

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## COMMITTEE ON THE LEGAL AND INSTITUTIONAL FRAMEWORK OF THE GATT IN RELATION TO LESS-DEVELOPED COUNTRIES

### Report of the Committee

1. In the report submitted by Committee III to the meeting of Ministers in May 1963 attention was drawn to the question whether the activities of GATT in the field of trade and development might not be extended by the creation of a stronger institutional framework which would more adequately reflect the concerns and responsibilities of the CONTRACTING PARTIES in this field. Committee III had pointed out that, while many of the activities of the CONTRACTING PARTIES have their roots in specific articles of the General Agreement, certain important activities, which are likewise designed to further the objectives of the Agreement as set out in Article I (revised), are based on more general provisions relating to joint action. In view of the importance the CONTRACTING PARTIES attach to furthering the development of the trade of less-developed countries it was felt that it would be opportune for the Ministers to give guidance to the CONTRACTING PARTIES as to whether more specific provision should be made for this important sector of their work. The Ministers recognized that an adequate legal and institutional framework to enable the CONTRACTING PARTIES to carry out the work of expanding the trade of the less-developed countries was needed and agreed that a committee of the CONTRACTING PARTIES should be established with instructions to examine all aspects of matters relating to the trade and development of less-developed countries (MIN(63)8). In accordance with the ministerial directives, the CONTRACTING PARTIES established the Legal and Institutional Framework Committee with the following terms of reference:

"Taking full account of the views expressed by Ministers at the meeting held on 16-21 May, to examine all aspects of the problems related to the provision of an adequate legal and institutional framework which would enable the CONTRACTING PARTIES to discharge their responsibilities in connexion with the work of expanding the trade of less-developed countries, and to report with appropriate recommendations to the twenty-first session."

2. The Committee held a series of meetings between 14 October 1963 and 23 October 1964. At the outset of its work the Committee concluded that the provisions which might be agreed on to cover the activities of contracting parties in relation to the trade and development of less-developed countries could most appropriately be drawn up in the form of a Chapter on Trade and Development for incorporation in the General Agreement.

3. In submitting the Draft Chapter, the text of which is contained in Annex I, the Committee wishes to stress the significance of the Chapter to the work of the CONTRACTING PARTIES and the contribution which it could make to the expansion of international trade and to closer co-operation in the field of economic development, particularly of the less-developed contracting parties.

The Committee wishes to draw attention to the following points.

Paragraph 3 A and B

4. The Committee recognized that the phrase "to the fullest extent possible" could have the effect of leaving the applicability of the provisions of subparagraphs (a), (b) and (c) of paragraph A exclusively to the judgement of each contracting party subject to them. Some less-developed contracting parties expressed concern that this phrase might be used in a way that would considerably detract from the effectiveness of the paragraph. For this reason, it was agreed to incorporate in the commitment an interpretation of the phrase "to the fullest extent possible" and to make provision for consultations.

Paragraph 3 C(e)

5. During the discussion in the Committee a number of developed contracting parties indicated that they would not be able to accept a commitment along the lines of either of the alternatives put forward in this proposed sub-paragraph.

Paragraph 3 D

6. The United States delegation felt that this section should take the form of a clear commitment along the following lines "the less-developed contracting parties also undertake the foregoing commitments to the largest extent possible, bearing in mind the trade interests of the less-developed contracting parties".

Section III

7. The Committee recommends that the present Article XVIII should be included in the Chapter as Section III, with an amendment under which a less-developed contracting party may impose import surcharges in place of quantitative restrictions subject to appropriate criteria and procedures. A draft amendment of Article XVIII is attached as Annex II to this report.

8. The Committee took note of an Australian proposal for amending Article XVIII (L/2165). The Committee has not had time to examine this proposal fully and therefore recommends that the Council make appropriate arrangements for the carrying out of this work.

#### Article XVII

9. At its meeting in March the Committee considered a proposal submitted by the delegation of the United Arab Republic (L/2165, page 7) which was designed to ensure that "in interpreting the provisions contained in Article XVII of the General Agreement, contracting parties should give sympathetic consideration to the need of developing contracting parties to make use of State-trading enterprises as one means of overcoming their difficulties in their early stages of development". On that occasion the Committee agreed that consideration should be given at a later date to a note to Article XVII which would make clear that nothing in the Agreement prevented a contracting party from establishing or maintaining State-trading enterprises.

10. The Committee again reviewed this matter in the light both of the original proposal and a note by the Executive Secretary (LEGAL/W/3). The Committee recognized that there was nothing in Article XVII which prevents a contracting party from establishing or maintaining State-trading enterprises, nor does the General Agreement sanction discrimination against State-trading enterprises which are, in this regard, placed on the same basis as any other enterprise.

#### Article XXIII

11. The Committee considered a proposal for amending Article XXIII submitted by the delegations of Brazil and Uruguay (L/2195/Rev.1, Annex 4). The Committee recommends that the Council consider the establishment of a working party to consider whether, in the light of experience, Article XXIII should be amended, taking into consideration the proposal by Brazil and Uruguay and any further proposals that may be put forward by contracting parties and report to the Council or to the CONTRACTING PARTIES, as appropriate.

#### Collaboration with United Nations on Trade and Development Problems

12. The Committee draws the attention of the Council to paragraphs 2(b) and 7(c) of the Draft Chapter which refer to collaboration with the United Nations Conference and the Trade and Development Board and with other organs and agencies of the United Nations system in matters relating to trade and development. The Committee suggests that the Council might recommend to the CONTRACTING PARTIES that the latter consider the best means of implementing these paragraphs and decide on the further arrangements that need to be made in this regard.

Institutional Arrangements

13. A proposal was submitted to the Committee by the Executive Secretary suggesting the setting up of a committee on trade and development with the principal task of keeping under continuous review the application of the provisions of the Chapter on Trade and Development and to conduct or make arrangements for the conduct of the consultations required for the effective application of the provisions of the Chapter. It was proposed that as the new Chapter would provide the legal framework for a continuous and a broader effort to facilitate the trade of less-developed contracting parties in furtherance of the overall economic development of these countries, it was appropriate that adequate permanent institutional machinery should be established to exercise effective supervision of the provisions of the Chapter, and as part of this responsibility to take over the functions of Committee III, and the Action Committee and its subsidiary bodies. The Committee recalled that some matters had been raised which could not be pursued in the context of the work on the Draft Chapter. The Committee recommends that the Trade and Development Committee might take over further study of any such matter.

14. The Committee recommends that the Council consider the setting up of a Committee on Trade and Development with appropriate terms of reference which could be as follows:

1. to keep under continuous review the application of the provisions of the Chapter on Trade and Development;
2. to carry out, or arrange for, any consultations which may be required in the application of the provisions of the Chapter;
3. to formulate proposals for consideration by the CONTRACTING PARTIES in connexion with any matter relating to the furtherance of the provisions of the Chapter;
4. to consider any questions which may arise as to the eligibility of a contracting party to be considered as a less-developed contracting party in the sense of this Chapter and to report to the CONTRACTING PARTIES;
5. to carry out such additional functions as may be assigned to the Committee by the CONTRACTING PARTIES.

15. The representative of Brazil proposed that, in the terms of reference of the Committee, the following be included:

"To formulate proposals on appropriate collaboration with the Conference and the Trade and Development Board of the United Nations and other organizations and agencies of the United Nations system on matters within its terms of reference."

He stated furthermore, that his acceptance of the recommendations contained in this section depended on the Committee being given such terms of reference as allowed it to take an appropriate part in the collaboration envisaged in sub-paragraphs 2(f) and 7(c) of the Chapter.

#### Legal Arrangements

16. The Committee recommends that a Legal and Drafting Group be set up, composed of legal experts from members of the Committee which can make such experts available, with the following terms of reference:

- (i) to remove any legal drafting imperfections in the new Chapter;
- (ii) to ensure conformity between the texts in the two official languages;
- (iii) to make a recommendation on the most appropriate means for incorporating the Chapter in the General Agreement;
- (iv) to draw up the protocol of amendment.

17. The Committee has taken note of the fact that, in accordance with the provisions of Article XXX, the amendments will enter into force, for contracting parties which accept them, when the protocol has been accepted by two thirds of the contracting parties. Inevitably, therefore, there will be some delay before the new Chapter can become legally effective and the Committee recommends that all possible ways and means should be sought to enable the provisions to enter fully into force at the earliest possible date, and at the same time to explore the possibility of the provisions being applied on a de facto basis pending their formal entry into force. The Committee recommends that the Executive Secretary be instructed to make a recommendation to achieve this end to the Legal and Drafting Group for their consideration when drawing up the protocol of amendment.

18. The Committee recommends that the Legal and Drafting Group should report back to the Committee prior to the special session of the CONTRACTING PARTIES.

ANNEX I

DRAFT CHAPTER ON TRADE AND DEVELOPMENT<sup>1</sup>

1. The contracting parties,
  - (a) recalling that the basic objectives of the General Agreement include the raising of standards of living and the progressive development of the economies of all contracting parties, and considering that the attainment of these objectives is particularly urgent for less-developed contracting parties;
  - (b) considering that export earnings of the less-developed contracting parties can play a vital part in their economic development and that the extent of this contribution depends on the prices paid by the less-developed contracting parties for essential imports, the volume of their exports, and the prices received for these exports;
  - (c) recognizing that individual and joint action is essential to further the development of the economies of less-developed contracting parties, in order to bring about a rapid advance in the standards of living of these countries so as to raise their standards of living as quickly as possible towards the levels of the more developed contracting parties/; and substantial increase in standards of living in less-developed contracting parties, and a concomitant reduction in wide economic disparities between the less-developed contracting parties and the more developed contracting parties/;
  - (d) recognizing that international trade as a means of achieving economic and social advancement should be governed by such rules and procedures - and measures in conformity with such rules and procedures - as are consistent with the objectives referred to in this Chapter.

Ad paragraph 1

Acceptance of this Chapter constitutes acceptance of the objectives set forth in amended Article I, set forth in Section A of paragraph 1 of the Protocol of 10 March 1955 Amending Part I and Articles XXIX and XXX of the General Agreement on Tariffs and Trade, even though the amendment provided for in such Section A shall not yet have become effective.

agree as follows:

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<sup>1</sup>The words in square brackets in this draft represent areas of disagreement.

I. PRINCIPLES AND OBJECTIVES

2. (a) there is need for a rapid and sustained expansion of the export earnings of the less-developed contracting parties;
- (b) there is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development;
- (c) given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products, there is need to provide in the largest possible measure more favourable access to markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular the attainment of stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development;
- (d) the rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification of the structure of their economies and the avoidance of an excessive dependence on the export of primary products; there is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties;

Ad paragraph (d)

A diversification programme would generally include the intensification of activities for the processing of primary products and the development of manufacturing industries, taking into account the situation of the particular country and the world outlook for production and consumption of different commodities.

- (e) because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development which require close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these developing contracting parties assume in the interest of their economic development;

- (f) there is need for appropriate collaboration between the CONTRACTING PARTIES, other intergovernmental bodies whose activities are relevant in matters relating to trade and development and the organs and agencies of the United Nations system on behalf of the economic development of less-developed countries;
- (g) there is need for the Agreement CONTRACTING PARTIES to provide flexibility in the application of the provisions of the Agreement to enable less-developed contracting parties to use such special measures as may be necessary to promote their trade and development without discrimination among or between such contracting parties and to meet the difficulties of such contracting parties arising from a shortage of foreign exchange in relation to growing import needs associated with their economic development;
- (h) the developed contracting parties should not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing contracting parties.<sup>1</sup>

Ad paragraph (h)

It is understood that the phrase "should not expect reciprocity" means, in accordance with the objectives of this Chapter, that the less-developed contracting parties should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments.

This paragraph would apply in the event of action under Section A of Article XVIII-B, Article XXVIII, Article XXVIII bis (Article XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol of 10 March 1955 Amending Part I and Articles XXIX and XXX of the General Agreement on Tariffs and Trade shall have become effective), Article XXXIII, or any other procedure under this Agreement.

- (i) the adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly.

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<sup>1</sup>As there was a difference of view as to where this paragraph should appear, it is also reproduced in paragraph 3 C(d) below.



II. COMMITMENTS

3. To give effect to the foregoing principles and objectives, the contracting parties undertake the following commitments:

A. The developed contracting parties shall to the fullest extent possible - that is, except when compelling reasons of broad national interest, which may include legal reasons, make it impossible - give effect to the following provisions:

(a) accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including tariffs and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;

Ad paragraph A(a)

This paragraph would apply in the event of negotiations for reduction or elimination of tariffs or other restrictive regulations of commerce under Articles XXVIII, XXVIII bis (XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol of 10 March 1955 Amending Part I and Articles XXIX and XXX of the General Agreement on Tariffs and Trade shall have become effective), and Article XXXIII, as well as in connexion with other action to effect such reduction or elimination which contracting parties may be able to undertake.

(b) refrain from introducing, or increasing the incidence of, duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties;

(c)<sup>1</sup> (i) refrain from imposing new fiscal measures,

(ii) in any adjustments of fiscal policy give high priority to the reduction and elimination of fiscal measures

which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in less-developed contracting parties, and which are applied specifically to those products.

B. When a contracting party determines that it is not giving effect, in any particular case, to the provisions of sub-paragraphs (b) and (c)(i) of paragraph A above it may shall report the matter to the CONTRACTING PARTIES. The matter may be reported to the CONTRACTING PARTIES by any

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<sup>1</sup>The Italian delegation reserves its position on provision (c) above.

interested contracting party, when it considers that effect is not being given to the provisions contained in sub-paragraphs (a), (b) and (c) of paragraph A. The CONTRACTING PARTIES shall, if requested so to do by any interested contracting party, and without prejudice to any bilateral consultations that may be undertaken, consult with the contracting party concerned and all interested contracting parties with respect to the matter with a view to reaching solutions satisfactory to all contracting parties concerned and without requiring any restrictive action by the less-developed contracting parties as a condition for the implementation of the provisions of sub-paragraphs (a), (b) and (c) of paragraph A with a view to reaching solutions satisfactory to all contracting parties concerned in order to further the objectives of this Chapter. In the course of these consultations, the reasons given in cases where effect was not being given to the provisions of sub-paragraphs (a), (b) and (c) of paragraph A above shall be examined. As the implementation of the provisions of paragraph A by individual contracting parties may in some cases be more readily achieved where action is taken jointly with other developed contracting parties, such consultation might, where appropriate, be directed towards this end. The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further the objectives of the Agreement as envisaged in paragraph 1 of Article XXV.

C.

(a) make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in less-developed contracting parties, to maintain trade margins at equitable levels;

(b) give active consideration to the adoption of other measures designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end;

Ad paragraph C(b)

The other measures referred to in this paragraph might include steps to promote domestic structural changes, to promote the consumption of particular products, or measures of trade assistance.

(c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under the General Agreement to meet particular problems and to explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties;

(d)<sup>1</sup> the developed contracting parties should not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing contracting parties;

(e) without prejudice to the generality of the above provisions, in establishing and administering their agricultural policies, adjust and moderate protective measures and avoid restrictive measures in order to facilitate exports of agricultural products of particular interest to the less-developed contracting parties. or in formulating and implementing their domestic policies affecting trade in primary products, avoid measures which stimulate in their countries uneconomic production in such a way as to deprive developing countries of the opportunity to obtain a fair and reasonable share of world markets and market growth. Where existing levels of protection have adverse effects upon the trade and trade opportunities of developing countries, developed countries should aim to modify the form or reduce the aggregate of such protection.

D. The less-developed contracting parties shall promote measures aimed at expanding trade and at furthering co-operation amongst themselves, bearing in mind the importance of a world-wide expansion of trade. Such measures should not be inconsistent with the nature of their economic structure, their individual development, financial and trade needs, and should take into consideration past trade developments as well as the trade interests of other less-developed contracting parties. The less-developed contracting parties, therefore, undertake those of the foregoing commitments in the Chapter as are consistent with the considerations and aims mentioned in this paragraph.

4. Those contracting parties, the economies of which are in the course of individual development and which are seeking to avoid an excessive dependence on a limited range of primary products for their export earnings but which are not less-developed contracting parties, shall endeavour, with due regard to their own development needs and policies, to apply to the maximum possible extent the obligations which other contracting parties accept under Section IIA.

5. In the implementation of the commitments set forth in paragraph 3 above, contracting parties shall afford to any other contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of the General Agreement with respect to any matter or difficulty which may arise.

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<sup>1</sup> If it is decided to place this paragraph here the interpretative notes at present reproduced under paragraph 2(h) of Section I would also appear here.

III. ARTICLE XVIII

IV. JOINT ACTION IN RELATION TO ECONOMIC DEVELOPMENT

6. The contracting parties shall collaborate jointly, within the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in this Chapter.

7. In particular, the CONTRACTING PARTIES shall:

- (a) where appropriate, take action, including action through international arrangements, to improve conditions of access to markets for primary products of particular interest to less-developed contracting parties and to devise measures designed to stabilize and improve conditions of world markets in these products including the attainment of stable, equitable and remunerative prices for exports of such products;
- (b) seek appropriate collaboration with the Conference and the Trade and Development Board of the United Nations and with other organs and agencies of the United Nations system in trade and development policy;
- (c) collaborate in analyzing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed. In this connexion they shall seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation to financial assistance for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required;
- (d) keep under continuous review the development of world trade with special reference to the rate of growth of the trade of less-developed contracting parties and shall make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate;
- (e) collaborate in seeking feasible methods to expand trade for the purpose of economic development, through international harmonization and adjustment of national policies and regulations, through technical and commercial standards affecting production, transportation and marketing, and through export promotion by the establishment of facilities for the increased flow of trade information and the development of market research.

ANNEX II

(to be distributed later)

