of the last paragraph of Article XI:2, that such restrictions shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion that might reasonably be expected to rule between imports and domestic production in the absence of restrictions.

13. Thus the General Agreement intended that in any case where restrictions were imposed to protect the operation of a certain class of domestic income and price support policies, a minimum level of access, based, inter alia, on the relationship that would have prevailed in the absence of restrictions between imports and domestic production, should be respected for each and every product to which restrictions are applied. One of the principal elements of the approach envisaged would therefore consist in a broad multilateral effort to reinforce the access obligations of the last paragraph of Article XI:2 as one of the key conditions to the continued maintenance of existing, or the introduction of new, restrictions.

14. The manner in which such an across the board improvement in access might be developed would obviously be a matter for negotiation amongst countries applying restrictions under a reinforced Article XI and countries with a principal or substantial supplier interest in the products concerned. In any such negotiations it would seem to be essential that existing levels of bound access be respected and that the resultant commitments be bound under Article II in the Schedules of contracting parties. In principle, based on the last paragraph of Article XI:2, a case could be made in favour of minimum access commitments being expressed in terms of a negotiated ratio between imports and domestic production, but there would be a range of other possible techniques or combinations of techniques. It may be noted that such a negotiation would be based fairly and squarely on reinforcing or more effectively applying existing obligations under Article XI. As noted in paragraph 21 below, a feature of the approach that might be elaborated in the case of other restrictions would involve equivalent obligations with respect to minimum access commitments. In the case of bound or unbound tariffs on products not otherwise restricted it is assumed that appropriate negotiating procedures would be established in the context of any future decision to embark on negotiations. Paragraphs 1 and 1(a) of the draft recommendations are intended to provide a framework within which a scheme for developing improved terms of access along these lines, along with other proposals discussed in the Committee (AG/W/6, paras 19 and 20; and AG/W/7 para 34), might be elaborated.

15. A second possible element of the approach envisaged would consist in some modification to the existing criteria governing eligibility to have recourse to restrictions under Article XI:2 (c) (i): the object being to enable a significant proportion of those restrictions currently maintained outside Article XI (under various derogations and exceptions) to be brought within the rules and disciplines, including the minimum access commitments discussed above, of a reinforced Article XI. The pace at which non-conforming measures are brought within the disciplines of a reinforced Article XI:2 (c) would be a matter for negotiation and would depend, inter alia, on the the scope of the exception in paragraph 2 (c) (i) and on the nature of the conditions governing its invocation.

16. It is not the purpose of this note to suggest possible modifications to Article XI:2 (c) (i). As a general comment, however, any re-definition or re-interpretation of the categories of governmental measures, the operation of which a contracting party is entitled to protect by recourse to restrictions (but not prohibitions) under Article XI:2 (c) (i), should be consistent with the general objectives and purposes described in the chapeau to the draft recommendations. Any such re-intepretation should, inter alia, aim to reinforce the linkages under Article XI between national policies and trade measures in the manner described in the chapeau. In other words whatever categories of governmental measures may in future entitle a contracting party to resort to restrictions under Article XI:2 (c) (i) should be subject to a requirement that they are operated in a manner that is consistent with the obligation under the last paragraph of Article XI:2 to provide a minimum bound level of access.

17. A third possible element in the approach envisaged to strengthening Article XI:2 (c) (i) is that any negotiated extension of the categories of measures whose operation a contracting party would be entitled to protect by recourse to restrictions under Article XI:2 (c) (i), would be counterbalanced by also employing "governmental measures which operate to restrict production" as one of the principal criteria for exceptions to any ban on export subsidies under Article XVI.

18. A fourth possible element would consist in a reinforcement of sub-paragraphs (ii) and (iii) of Article XI:2 (c) to ensure, for example, that the temporary surplus exception in sub-paragraph (ii) does not become a permanent escape clause from the strengthened obligations of paragraph 2 (c) (i). A fifth possible element would consist in a provision for review of national policies from the point of view of their impact on trade and their consistency with the provisions of a reinforced Article XI:2 (c) (see para. 54 below).

19. In the case of "state trading and other related enterprises" the approach that might be elaborated would be directed to reinforcing the existing GATT rules and disciplines to ensure that the activities of these enterprises are conducted in a manner which is consistent with the obligations assumed by governments in respect of import and exports (AG/W/6, para. 9). In addition to seeking greater transparency as regards the activities of such enterprises, one general objective would thus be to ensure that the obligations of governments with respect to import and export measures under the relevant GATT rules, including a reinforced article XI:2 (c), are not circumvented by the operations of state trading or other related enterprises. Thus minimum import obligations would have to be respected in cases where, although Article XI:2(c) is not as such invoked, the activities of such enterprises have the effect of quantitative or other related restrictions.

Other related measures

20. The general prohibition in Article XI:1 relates to restriction or prohibitions "other than duties, taxes or other charges". Paragraph 1 (a) of the draft recommendations refers, in addition to quantitative restrictions, to a number of other restrictive measures, such as voluntary restraint agreements, variable levies and charges, unbound tariffs and minimum import price agreements. In calling for appropriate rules and disciplines on such measures the draft recommendations are not intended to prejudge whether a particular measure not explicitly recognized in the General Agreement should be so recognized or legitimized (e.g. an appropriate rule on VRA's could be a provision declaring such measures to be illegal simpliciter). Nor does the formulation in paragraph 1 (a) of the draft recommendations presuppose that it is necessarily under Article XI itself that a home should be found for one or other of these measures.

21. Rather, the general philosophy developed in the course of the work of the Committee has been that in order to bring substantially all measures under more operationally effective rules and disciplines, and thereby bring trade in agriculture more fully into the multilateral trading system, it is necessary that the restrictive measures to which countries can resort, whether or not they are explicitly provided for at present in the General Agreement, should also be subject to effective disciplines. If, for example, only the rules on quantitative restrictions were to be re-inforced the tendency could be for countries to resort to other measures that are not subject to equivalent rules and disciplines or subject to no multilateral disciplines of any kind.

22. With regard to voluntary restraint agreements the elaboration of appropriate rules and disciplines could involve a range of possibilities, from an unqualified prohibition of such measures to their incorporation under the disciplines of an appropriate article of the GATT or of a separate GATT provision. It may be noted that such agreements raise issues relating to the obligations of the parties concerned with respect to restrictions affecting both exports and imports.

23. In principle it would seem that if voluntary restraint agreements were to be subject to the disciplines of a reinforced Article XI:2(c), on the same footing as quantitative restrictions, the country seeking to impose a voluntary restraint would be entitled, ipso facto, to instead have recourse to a possibly more restrictive quasi-unilateral quota. Another possible alternative would be a requirement that, as an exception to Article XI:2(c), voluntary restraint agreements be submitted to the Contracting Parties who, on the basis of a negotiated set of criteria, would undertake an assessment of the agreement's conformity therewith. An agreement once concluded would be submitted to the Contracting Parties but would remain in force unless disapproved. The criteria to be negotiated might relate to such matters as, for example, conformity with Article XIII, provisions for progressive liberalization, differential treatment for developing countries, disciplines on internal production in the importing country, duration, renewal and denunciation and transparency.

24. With regard to variable levies and charges there are a number of alternative approaches. The basic concept would be that such measures should be subject to disciplines equivalent to those applicable to restrictions under Article XI:2(c). In other words where variable levies or other variable charges are applied the obligations in the last paragraph of Article XI:2 should be respected. This could be achieved by bringing variable levies and charges under Article XI:2(c) itself but there would appear to be certain practical or presentational difficulties in such an approach. An associated provision could achieve the same result as well as providing a framework for the elaboration of other elements of an appropriate rule on these measures.

25. Minimum import prices, which in certain circumstances can have effects similar to those of a variable levy or of a quantitative restriction, could, in principle, be dealt with as restrictions under Article XI:2(c). Indeed such an approach was followed in a 1978 panel which considered restrictions involving minimum import prices. There may, however, be other possibilities in this regard.

26. The reference to appropriate rules and disciplines on unbound tariffs in paragraph 1(a) of the draft recommendations reflects discussion in the Committee on the question of balance of rights and obligation. Since tariffs, whether bound or unbound, are a legitimate form of protection under GATT, it would seem that the elaboration of an approach based on the reduction and binding of such tariffs, in accordance with appropriate principles and procedures, is what might be envisaged, although in terms of the draft recommendations other approaches may be elaborated.

27. Paragraph 1(b) (subsidies)

> Text: "... underwhich (b) all subsidies affecting trade in agriculture, including export subsidies and other forms of export assistance, are brought within the purview of strengthened and more operationally effective GATT rules and disciplines. The approach to be elaborated in this regard should be developed within the framework of a general prohibition, subject to carefully defined exceptions, on export subsidies and other forms of export assistance in conjunction with the elaboration of improvements in the existing rules and disciplines."

28. In the course of the Committee's discussions, it was generally recognized that there were certain lacunae in the operation of the existing disciplines on subsidies affecting trade in agriculture (e.g. AG/W/5, p. 11, para. 39 and AG/W/6, p. 3, para. 11).

29. Not all contracting parties were fulfilling their obligation to notify under Article XVI:1 first sentence. Moreover, many of the notifications that were submitted were incomplete in a number of respects; for example there was a lack of information on certain practices like export credit, concessional sales and countertrade or similar operations. Although the coverage of measures notifiable is broad under this provision, difficulties were noted in distinguishing between subsidies which had a trade effect and those with little or no such effect, and consequently in determining specifically which measures were covered under the notification obligation.

30. Secondly, there have been divergent views as to the meaning of the provisions of Article XVI:1 second sentence: who was to make the determination of prejudice, what was the meaning of "serious prejudice" and in particular its relation to the equitable share obligation, and whether the obligation to discuss the possibility of limiting the subsidization implied that the subsidizing contracting party must take action to limit the subsidy in question.

31. Thirdly, it was felt that Article XVI:3 had not been effective in limiting the use of export subsidies on agricultural products, since it had been designed only to prohibit certain effects of those subsidies. Moreover, the case-by-case application of the effect-oriented rule had not produced a common line of case law on the matter, and certain key concepts like equitable share remained subject to divergent interpretations.

32. Finally, there were divergent interpretations as to whether export subsidies on the primary product component of processed products were permitted: although the rules provided a clear prohibition of export subsidies on non-primary products, these practices had been in existence for a long time.

33. The first sentence of paragraph 1(b) of the draft recommendations contained in AG/W/8 therefore calls for bringing "all subsidies affecting trade in agriculture, including export subsidies and other forms of export assistance ... within the purview of strengthened and more operationally effective GATT rules and disciplines". This would mean that the scope of the exercise is intended to be large as regards the measures to be considered: encompassing subsidies within domestic markets and at the border, direct and indirect, including the measures which assist exports and have the same effects as export subsidies. This would also mean considering remedies to correct the deficiencies in the existing rules and their application as identified by the Committee. Many suggestions have already been made in the Committee in this regard. They have received various degrees of support in the Committee and their further consideration and elaboration can be pursued.

34. As regards the obligation to notify under Article XVI:1 first sentence, there have been suggestions to clarify what measures are notifiable, to resort more often to reverse notifications, to examine the current questionnaire (BISD 9S/193-194) to determine whether it should be modified or updated and to institute a regular review process of the notifications either annually or every three years. These suggestions have been made in the interest of achieving greater transparency and compliance with the notification requirements.

35. As regards Article XVI:1 second sentence, it has been suggested that this provision be re-enforced by clearly converting an obligation to consult into an obligation to limit subsidization where there is an international finding of serious prejudice or threat thereof. This would entail making a differentiation between when one or some contracting parties consider that serious prejudice is caused or threatened by a subsidization, and when the CONTRACTING PARTIES so determine on the basis, for example, of a panel finding. In the former case there would be, as at present, discussions engaged bilaterally or plurilaterally, similar to what takes place under Article XXII or even Article XXIII:1, or multilaterally in a working party for example. In these discussions the subsidizing contracting party would be expected to explain the operation of the subsidization and to discuss whether the subsidization is causing or threatening serious prejudice and whether it would be possible to limit the subsidization. However in the case of determination of serious prejudice by CONTRACTING PARTIES (either deciding by consensus or if necessary by a vote) a higher form of commitment would be demanded of the subsidizing contracting party. It would have to take action to limit the subsidization in accordance with any recommendations that would be made by the CONTRACTING PARTIES.

36. It should be remembered that Article XVI:1 deals with "any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports ... or to reduce imports" on primary as well as non-primary products. Moreover it refers to serious prejudice or threat thereof to "interests" by such subsidization. Therefore, a conversion of the obligation to discuss into an obligation to limit subsidization has broad implications. Serious prejudice could be caused or threatened (i) to domestic producers as a result of subsidized imports, (2) to exporters as a result of subsidies in a domestic market, and (3) to exporters as a result of export subsidies in third country markets. It would have to be considered whether in the light of a re-enforced second sentence of Article XVI:1, written guidance would be needed as to the basic criteria to be used in determining serious prejudice or threat thereof in any or all three of the situations described above, or whether this could only be determined on a case-by-case basis, with reference to any precedents in previous case law as developed. If, for example, it is felt that written guidance for determining serious prejudice or threat thereof is necessary in cases of competition in third country markets through export subsidies, it should be considered whether the equitable share obligation (expressed in Article XVI:3 and developed in Article 10 of the Subsidies Code) would be a criterion in this determination, as well as the concepts that emerged from the findings of the two panels on EEC refunds on exports of sugar (BISD 26S/319 para. (h), BISD 27S/97 paras (f) and (g)) and/or any other criterion.

37. As regards the subsidization of processed products, it appears to be recognized that the subsidization of the non-primary product component thereof should not be permitted. However as regards the subsidization of the primary product component, two courses have been suggested: either this practice is not permitted or it is permitted to the extent that the export subsidization of the primary product itself is allowed under present or envisaged disciplines. In the case of a recognized ban on export subsidies on the primary product component of processed products, one might expect an increase in the amount of "indirect" subsidization of exports of processed products by way of production aids, two-price systems, and so on. Such indirect subsidization is covered, inter alia, by the equitable share obligation of the present Article XVI:3. It would remain to be considered whether there would be re-enforced disciplines on this indirect subsidization due to a re-enforced Article XVI:1 second sentence as described above or under the approach to be elaborated in the context of a prohibition with carefully defined exceptions described below.

38. Finally, as regards export subsidies, it has been suggested that the possibility of developing a general prohibition, subject to carefully defined exceptions was worth exploring. This suggestion, inter alia, is embodied in the second sentence of paragraph 1(b) of the draft recommendations.

39. The approach consisting of adapting Article XVI:3 along the lines of Article XI, is aimed at converting the largely ignored moral imperative of the first sentence of Article XVI:3 that "contracting parties should seek to avoid the use of subsidies on the export of primary products" into a contractual obligation that contracting parties shall not use export subsidies, just as Article XI bans the use of prohibitions or quantitative restrictions. However, the ban on quantitative restrictions under Article XI:1 is qualified, inter alia, by exceptions under Article XI:2(c) which permit restrictions on imports of an agricultural of fisheries product when this is necessary for enforcing government measures which operate to restrict production or marketing.

40. Similarly, carefully defined exceptions could be envisaged to a general prohibition on export subsidies and other forms of export assistance, which would circumscribe the situations wherein export subsidies could be resorted to. As in the case under Article XI:2(c), this would imply an indirect limitation on domestic policies. Of course domestic support programmes would remain within the sovereign purview of governments to establish and maintain in order to pursue certain socio-political objectives which they hold as legitimate. But wherever these programmes engender the necessity to use quantitative restrictions or export subsidies in order to dispose of the domestic product, certain international disciplines already exist and can be further elaborated so as to more clearly define the limits to the impact of domestic agricultural policies on trade. In other words, as regards export subsidies there would be implicit limitations on the amount of the subsidy and/or the volume of agricultural commodities which could be subsidized on the international market-place.

41. The alignment of Article XVI:3 with Article XI:2 need not entail a copying word for word of the latter provisions in the interest of symmetry at all costs, however. A more flexible attitude should be adopted to take into account any particular features of the export market, keeping in mind the overall intentions of the basic approach.

42. In elaborating the prohibition the following issues could be addressed and clarified: whether the prohibition should extend to both direct and indirect export subsidies (the current coverage of the equitable share obligation) or only to direct export subsidies, and whether the prohibition should cover only export subsidies granted by governments and not cover then subsidies which are truly producer-financed. Moreover it should be clear from the text of the recommendations that not only direct export subsidies must be examined and covered by disciplines but other forms of export assistance like concessional sales, and export credit.

43. Transactions which are considered as food aid transactions under the FAO's Consultative Sub-Committee on Surplus and therefore subject to notification, consultation and reporting obligations thereunder[1] could be an exception to the prohibition to meet relief needs. It would be understood that transactions other than these which involved an export subsidy like so-called gray-area transactions would be prohibited (unless permitted otherwise). A variant of this proposition is the suggestion that all concessional sales be replaced by grant aid transactions.

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[1] Currently types 1 through 13 excluding types 10(c) and 11(c) under the catalogue of transactions.

44. Non-commercial export credit practices or export credit guarantee practices would be covered under the prohibition. There would have to be an understanding as to what constituted commercial or non-commercial interest rates or conditions of re-payment; that is at what level these practices would constitute a subsidy and therefore be prohibited.

45. By analogy with Article XI:2 an exception to the prohibition on export subsidies could be envisaged on a product to which a governmental measure applied which operated to restrict the quantity of the product permitted to be marketed or produced. However, a restriction on production would seem a more apparent restriction on the volume of a product that could be exported with a subsidy, as opposed to a marketing restriction, and thus the former should be perhaps the only criterion to be retained in this regard, to assure that this exception circumscribes export subsidization. There would be the very important question as to at what level production should be restricted, and whether a formula of general application could be drafted in this regard.

46. By further analogy with Article XI:2, it would have to be considered whether there should be an exception in the case where a temporary suplus must be removed. At present under Article XI:2c(ii), if such a case arises, a country must in effect eat its own surplus via subsidized distribution internally, in order for it to be able to resort to quantitative restrictions on imports. As regards the export side, mention has been made already of the possibility of an exception for food aid (paragraph 43). Accordingly, it might be considered that these two recourses, subsidized internal distribution and food aid, should be the only ones to be retained for disposing of a temporary surplus.

47. As there is an exception under Article XX(h) from the other provisions of the General Agreement for measures taken in pursuance of obligations under an intergovermental commodity agreements, so perhaps it should be considered whether there should be an exception to the prohibition on export subsidies for signatories of such an agreement.

48. It has also been suggested that in the elaboration of this approach, the special situation of developing countries should be taken into account. At present Article XVI:3 and its equitable share obligation applies to all contracting parties, developed and developing. If the approach to be elaborated re-enforces the rules as to the effects subsidies can have, as well as to under what conditions subsidies can be resorted to, then it would have to be considered in the light of any new or re-enforced disciplines, where in particular the special situation of developing countries should be taken fully into account and in what particular manner.

49. The second sentence of paragraph 1(b) of the draft recommendations also refers to the elaboration of improvements in the existing rules and disciplines. The use of the connecting words "in conjunction with" is meant to imply that the development of a general prohibition with exceptions is not a distinctive alternative to seeking common interpretations of key concepts in the present rules. One proposition need not necessarily exclude the other. Indeed, even with the adoption

of a general prohibition, the so-called effect-oriented disciplines would continue to exist for those subsidies that were not prohibited but covered under the exceptions of one kind or another. If these provisions were subject to divergent interpretations in the past, they must be subject to common interpretations in the future or they will be no more effective. Examples of terms in the existing rules and disciplines that could be reviewed in this connection are: serious prejudice, primary product, equitable share, world export trade, representative period, special factors, market displacement and price-undercutting.

50. Paragraph 1(c) (sanitary and phytosanitary regulations)

> Text: "... underwhich (c) sanitary and phytosanitary regulations and other technical barriers to trade, including related administrative requirements, are brought within the ambit of improved procedures aimed at minimizing the adverse effects that these measures can have on trade in agriculture."

51. This part of the draft recommendations is intended to provide a framework within which possible improvements in the GATT rules and disciplines relating to the various barriers to trade referred to, might be elaborated (AG/W/6, para. 10, and AG/W/7, para. 20). The nature of the specific approaches that might be considered in this context are, as in other areas, matters for subsequent action. One possible approach would be to seek to improve the existing procedures on the basis of an examination not only of whether in terms of Article XX(b) the measures in question are necessary or justified or are a disguised barrier to trade, but also on the basis of whether, accepting that the particular measures may be justifiable, the national interests involved can be protected in a way which is less harmful to the trade of third countries.

52. Paragraph 2 (regular review of measures and policies)

> Text: "The policies and measures of contracting parties should be subject to regular review and examination and that for this purpose the system of notifications introduced by the Committee should, with appropriate improvements, be implemented on a permanent basis in order to ensure fuller transparency with regard to all policies and measures affecting trade in agriculture."

53. This section of the draft recommendations is concerned with improvements in procedures for notification and for regular review of measures and policies. Paragraph 3 of the Ministerial work programme for trade in agriculture provides for an improved and unified system of notifications to be introduced so as to ensure full transparency, and in the course of the Committee's examinations and discussions various suggestions have been made regarding the more general aspects involved (AG/W/7, para. 10).

54. In essence there are three particular issues involved. There is first the question of an improved and unified system of notifications. This has been developed to a certain point in the AG/FORMAT series and the draft recommendations envisage that further improvements may be necessary. Secondly, there is the question of improvements in the notification requirements and procedures under specific Articles, such as for example, Article XI:2 (last paragraph) and Article XVI:1. These are presumed to be matters which will be considered in the context of the elaboration envisaged under each of the sub-paragraphs of paragraph 1 of the draft recommendations. Thirdly, there is the question of what if any procedures might be elaborated for a regular review and examination of the overall situation as regards the impact of national policies and measures on trade in agriculture. To the extent that the linkages under Articles XI and XVI, between national policies and trade measures, are reinforced in a manner which clearly defines the limits to the impact of national agricultural policies on trade, one of the issues that has been raised is whether it would be appropriate that, in a GATT multilateral context such a review procedure should be established. The general objective would be to make it possible to keep a collective eye on whether, from the point of the impact on trade, national policies are generally on course and moving within whatever more clearly defined limits or boundaries are, or might be, established.

55. Paragraph 3 (other general considerations)

> Text: "In the elaboration of the various elements of this approach, full account should be taken of the need for a balance of rights and obligations under the GATT; of the special needs of the developing countries in the light of the GATT provisions providing for differential and more favourable treatment for such contracting parties; and of specific characteristics and problems in agriculture."

56. Paragraph 3 of the draft recommendations recapitulates a number of important general considerations which figure in paragraph 2 of the Ministerial work programme and to which specific reference does not occur elsewhere in the draft recommendations. This listing of general considerations or objectives is not exclusive and should be read in conjunction with the objectives and purposes set out in the chapeau to the recommendations (see paragraphs 4 et 5 eq. above).

57. The need for a balance of rights and obligations is a consideration which does not call for particular comment, except perhaps to note that the balance referred to is under the GATT generally rather than in any one part or sector of the GATT or its coverage.

58. The question of "the special needs of the developing countries in the light of the GATT provisions providing for differential and more favourable treatment" is an objective on which there has been extensive comment and discussion in the course of the work of the Committee (AG/W/8, paras 3 and 27; and AG/W/7 paras 8, 16, 27, 28, 29, 32 and 35). As noted in the Committee's discussions the question of differential and more favourable treatment is a matter which may lend itself to fuller and more specific consideration in the context of, and

in parallel with, the detailed elaboration of the general approach embodied in the recommendations. As a general comment, however, the draft recommendations are intended to provide a framework within which this process could be accomplished. Thus, in terms of the possible approach or approaches outlined in this note, there would be full scope for detailed elaboration of proposals for differential and more favourable treatment in the context of, for example, a re-inforcement of the minimum access provisions of Article XI:2, of possible rules on other related measures under paragraph 1(a) of the draft recommendations, and of the approach on subsidies affecting exports.

59. With regard to "specific characteristics and problems in agriculture", this is a consideration of which full account is required to be taken under paragraph 2 of the Ministerial programme. As with the other general considerations mentioned, the general framework of the draft recommendations would provide a basis for account to be taken of the issues involved in the process of elaboration. As noted in paragraph 6 above one of the main objectives of the approach to be elaborated would be to strike an appropriate balance between domestic and international trade interests.