GENERAL AGREEMENT ON TARIFFS AND TRADE

THE TOKYO ROUND

OF

MULTILATERAL TRADE NEGOTIATIONS

GENEVA APRIL 1979

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Report by the Director - General of GATT

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PREFACE

The Tokyo Round of multilateral trade negotiations has been the most complex and far-reaching ever undertaken. The following report is a record of the developments in the negotiations, the issues that arose, and the results that have been achieved as far as can be assessed at the present time.

Olivier Long
Director-General

20 April 1979

THE TOKYO ROUND OF MULTILATERAL TRADE NEGOTIATIONS

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PART I: THE NEGOTIATIONS

CHAPTER I: INTRODUCTION

The Multilateral Trade Negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) were opened in September 1973 at a Meeting of Ministers in Tokyo.

Ninety-nine countries of widely differing levels of development and economic systems, both GATT and non-GATT members, have been involved in the Negotiations: the industrialized countries of Western Europe and North America; less-industrialized countries, such as Australia and New Zealand; countries of Eastern Europe; and the whole range of developing countries from the least developed to the most advanced. The participating countries are listed in Annex A.

The Negotiations - the Tokyo Round - have been more extensive and comprehensive than any undertaken before. They were designed, not only to bring about the reduction or elimination of tariff and non-tariff barriers to trade, but also to shape the multilateral trading system and international trade relations well into the next decade.

Other differences, however, have distinguished the Tokyo Round from all earlier GATT negotiations.

In the period between the Kennedy Round and the Tokyo Round there had been a significant shift in the relative weight of the major economic powers in international trade. The European Communities had grown to become the world's largest trading entity, while Japan's economic progress had been such that it was now among the top three trading nations. The result was that in the Tokyo Round three economic powers - the United States, the European Communities and Japan - would together take the lead and largely govern the direction, pace and content of the Negotiations.

The other outstanding difference concerned the developing countries. For the first time in GATT multilateral trade negotiations the problems of these countries assumed a prominent place, reflecting their increased economic and political significance in international affairs, and the importance and weight of their participation in the Negotiations themselves.

CHAPTER II: BACKROUND

A. LAYING THE GROUNDWORK

Following the conclusion of the Kennedy Round in June 1967 it was recognized that it would be unrealistic to expect a further multilateral move forward in the near future. A breathing-space would obviously be necessary to enable governments, industry and traders to digest the results of the negotiations. It would also take time for the new problems to be tackled in the next round to be identified.

Nevertheless it was realized in the GATT that inactivity, or any attempt to stand still, could be damaging in a field as dynamic as world trade. It was decided at GATT's annual session in November 1967, that a new comprehensive programme of preparatory work for a further round of trade negotiations should be initiated.

In line with the directives given at that session and at subsequent sessions in November 1969 and February 1970, the programme was carried forward in three stages: the collection, mainly in 1968, of the necessary basic information and documentation; the identification of problems, largely completed in 1969 and 1970; and finally the search for mutually acceptable solutions to these problems.

The work under the programme was in the event to last until the decision in principle to enter into multilateral negotiations was taken in 1972.

B. PERIOD OF UNCERTAINTY

The year 1967, when the co-ordinated work programme was established, represented one of the few occasions in the post-war period when several large economies were simultaneously undergoing a recession. The recession was short-lived and economic activity recovered but monetary disturbances, growing inflation, rising unemployment and protectionist pressures were soon to create increasing problems for governments.

In August 1971 the United States, against the background of a serious deterioration in its balance-of-payments position, abandoned the gold convertibility of the dollar and imposed a 10 per cent surcharge on all dutiable imports not subject to United States quantitative restrictions.

Although the United States surcharge had been removed by December 1971, there followed a protracted period of monetary crisis with the readaptation of the Bretton Woods system to meet changed economic relationships. The progressive deterioration in the international monetary system had implications for the operation of the multilateral trading system.

Apart from these adverse economic developments there were political factors which had a decisive influence on prospects for any substantive move at that time toward a new round of multilateral trade negotiations.

There was as yet no United States trade legislation giving the President authority to enter into negotiations. A draft trade bill was the subject of long discussion in the early 1970's in the House Ways and Means Committee, but the bill ran into considerable difficulties and was not reported out of the Committee. The President was not in fact to receive the necessary negotiating authority until the United States Trade Act came into force on 3 January 1975. At the same time there was a significant resurgence of protectionist pressures in the United States, a development common to almost all industrialized countries over that period.

In Europe, applications for accession to the European Economic Community had been presented by the United Kingdom, Ireland and Denmark in May and by Norway in July 1967. The negotiations for accession were opened at the end of June 1970 and were completed in nineteen months. Following the necessary ratification procedures in accordance with their constitutional requirements, the United Kingdom, Denmark and Ireland acceded to the Community on 1 January 1973. Norway did not proceed to accession as a consequence of a negative response in a national referendum on the subject. On the same date - 1 January 1973 - arrangements providing for free trade in most industrialized products came into effect between the EEC and those countries of the European Free Trade Association that had not acceded to the Community.

These economic and political developments in the period up to 1972 - and in particular the absence of United States trade legislation and the negotiations for enlargement of the European Economic Community - were of such

a magnitude that they fully engaged the attention of governments. The possibility of any new initiative in the GATT at that time was excluded.

C. THE DECISION TO NEGOTIATE

There was, however, to be an encouraging development in 1972.

The monetary crisis of mid-August 1971, with its concurrent threat to international trade relations, had at least the merit of jolting the trading nations out of their inactivity in the previous few years. Action was, in fact, forthcoming early in 1972 and was to lead within a relatively short time to a decision to initiate substantive multilateral trade negotiations.

In February 1972, on the initiative of the United States, two similar Declarations on International Economic Relations were agreed upon: one by the United States and the Commission of the European Economic Community and the other by the United States and Japan.

Each signatory to the Declarations undertook, subject to such internal authorization as might be required, "to initiate and actively support multilateral and comprehensive negotiations in the framework of GATT beginning in 1973", the negotiations to be conducted "on the basis of mutual advantage and mutual commitment with overall reciprocity". Other countries were invited to join in this undertaking.

The Declarations called for "a comprehensive review of international economic relations" covering "all elements of trade, including measures which impede or distort agricultural, raw material and industrial trade". Special attention was to be given to the problems of developing countries.

The Declarations brought a prompt response. At a meeting of the GATT Council in March 1972, all the industrialized countries pledged their full support for the proposed negotiations and announced their intention to participate.

The developing countries in general gave the new initiative a cautious welcome, but made it clear that, before committing themselves to negotiate, they would need a clearer view of whether the proposed negotiations would deal effectively with their problems and an indication of what they would be expected to contribute.

The action taken by the big trading nations in February 1972 constituted the high-level political decision in principle to engage in negotiations. It placed a special responsibility on the United States, the European Economic Community and Japan.

The positive response to the Declarations from other countries was indicative of a general feeling that it might be possible, through a further round of multilateral trade negotiations, to accommodate and deal with the many existing and potential problems, stresses and strains that had developed over recent years. The increasing part of world trade that would no longer be conducted on a most-favoured-nation basis, following the imminent enlargement of the European Economic Community, the trading arrangements between the Community and the remaining EFTA countries, and the Community's association arrangements with the Mediterranean countries, had become a growing preoccupation with many countries, particularly as regards the implications in terms of discrimination against third countries.

The efforts to move forward had been given a big push. There was agreement at the GATT Council meeting in March 1972 on the principle of initiating a new round of multilateral trade negotiations in GATT in 1973. Later, at GATT's annual session in November 1972, the Council's decision was endorsed. A Preparatory Committee was set up to prepare for the Negotiations which would be opened at a Ministerial meeting in Tokyo in September 1973.

The Preparatory Committee, under the Chairmanship of Mr. Olivier Long, Director-General of GATT, held three formal meetings in the first six months of 1973. At its third meeting - which lasted throughout July - it completed its report, together with a draft Declaration for consideration by Ministers when they met in Tokyo.

CHAPTER III: OPENING OF THE MULTILATERAL TRADE NEGOTIATIONS

The Meeting of Ministers took place in Tokyo from 12 to 14 September 1973. At its conclusion, the representatives of the 102 countries present unanimously adopted the Tokyo Declaration and launched the Multilateral Trade Negotiations, participation in which would be open to GATT members and non-members alike. A copy of the Declaration is attached as Annex B.

Two specific issues had been left by the Preparatory Committee for decision by the Ministers. A major issue concerned differences between the European Economic Community and the United States over the monetary-trade link. A compromise formula was finally agreed and was subsequently approved by the full Ministerial meeting. The language of the relevant paragraph in the Tokyo Declaration - paragraph 7 - reflects both the concerns of the Community and the position of the United States, while avoiding a contradiction between the two. Discussions under the aegis of the International Monetary Fund on the reform of the international monetary system were being pressed forward at that time.

A second issue concerned the least developed countries and the question of the extent to which special treatment could be extended to these countries without the same treatment being accorded to other developing countries. The difficulties that had arisen - particularly with certain developing countries - were eventually overcome and paragraph 6 of the Declaration approved.

The Tokyo Declaration was a political act of considerable significance. It involved important new commitments, particularly as regards the developing countries.

A. THE TOKYO DECLARATION

As stated in the Declaration, the overall aim of the multilateral negotiations - the Tokyo Round - was "to achieve the expansion and ever-greater liberalization of world trade ..., inter alia, through the progressive dismantling of obstacles to trade ...".

The Negotiations were - as in previous GATT multilateral negotiations - to be conducted on the basis of mutual advantage, mutual commitment and overall reciprocity. The aim was "to achieve, by appropriate methods, an overall balance of advantage at the highest possible level". Contributions were not expected from developing countries "inconsistent with their individual development, financial and trade needs".

The Negotiations would cover the reduction or elimination of tariffs, non-tariff barriers and other measures that impeded or distorted world trade in both industrial and agricultural products, including tropical products and raw materials, whether in primary form or at any stage of processing. The Negotiations were to be considered "as one undertaking the various elements of which shall move forward together".

There was to be an examination of the adequacy of the multilateral safeguard system and of the possibilities for the co-ordinated reduction or elimination of all barriers to trade in selected sectors as a complementary technique.

Specific objectives were agreed as regards the developing countries. The broad aim was to secure, in the manner and through the means set out in the Tokyo Declaration, additional benefits for the international trade of these countries, so as to achieve a substantial increase in their foreign exchange earnings, the diversification of their exports, and the acceleration of the rate of growth of their trade. "Special and more favourable treatment", as provided for in the Declaration, would be a prominent theme running through every area of the Negotiations.

Consideration was to be given "to improvements in the international framework for the conduct of world trade which might be desirable in the light of progress in the negotiations".

It was evident that, in its scope, coverage and complexity, the Tokyo Round would be the most ambitious multilateral economic negotiation ever attempted.

B. ESTABLISHMENT OF MACHINERY

1. The Trade Negotiations Committee

A Trade Negotiations Committee, consisting of all the countries participating in the Negotiations, was set up under the Tokyo Declaration. Its task was to elaborate and put into effect detailed trade negotiating plans and establish appropriate negotiating procedures, and to supervise the progress of the Negotiations. The Director-General of GATT, Mr. Olivier Long, was Chairman of the Committee. The Committee was not intended to be the place where substantive negotiations would take place. It would be impossible to negotiate in a forum in which almost a hundred countries were represented and where up to some three hundred delegates - and on occasions more - would be present.

The Committee met toward the end of October 1973 and, in February 1974, set up six specialized sub-groups, which were to concern themselves with the subjects set out in (a) to (f) of paragraph 3 of the Tokyo Declaration.

The tasks to be undertaken in 1974 would essentially be technical in character and largely a continuation of the kind of work that had been going on over the past several years. Despite the expectations created first by the Declarations of early 1972, and more importantly by the Tokyo Declaration, the fact remained that the engagements undertaken still lacked the backing of the necessary constitutional or legislative authority.

With the entry into force of the United States Trade Act at the beginning of 1975, and approval of an agreed negotiating mandate for the Commission of the European Communities shortly afterwards, the Negotiations were moved a major step forward. In February 1975, the Trade Negotiations Committee established six groups to conduct the various parts of the Negotiations.

2. The negotiating groups and sub-groups

The machinery for the Tokyo Round comprising the six Groups and a number of Sub-Groups, and including also certain additions made to the machinery at a later stage, was the following. These were the bodies within the framework of which, under the overall supervision of the Trade Negotiations Committee, the Negotiations were to be conducted.

(a) Group: Tropical Products (Chairman, Ambassador G. Martinez, Argentina);

(b) Group: Tariffs (Chairman, Mr. G. Patterson, Deputy Director-General, GATT secretariat);

(c) Group: Non-Tariff Measures (Chairman, Mr. M.G. Mathur, Deputy Director-General, GATT secretariat);

(i) Sub-Group: Quantitative Restrictions (Chairman, Mr. Chadha (India) followed by Mr. Mathur);

(ii) Sub-Group: Technical Barriers to Trade (Chairman, Mr. P. Williams, GATT secretariat);

(iii) Sub-Group: Customs Matters (Chairman, Mr. K. Kautzor-Schröder, GATT secretariat);

(iv) Sub-Group: Subsidies and Countervailing Duties (Chairman, Mr. A. Lindén, GATT secretariat);

(v) Sub-Group: Government Procurement (Chairman, Mr. R. Tooker, GATT secretariat);

(d) Group: Agriculture (Chairman, Mr. G. Patterson);

(i) Sub-Group: Grains (Chairman, Mr. G. Patterson);

(ii) Sub-Group: Meat (Chairman, Mr. J.-M. Lucq, GATT secretariat);

(iii) Sub-Group: Dairy Products (Chairman, Mr. J.-M. Lucq);

(e) Group: Sector Approach (Chairman, Dr. P. Tomić, Yugoslavia);

(f) Group: Safeguards (Chairman, Mr. H. Colliander (Sweden) followed by Mr. K. Kautzor-Schröder).

A seventh Group, described as the Framework Group, was established in November 1976, under the Chairmanship of the Director-General of GATT, with the task of considering "improvements in the international framework for the conduct of world trade which might be desirable in the light of progress in the negotiations".

CHAPTER IV: PRINCIPAL DEVELOPMENTS

The story of the Tokyo Round covers a period of over five years. It is one of vicissitudes and "stop and go" with delays - sometimes long - alternating with renewed impetus and progress, depending on developments in the international economic situation, on political factors, and on the speed of governments' constitutional and legislative processes.

A. ECONOMIC FACTORS

The decision to launch the Negotiations had been taken against the background of an expectation of continued growth in the international economy, although there was still considerable uncertainty in monetary matters and frictions in trade relations. For a full understanding of developments it is important to recognize that this premise ceased to apply almost as soon as the decision had been taken. Unlike during the Kennedy Round, when the world economic situation remained buoyant, unfavourable economic conditions dominated the whole period of the Tokyo Round. The energy crisis, and inflation at widely differing rates leading to balance-of-payments difficulties and exchange rate disturbances, inadequate investment and growing unemployment provided an unpropitious environment in which to make efforts to liberalize world trade. This situation posed serious political and social problems for governments, particularly those - of which there were several - with minimal parliamentary majorities.

Against this background, there developed during the Tokyo Round a marked shift in emphasis and priorities whereby certain elements in the Negotiations - such as safeguards for example - became of progressively increasing importance for many countries. Protectionist pressures gained momentum, particularly in 1977 and 1978, and those in national Administrations favouring liberal policies were finding it increasingly difficult to hold the line.

Governments were aware of the risks of this situation and continued to look to the Tokyo Round to help counter a deterioration in the situation. Their periodic affirmations of support for the Negotiations at a number of summit meetings between November 1975 and July 1978 were a reflection and a consequence of this attitude.

B. POLITICAL FACTORS

Political developments intruded decisively to influence the course of the Negotiations, either directly or indirectly. Some caused delay; others created momentum. Political events, such as national elections, or domestic crises of one kind or another arose regularly and made their impact on the formulation of national or regional trade policies and on the speed of their formulation.

President Ford signed the United States Trade Act on 3 January 1975 after a difficult passage of the Bill through Congress. Shortly afterwards - in February - the Council of Ministers of the European Economic Communities approved the Directives for the Negotiations, the Commission's negotiating mandate. Prior to this, the Commission had been operating on the basis of a global Community approach to the Negotiations that had been agreed upon at a session of the EEC Council of Ministers in June 1973.

Again political events intruded, for the United States were soon to be fully engaged on the run-up to the Presidential election. In such circumstances the Administration had no inclination to take substantive decisions in connexion with the Tokyo Round. At the same time, other countries would not themselves be disposed to take such decisions until the outcome of the American elections was known. There could, therefore, be no significant developments in the Negotiations until the President had been elected although it should be noted that, over that period, a great deal of necessary work was done of a substantive character.

Early in January 1977 Mr. Carter was inaugurated President of the United States and he and his Administration took office on 20 January. Some months would pass, however, before the formulation by the Administration of its policies and approach to the Tokyo Round and before the appointment of the new leadership for the negotiating team.

C. LATER DEVELOPMENTS IN THE NEGOTIATIONS

The substantive issue in the Tokyo Round that most slowed down progress arose from differences in approach between the United States and the European Economic Community to the agricultural negotiations. This issue is discussed

in Chapter V:A which deals with agriculture. There was little or no narrowing of the gap between the two approaches during the early years of the Negotiations. As an essential aspect of the differences of view related to where, and how, within the overall framework of the Negotiations, agriculture should be dealt with, the deadlock spilled over into the rest of the Negotiations and held up progress.

A new attempt to inject life into the Negotiations was made early in 1976 when the United States and the European Economic Community proposed, and other countries agreed, on a procedure for the exchange of information, consultation, and dialogue between participants on agricultural products other than grains, dairy products and meat, for which separate sub-groups had been set up. No substantive negotiation followed this move, however, and things relapsed into a state of relative inactivity.

The consequences of the substantive difficulties in the agricultural negotiations, and the effects of the economic and political factors that have been referred to, are evident in the status of the Negotiations early in 1977. Very little substantive progress had been made and all crucial issues remained outstanding. In several key areas the Negotiations were still at the stage of identification of the areas to be dealt with, the bodies to deal with them and the specific positions of governments. Except in the case of tropical products and standards, the Negotiations were not yet off the ground, although a lot of the work that had been done could be described as pre-negotiation.

It was urgent for the Negotiations to move forward for a number of reasons. Under the US Trade Act, 1974, the negotiating authority of the President would expire on 3 January 1980. This meant that the negotiations on non-tariff measures and other distortions of trade would have to be completed sufficiently in advance of that date to make it possible for the procedures laid down in Section 102 of the Trade Act to be completed within the time periods prescribed in that Section.

Another deadline was embodied in Section 331 of the US Trade Act, which authorized the President to waive the imposition of countervailing duties against subsidized imports into the United States while multilateral negotiations

on subsidies and countervailing duties were under way. This waiver provision, however, only applied for a four-year period from the date of enactment of the Trade Act, in other words until 3 January 1979. The critical importance that this deadline was to assume toward the end of 1978 is discussed later in this Chapter.

In July 1977 came the breakthrough that had been awaited and which, as will be seen from the following chapters, had its effects in every area of the Tokyo Round. At a meeting in Brussels between Mr. Robert Strauss, the recently appointed United States Special Trade Representative, and Mr. Wilhelm Haferkamp, the European Communities' Commissioner for External Relations, it proved possible to resolve certain major differences of policy and procedure, including in the agricultural sector.

Specifically, agreement was reached on an accelerated time-table for the Tokyo Round. This involved action on the following:

First phase

A general tariff plan: to include a tariff-cutting formula; specific directives for treatment of agriculture; method of dealing with countries not subscribing to the tariff-cutting formula; specific statement on treatment of developing countries.

Second phase

Tabling of requests for: tariff cuts on agricultural goods; non-tariff measures not the subject of codes; tariff cuts by countries not subscribing to the tariff-cutting formula.

Third phase

Tabling of draft texts for non-tariff measure codes.

Fourth phase

Tabling of offers by participants in response to requests received.

These four phases were to be completed by January 1978. Requests were to be submitted in November 1977 and offers in January 1978. This was an important development. The aim was to have the whole pattern and material of the

Negotiations laid out by the spring of 1978 and the final phase of substantive negotiations embarked upon.

There followed much negotiating activity at a high political level during the first half of 1978. Over the period 3 to 13 July 1978 in particular, there were intensive bilateral and plurilateral negotiations in Geneva involving a number of personalities from capitals with responsibilities in connexion with the Tokyo Round.

The aim was to have, by the time of a further summit meeting of Heads of States and Governments to be held in Bonn on 16 and 17 July 1978, the political outlines of an agreed package, leaving the autumn for clearing up the details.

In the meanwhile, there had been two multilateral meetings, at which countries had the opportunity to make known their points of view. One was a meeting of the Trade Negotiations Committee on 3 July 1978 and the other an informal meeting of countries participating in the Tokyo Round on 10 July.

On 13 July 1978 an agreed "Framework of Understanding", covering all the main issues in the Tokyo Round, was tabled. It represented an agreement reached by the European Economic Community, the United States, Japan, Switzerland, New Zealand, Canada, the Nordic countries and Austria and set out the principal elements they considered necessary for a balanced package at the end of the Tokyo Round. It was the hope of the countries subscribing to the "Framework of Understanding" that other countries would see in the memorandum a solid basis for conclusion of the Tokyo Round.

The developing countries, however, were far from happy about the way in which, as they saw it, they had been left on the periphery of the negotiations. A strong statement on their behalf on 14 July made this clear. It stated that the developing countries had not been consulted on the "Framework of Understanding", and stressed that a balanced assessment of the current status of the negotiations could only be made with the participation of all the countries involved.

At the same time the Director-General, Mr. Long, gave in a statement an overall view of the situation in the Negotiations, stressing the substantial progress that had been made and his belief that the Negotiations could be completed by the end of 1978.

The Heads of State and Government, at the Bonn summit, in the communiqué issued at the end of the meeting on 17 July 1978, charged their negotiators in Geneva, in co-operation with the other participants, to resolve the outstanding issues and to conclude the negotiations successfully by 15 December 1978.

Following the summer recess, the Negotiations were energetically moved forward with the firm intention and will on all sides to complete them by the end of the year. There were intensive bilateral and plurilateral consultations and negotiations among delegations. Texts were further refined. Critical decisions however, for example on agriculture, safeguards and subsidies and countervailing duties, had still to be taken. The aim was to limit and clearly define the outstanding issues in advance of a further high-level meeting envisaged for mid-November.

Before the November meeting could take place, however, there was to be a development that would have serious consequences for the pursuit of the Tokyo Round. Reference has been made earlier in this Chapter to Section 331 of the US Trade Act, under which the requirement of existing United States law that countervailing duties be imposed on subsidized imports could be waived by the President over the four-year period up to 3 January 1979. If the waiver provision were not extended, the existing law would again apply and countervailing duties be automatically imposed, without the need for evidence that such imports were causing material damage to domestic suppliers.

The United States Administration made determined efforts to secure the extension of the waiver provision. These efforts were unsuccessful. A bill put to the United States Congress providing for the extension was not passed by Congress before it recessed in October 1978. It was not due to reconvene until mid-January 1979.

This created a serious situation which jeopardized the successful pursuit and early conclusion of the Tokyo Round. The Council of Ministers of the Communities made it clear that the Community would not be prepared to pursue the Negotiations to their conclusion until such time as the waiver issue had been satisfactorily resolved by the United States.

This particular obstacle was removed when, late in March 1979, the United States Congress passed the necessary legislation extending the waiver for a further period of time. Continuous intensive bilateral and plurilateral negotiations among delegations, and meetings of the various Groups and Sub-Groups over the following few weeks, led up to a meeting of the Trade Negotiations Committee on 11 and 12 April 1979.

At its meeting, the Committee had before it the texts on all elements in the Negotiations that had emerged (see attachment to Annex C), together with the summings-up of the Chairmen of the negotiating Groups and Sub-Groups.

A large number of representatives made statements on their positions in relation to the various texts before the Committee.

At the end of the meeting the Chairman proposed the text of a Procès-Verbal which met the approval of all the participants and was subsequently opened for signature as from 12 April 1979 without time-limit. The text of the Procès-Verbal is reproduced in Annex C.

D. CONDUCT OF THE NEGOTIATIONS

It was to be expected that the large trading entities would play a predominant rôle in the Tokyo Round.

The European Economic Community, Japan and the United States conduct some two thirds of world trade between them. They were the initiators of the Tokyo Round. Many of the major issues in the Negotiations were between them and settlement of these issues was a sine qua non for progress in the Negotiations as a whole. It was in practical terms necessary and realistic for the Big Three, through the process of pre-negotiation, first to attempt to reconcile their own differences before joining in negotiations with other countries.

However, what is essential in a multilateral trade negotiation such as the Tokyo Round is that what has been discussed among two or a few countries be made known to the other parties to the negotiations in time to give them the opportunity to ensure that their interests are fully taken into account.

In the Tokyo Round difficulties arose when this opportunity did not present itself fully or early enough.

As the shape of possible agreements began to emerge, considerable efforts were made from the middle of 1978 to bring the other participants, and especially the developing countries, more fully into the process of consultation and negotiation, for example on certain aspects of the Codes on non-tariff measures of special interest to them. A greatly increased number of consultations were organized, bringing together the participants concerned with the topics under discussion. More meetings of the formal Groups and Sub-Groups were held.

Many of the problems that arose can be attributed to the very dimensions and complexities of the Tokyo Round. Some of the issues were highly complex and, in trade terms, sometimes concerned only a few participants. Moreover, countries with only limited staff available had to concentrate on those matters to which they attached the greatest importance. Furthermore, because of the difficult economic climate, the room for manoeuvre in the Negotiations became increasingly limited by domestic political constraints.

Well aware of all the difficulties facing the participants throughout the whole period of the Tokyo Round, and especially during its final phase, the GATT secretariat made considerable efforts to ensure that all parties were brought into the process of negotiation and to assist them in reaching agreement.

CHAPTER V: AGRICULTURE

A. BACKGROUND

1. Basic considerations

When the GATT rules were originally drafted in the 1940s, they were intended to apply to trade in agricultural and industrial products alike. Things have worked out differently however. Agriculture has been virtually excluded from the broad sweep of trade liberalization and insulated from the normal disciplines of market forces and international competition.

Agricultural problems were prominent in the Kennedy Round but the results were minimal compared with the objectives that were set.

For agricultural exporters a significant enlargement of agricultural markets as a result of the Tokyo Round was an essential requirement. Such countries had a strong political commitment to negotiate and achieve results on agriculture.

The variety and complexity of the protective measures used in agriculture made the negotiation of balanced reductions particularly difficult. If the underlying problems were essentially technical, ways could be found of overcoming them by the adoption of appropriate negotiating techniques. It is, however, the fundamental political and social factors governing the protection of farmers, and the link between production policies and measures at the frontier, that give rise to the basic problems.

2. Differences of approach

The adverse consequences of the differences of approach to the agricultural negotiations have been referred to earlier in Chapter IV:C.

The difficulties ahead had already been foreshadowed in 1973 in the report of the Preparatory Committee. Two sentences in the report read: "It was suggested by some delegations that a distinction should be made in the negotiations between agricultural and industrial products and this will have to

be defined ... On the other hand, other delegations considered that no distinction should be made between agricultural and industrial products". This blunt juxtaposition of views points up clearly the differences in approach that were to exist for a long time. Ministers recognized at the Tokyo meeting in September 1973 that, despite the negotiating complexities and the politics involved, agriculture had to be brought fully into the Negotiations and dealt with. They agreed in the Tokyo Declaration that the Negotiations should be considered as one undertaking, the various elements of which should move forward together.

The language of the Tokyo Declaration was, however, the language of compromise, not surprisingly in view of the need to arrive at a unanimously acceptable text. The two paragraphs of the Declaration on agriculture - 3(e) and 8 - represented a trade-off between the United States and the European Economic Community.

There was a lack of precision in the language. There was no guidance on whether agricultural and industrial products should be taken together and treated similarly - for example, in such fields as tariffs, non-tariff measures and standards - or whether all matters relating to agricultural products should be handled separately by whatever body was set up to deal with agriculture. This was to lead to endless debate later on the question of competence and on where and how negotiations on agriculture should be conducted.

The differences in approach between, among others, the United States and the European Economic Community were fundamental. The United States wanted the negotiations to lead to the liberalization of agricultural trade and increased access to foreign markets for products of which they were efficient producers.

The European Economic Community, on the other hand, sought the stabilization of agricultural trade through commodity arrangements, a sufficiently high income level for its farmers, and the preservation of an effective Common Agricultural Policy.

These differences of substance had as a corollary and consequence a divergence of view on how to negotiate - in other words what procedures to follow in the negotiations.

The United States considered that the same treatment and solutions should be applied to agricultural and industrial products alike, be it in the area of tariffs, subsidies and countervailing duties, or elsewhere, although it conceded that there might be instances where special characteristics in agricultural trade might justify exceptional treatment.

For the European Economic Community, agriculture had unique characteristics, sharply distinguishing it from the industrial sector; agriculture should be dealt with separately. In the view of the Community, solutions should often take the form of "managed markets" with all that implied in terms of international agreements on prices, stockpiling procedures, "phasing" of exports, consultations and so on. As regards tariffs in particular, these could not be considered in isolation from what should be done about minimum prices, maximum prices, stockpiling, subsidies, international supply commitments, etc. The Community stressed that it had largely eliminated quantitative restrictions.

B. THE NEGOTIATIONS: THE MATERIAL BASE

A solid basis for the negotiations on agriculture had been provided by the preparatory work done in the years preceding the Tokyo meeting.

1. Assembly of material

The first tasks were the collection of the basic documentation and identification of the principal problems. This facilitated the search for possible solutions and the examination, at a later stage, of alternative negotiating techniques and modalities.

The products most prominent in international agricultural trade were the subject of attention in the early stages. These made up the following eight groups: cereals, dairy products, meat, vegetable oil and oilseeds, fruit, vegetables, wine and raw tobacco. Later the work was extended to all agricultural products.

Following this, early in 1970, discussions moved on to the next task: the possibilities for concrete action. Attention was concentrated on measures that affect imports and exports such as tariffs, variable levies, centralized trading and quantitative restrictions; and measures that affect production.

During 1970, these discussions produced a broad spectrum of suggestions on how the principal problems in agricultural trade might be dealt with. These were wide-ranging and often conflicting.

An examination of the reports of the discussions indicates their detailed and highly-technical character and the expertise that had gone into their preparation. It is difficult to believe that any aspect of any possible solution could have avoided scrutiny.

Much of the information gathered in this period was incorporated in a detailed inventory which set out the measures, including measures relating to production, which influenced the exports and imports of the major trading countries. It covered - particularly as regards imports - customs duties, quantitative restrictions, levies, health and sanitary regulations and other measures constituting barriers to trade. This information, together with the range of suggestions for possible solutions that had been put forward, would form a useful basis for the agricultural negotiations when they began.

2. Examination of techniques and modalities

The preparatory work for the Negotiations generally was given an impetus when, following the joint United States/Japan and United States/EEC Declarations early in 1972, the decision in principle was taken to open multilateral negotiations in 1973.

Following this development, the work on agriculture moved into a new stage: the examination of possible techniques and modalities for the Negotiations, particular attention being given to the implications of certain techniques for developing countries. Some conclusions could be drawn from this examination.

One approach might be to negotiate directly on the tariff or non-tariff measures themselves in order to reduce or eliminate them, to harmonize them, or to reduce or eliminate their trade-restricting and distorting effects.

A second approach might be to negotiate international stabilization arrangements for certain products. These arrangements might include a number of elements such as price mechanism - for instance, minimum and maximum prices - export policies, import policies, stock management to regulate supply, food aid and other features.

Another technique might be to seek agreement on rules or codes of conduct in certain areas, such as export policies, the use of health and sanitary regulations, or possibly certain aspects of internal price policies.

Some techniques might need to be combined to enable the disadvantages of one to be offset by the advantages of another. They should in any case have the necessary flexibility to meet the particular situation of individual countries.

All of this work throughout the preparatory stages was without commitment on the part of governments as to any possible solution or possible technique. Apart from basic differences regarding approach and procedure - which were still to last for several years - the objectives toward which solutions and techniques would be directed were not yet agreed.

C. DEVELOPMENTS IN THE NEGOTIATIONS

1. 1974 to 1977: Lack of substantive progress

In February 1975, a Group was formally established with responsibility for the negotiations on agriculture. It succeeded the group that had been set up a year earlier, but which had remained unnamed (and simply numbered 3(e) corresponding to the paragraph on agriculture in the Tokyo Declaration).

In May 1975, three Sub-Groups were set up to deal respectively with grains, dairy products and meat; these, taken together, account for a large part of world agricultural trade, are widely traded and were regarded as possibly lending themselves to multilateral solutions. At a later stage, procedures were agreed to deal with products other than those covered by the Sub-Groups; some

of these - such as citrus fruits; fresh or canned fruits; vegetables; other specialities; tobacco; etc. - are important in the export trade of many countries including developing countries. There are hundreds of products of this kind.

Despite the establishment of the appropriate machinery, however, no meaningful progress was made in the agricultural negotiations until 1977. For most of 1975, there were protracted and unproductive arguments about the competence of the Group on agriculture and, thereafter, the continuing differences between the United States and the European Economic Community, added to the economic and political developments to which reference has been made in Chapter IV, effectively blocked any chance of substantive movement.

In the three Sub-Groups there was no activity in any substantive sense. Some useful work on products other than grains, meat and dairy products was undertaken in 1976. This took the form of bilateral and plurilateral consultations on tariff and non-tariff barriers which countries had notified as adversely affecting their trade and which they would wish to see relaxed. A number of developed and developing countries - among them Brazil, Colombia, the European Economic Community, Hungary, New Zealand, Poland, South Africa, Thailand, Turkey and the United States - took part in the exercise.

At the end of 1976 the results of the many bilateral and plurilateral consultations that had taken place were communicated to all the other participants and thereby multilateralized. The exercise was, of course, essentially one of notification, examination and dialogue, with no commitment as to how or where the actual negotiations would be undertaken.

Over this period, both developed and developing countries maintained their basic positions.

For developing countries the aim - in line with the objectives of the Tokyo Declaration - continued to be to secure improved and liberal market access and the stabilization of agricultural trade at fair and remunerative prices. On the whole, they favoured the commodity arrangement approach. They sought differential treatment whenever possible, for example, in the fields of tariffs,

import quotas and levies and a priority approach to tropical products. In their view developed countries should promote adjustment policies and pay greater attention to the adverse effects on the trade of developing countries of, for example, such actions as releases from stockpiles of strategic agricultural materials and the proliferation of substitutes and synthetics.

2. Impasse broken: 1977

Following the agreement in Brussels between Mr. Strauss and Mr. Haferkamp in July 1977 on a programme and accelerated time-table for the Tokyo Round generally (see Chapter IV:C), the impasse was broken and there was soon forward movement in all areas of the negotiations, including agriculture.

In the same month - July - the Group "Agriculture" adopted a request and offer procedure for agricultural products, covering tariff and non-tariff measures. Requests were to be submitted by 1 November 1977 and offers by 15 January 1978. Special procedures were agreed for developing countries who could make requests to developed countries but to whom requests would not be addressed, except in the form of indicative lists of export interests.

By early 1978 requests concerning measures affecting their agricultural export trade had been submitted by some seventy developed and developing countries to their negotiating partners. Copies of these lists were circulated to all participants in the Negotiations. Most major participants had submitted initial negotiating offers by early 1978.

Bilateral and plurilateral negotiations continued throughout the year and in the early months of 1979, with additional or modified requests being submitted in the light of progress.

Meanwhile, the impetus also given to the work of the Sub-Groups on Dairy Products and on Meat in July 1977 enabled them to make substantive progress over the following period. Progress in the Sub-Group on Grains, however, had to await the outcome of efforts being made outside the Tokyo Round to negotiate an international agreement on grains. Developments in the work of the three Sub-Groups in the period up to early 1979 are described in the following sections.

D. THE NEGOTIATIONS ON AGRICULTURE: GRAINS

1. Work of Sub-Group up to 1976

About forty countries participated in the work of the Sub-Group on Grains; developing countries, both importing and exporting, made up around half of that number.

Initially, the Sub-Group focussed its attention on four products: wheat, barley, sorghum and corn, it being understood that other cereals, such as rice and grain products - for example, wheat flour and malt - could be added at a later stage. Taken together, the products under consideration in the Sub-Group represent the most important sector of international agricultural trade.

The Sub-Group agreed to address itself in the first place to three inter-connected topics: those related to the objective of stabilization of markets and prices; those related to the objective of expansion and ever-greater liberalization of trade; and those related to objectives concerning developing countries, including differential treatment. The juxtaposition of the first two topics - stabilization versus liberalization - reflects the differences in position of the European Economic Community and the United States.

There were a series of meetings during 1975 and 1976, but no forward movement. The Sub-Group carried out useful technical work in that period but this involved essentially the refinement and bringing up to date of the material base for the negotiations. A number of specific proposals were, however, put forward.

2. Interruption of the work of the Sub-Group

A development that affected the work of the Sub-Group - and in fact resulted after a period in it becoming dormant - was the parallel activity that had been going on since 1975 within the framework of the International Wheat Council in London. At the request of that body a full conference was

called in 1977, under the auspices of UNCTAD, to negotiate an Arrangement to replace the International Wheat Agreement which was due to expire in June 1979, and which had become largely inoperative. A positive result was not, however, achieved at that time. Further sessions of the Conference were held in late 1978 and early 1979.

In these circumstances, the Sub-Group on Grains did not meet again after 1976 until its final meeting in April 1979. During 1977 and 1978, and in early 1979, the Chairman of the Sub-Group held several informal meetings, from which the common view emerged that nothing could usefully be done in the Sub-Group until there had been further progress in the international grains negotiations.

Two further sessions to resume negotiations to replace the International Wheat Agreement were held in November 1978 and January 1979, but both adjourned without a conclusion having been reached. It was agreed that the work would be continued at an appropriate time in the future. In March, the existing International Wheat Agreement was extended for a period of two years from 1 July 1979.

E. THE NEGOTIATIONS ON AGRICULTURE: BOVINE MEAT

A basic factor in any multilateral negotiation on bovine meat is the extent and importance of the trade to a wide range of countries at all levels of economic development. In addition to developed countries, a number of other countries - such as Argentina, Botswana, Brazil, Bulgaria, Colombia, Kenya, Mexico, Paraguay, Romania, Swaziland, Tanzania, Uruguay and Yugoslavia - are large meat producers and exporters.

1. Work in the period 1975 to mid-1977

The Sub-Group on Meat was set up in May 1975. It focussed its attention mainly on beef, veal and cattle.

Due to the lack of substantive progress in the Tokyo Round generally, the work of the Sub-Group up to mid-July 1977 was largely of a technical character and without commitment on the part of governments. The work was nevertheless useful as a basis for the substantive negotiations that were later to be engaged in this sector.

As a first step the Sub-Group analyzed the structure and problems of world meat trade, including the impact of trade barriers and trade-distorting practices. Measures maintained were examined on a country-by-country basis.

There then followed an examination of proposals relating to the expansion and liberalization of trade; possible concerted action between importing and exporting countries in the conduct of their trade policies and other approaches aimed at stable and secure trading conditions; special and differential treatment for developing countries; and forms of international co-operation and its possible mechanisms.

In mid-1976 the Sub-Group, going a stage further, looked at the various elements involved and considered which of these elements might be suitable for treatment multilaterally and which might not be suitable.

It was at this stage of the Sub-Group's work that the European Economic Community put forward a proposal for "a multilateral framework agreement on bovine meat". This framework agreement was envisaged by the Community as primarily a multilateral mechanism designed to promote a better knowledge of the meat market and of trends in the market. Continuous and exhaustive examination of developments would facilitate the process of consultation between governments and enable them to consider what measures could be taken to avoid or alleviate the consequences of any crisis situation that might develop. There was provision for an undertaking by signatories to afford adequate opportunity for bilateral and plurilateral discussions on the application of health and sanitary measures, a subject that would be of crucial importance throughout the negotiations. The Community's proposal was at that time the only comprehensive text on the table.

2. Substantive progress: 1977 to 1979

Following the summer recess of 1977, substantial progress was made in the Sub-Group. Negotiations proceeded on the basis of the text of a draft arrangement on meat prepared by the GATT secretariat based on proposals made by the EEC and Australia. The draft was discussed and revised at a number of meetings in the remaining months of 1977 and throughout 1978.

The structure of the Arrangement, consisting of four Parts, remained the same until the final stages of the negotiations. In December 1978, however, one Part was dropped. This contained a separate Article dealing with "joint disciplines", setting down certain commitments as regards trade policies and providing for bilateral and plurilateral negotiations for concessions.

In the Sub-Group there had been considerable discussion on the status to be given to these concessions. Some wished to see them annexed to the Arrangement, thus formalizing the link between the concessions and the Arrangement and bringing all the results of bilateral negotiations on meat within its framework as part of the process of promoting orderly marketing. Others wanted the concessions incorporated into the GATT Schedules, so as to guard against the expiry or any possible collapse of the Arrangement, or

withdrawal of important participants resulting in the loss of concessions that would have been paid for. Most other participants could only agree to an attachment for information purposes.

The inclusion of certain other provisions in the Arrangement remained uncertain until a very late stage. These were the provisions on health and veterinary measures, safeguards and subsidies. Whether these should be included or excluded from the Arrangement had to await the outcome of the negotiations in the specialist Groups or Sub-Groups dealing with these subjects.

The issue of health and sanitary measures gave rise to serious difficulties. It was finally resolved when, on 18 December 1978, the Group "Agriculture" decided that the Standards Code should be amended to make it applicable to agricultural products.

The questions relating to safeguards and subsidies were settled at the beginning of April 1979, when the negotiators decided that it would not be necessary for separate provisions on matters of general application to be written into the Arrangement. This decision was based on an agreement (spelled out in a footnote) that the matters which may be raised before the Council and considered by it include any matter covered by multilateral agreements negotiated within the framework of the Tokyo Round.

There were considerable differences of view as to the rôle to be given to the International Meat Council to be set up under the Arrangement. The issue concerned its degree of authority and responsibility.

There was support for a strong Council with authority to recommend to governments unilateral or concerted action to correct market imbalances; with an effective dispute settlement rôle; and with the possibility of discussing, in substantive terms, the reduction of trade barriers. The alternative would be a Council with a primarily consultative function.

The text finally agreed upon charges the Council, if it finds evidence of a serious imbalance or threat thereof in the international meat market, to identify possible remedial solutions for consideration by governments. Depending on the situation, such solutions could include short-, medium- or

long-term measures taken by importers as well as exporters to contribute to the improvement of the overall world market situation consistent with the aims of the Arrangement, in particular the expansion, ever greater liberalization and stability of the international meat and livestock markets.

3. The Arrangement Regarding Bovine Meat

Following further meetings of the Sub-Group and continuing bilateral and plurilateral negotiations among delegations in the period up to April 1979, the text of an Arrangement was finally established and transmitted to the Trade Negotiations Committee by the Sub-Group in the beginning of April 1979. The main features of the Arrangement are described in Chapter III of Part II.

F. THE NEGOTIATIONS ON AGRICULTURE: DAIRY PRODUCTS

1. Background

The consequences for international agricultural trade of government policies in high-cost producing countries have been referred to earlier in this Chapter. Nowhere have these consequences been more clearly seen than in the field of dairy products.

Government policies of support assuring a high income level for dairy farmers have resulted in important changes in the pattern of world trade and in considerable difficulties in world markets.

Some international co-operation already existed in this sector prior to the establishment of the Sub-Group on Dairy Products in May 1975. Arrangements negotiated in GATT, setting floor prices to international trade in skimmed milk powder and milk fats, and a "Gentleman's Agreement" under the auspices of the OECD providing for a minimum price for whole milk powder, had been in operation for a number of years.

These arrangements, however, covered only part of the trade in dairy products, and were limited in scope. When the Sub-Group on Dairy Products was set up it was agreed that it would deal with all such products.

2. Work of the Sub-Group

No progress was made in the Sub-Group in a substantive sense until after mid-July 1977, when the impasse in the Tokyo Round generally was broken. The Sub-Group did not meet during the period July 1976 to October 1977.

In this period work on dairy products - as on meat - was necessarily of a technical and analytical character. This was of considerable value in improving the material basis for negotiations, but was essentially a process to keep things moving until such time as conditions were right for negotiations to begin.

First, there was an analysis of the characteristics, structure and problems of world trade in dairy products, including the direct and indirect effects of trade barriers and of trade-distorting practices. This included a multilateral examination of the measures maintained in this sector by the various trading nations.

A subsequent task was to examine all the proposals that had been put forward, so as to evaluate their content and relevance in the context of the problems posed in the dairy products sector and of the objectives of any negotiation. This examination was focussed on the expansion and liberalization of world trade; stabilization of the conditions of trade through improvement and extension of already existing international co-operation mechanisms; improved conditions and competition in international markets; special and differential treatment for developing countries; and forms and instruments of international co-operation.

3. Negotiations engaged

(a) Developments

In the second half of 1977 work on dairy products took on a more substantive character.

In October 1977, two proposals for an arrangement on dairy products were tabled: one by the European Economic Community and the other by New Zealand. Both had common features and it was on the basis of a draft arrangement comprising elements of both these proposals that the discussions moved forward. The Arrangement was envisaged as containing general provisions, to which would be annexed Protocols dealing with certain dairy products.

Throughout 1978 the text of the draft arrangement was periodically revised as a result of discussions in the Sub-Group and, in particular, following bilateral and plurilateral negotiations between delegations.

(b) Issues

A number of difficult problems had to be dealt with.

First, there was the question of the provisions in the Arrangement on the exchange of information, consultation, and on prices.

Secondly, there was the problem of safeguards, subsidies and sanitary and veterinary measures. These were the subject of negotiations in the specialist Groups and Sub-Groups established for the purpose, and the outcome of these negotiations had to be awaited before any action could be considered in the Sub-Group on Dairy Products. The particular issue of sanitary and veterinary measures was settled in December 1978 when the Group "Agriculture" decided that the Standards Code should be applicable to agricultural products. The other two questions were settled at the end of March 1979, when the negotiators agreed that it would not be necessary for separate provisions on matters of general application to be written into the Arrangement, as long as it was made clear that any matter could be raised in the Council and consulted upon.

A problem that took a long time to settle was how to deal with cheeses in the Arrangement. Australia and the European Economic Community were particularly active in the negotiations on this problem which was resolved toward the end of 1978 by the addition of a Protocol on cheeses in the Arrangement.

A further question concerned the formal action to be taken in connexion with concessions resulting from bilateral and plurilateral negotiations which, it had been envisaged, would be undertaken between governments. While it was agreed that such concessions would be incorporated in the GATT Schedules, a problem arose as to the status of the concessions in the context of the Arrangement itself. Should they be annexed and referred to

in the body of the Arrangement? Should the relevant concessions be annexed to the Protocols to be established for individual dairy products? Should there be no Annex and no reference to the concessions in the Arrangement? Should there be provision in the text for obligations under the Arrangement - for example observance of minimum prices - to be deemed to be concessions under the GATT, thus permitting recourse to GATT Articles XXII and XXIII, (consultation and dispute settlement provisions) including the possibility of the withdrawal of substantially equivalent concessions in case of impairment?

During most of the period of the negotiations provision for maximum, as well as minimum, prices had been included in the Protocols. However, toward the end of 1978, the provision for maximum prices was dropped at the request of a large number of countries. Shortly afterwards, the provision was reinstated in the draft Protocols on a proposal of certain developing countries but was not agreed to by the other countries.

4. Texts on International Dairy Arrangement

Meetings of the Sub-Group, and bilateral and plurilateral negotiations among delegations, continued in the early months of 1979, leading to the establishment of a text of an Arrangement agreed upon by many members of the Sub-Group. This, together with interpretative declarations by certain delegations, was transmitted in the beginning of April 1979 to the Trade Negotiations Committee by the Sub-Group. Amendments proposed by certain members were also annexed in a separate text. The main features of these texts are described in Chapter III of Part II.

G. MULTILATERAL AGRICULTURAL FRAMEWORK

In the course of the negotiations it became apparent that it would be desirable and necessary to have in the GATT a mechanism which would watch over the application of the results of the negotiations relating to the agricultural sector, and which would provide a forum for exchange of information and for consultation and thus for preventing problems in agricultural trade and for helping to deal with any that might arise.

These ideas were first expressed in concrete form in the Statement on the Current Status of Tokyo Round Negotiations, of 13 July 1978, to which a large number of participants subscribed. In the section on agriculture it stated that the establishment of some fundamental understandings on the conduct of agricultural trade could provide a framework for avoiding continuing political and commercial confrontations in this highly sensitive sector and would lead to an improved level of international co-operation among participants. It further stated that this aim could be achieved in the GATT through a systematic series of consultations, exchanges of information and the establishment of a consultative committee for reviewing and implementing the understandings and possibly co-ordinating the work of subsidiary bodies.

A formal proposal embodying a series of principles and providing for the establishment under the aegis of GATT of an International Agriculture Consultative Council was tabled in December 1978. An initial discussion in Group "Agriculture" in the same month brought forth a broad consensus that an improved level of international co-operation in matters affecting agricultural policies and trade was both desirable and necessary, and that a mechanism for consultation on such matters under the aegis of GATT could be an appropriate instrument towards this objective.

While some delegations were ready to accept the proposal as it stood, others considered that the text required certain modifications. Consultations held among delegations in early 1979 made a good deal of progress, but certain differences still existed when Group "Agriculture" met at the beginning of April.

On the basis of a proposal by the Chairman, the Group therefore agreed to call on the Trade Negotiations Committee to recommend to the Contracting Parties of GATT to establish an appropriate consultative framework which would further develop active co-operation in the agricultural sector, and to work out the definition of this framework and its tasks as soon as possible.

The text agreed by Group "Agriculture" is reproduced in Chapter III of Part II.

CHAPTER VI: TROPICAL PRODUCTS

A. BACKGROUND

In terms of the Tokyo Declaration, tropical products were to be treated as a "special and priority sector", the negotiations to cover tariffs, non-tariff barriers and other measures affecting trade in tropical products in primary form or at any stage of processing. Thus it was in the tropical products sector that substantive negotiations got underway first in the Tokyo Round and where the earliest concessions and GSP contributions were implemented.

A solid basis for negotiations had been established as a result of the work done prior to the Tokyo Round by GATT's Trade and Development Committee and its Special Group on Trade in Tropical Products. In the GATT in 1974, following the Tokyo ministerial meeting, the material was up-dated, extended and analyzed. Possible negotiating techniques were examined.

The generality of the formulation in the Tokyo Declaration on this subject derived from the situation obtaining in this area of international trade relations. The differences in positions and interests between developing countries themselves, particularly in the context of preferences, would make difficult, if not impossible, agreement on specific aims. The developed countries likewise had divergent views on preferences. Moreover, several tropical products presented problems for them. Some - such as certain vegetable oils and oilseeds - could substitute for, and be competitive with, temperate-zone products. Others - such as rice, sugar and tobacco - are produced in both developed and developing countries. It was considerations of this sort that had frustrated a better result in the Kennedy Round. They would also be significant in the Tokyo Round. The question of an adequate negotiating basis involving interpretation of paragraph 5 of the Tokyo Declaration with respect to reciprocity and developing countries also had an influence on the conduct of negotiations in the field of tropical products.

B. THE NEGOTIATIONS

a) The requests

The negotiations can be considered as falling into two parts, with much overlapping between them.

First, there were those initiated in the Group "Tropical Products" that had been set up in February 1975 specifically to supervise the conduct of the negotiations in this area. These negotiations were carried out without prejudice to the definition of tropical products, it being left to requesting countries to identify their product interest and related requests and to the offer-making countries to decide on which products they could make offers having regard to all relevant factors. Under procedures for negotiations on tariffs and non-tariff meaures agreed upon, the submission of requests by developing countries to eleven developed participants - Australia, Austria, Canada, the European Economic Community, Finland, Japan, New Zealand, Norway, Sweden, Switzerland and the United States - began around the target-date of 16 May 1975 and continued for some time over the following period. Although the Tokyo Declaration provided for negotiations on "other measures" affecting trade in tropical products, no such negotiations were in fact carried out in the context of the Tokyo Round, it being felt by some delegations that such measures as price stabilization were being dealt with in other fora. Offers (tariff and certain non-tariff) and GSP contributions resulting from this stage of the negotiations were implemented by some countries in July 1976 and by the others (except the United States) in the early months of 1977.

In July 1977, procedures were agreed upon for the submission of requests and offers on non-tariff measures and on agricultural products. Under these procedures, requests were to be submitted by November 1977 and offers by 15 January 1978. Tariff negotiations also got underway at the beginning of 1978.

Requests that had been submitted by developing countries earlier in the tropical products negotiations, which were still pending or which in their view had not been fully satisfied, were considered to have been re-submitted under these procedures if the developing countries concerned so indicated. As a result of this stage of the negotiations, further offers responding to requests by developing countries were included in the final package of results arising from the Tokyo Round. As is generally the case in multilateral negotiations, some requests were not satisfied for domestic reasons in the offer-making country or for reasons involving, for example, its commercial relations with third countries.

The requests submitted by developing countries were comprehensive and diverse, and an indication of their great interest in this sector of world trade, as well as the extent of their active participation in the negotiations themselves.

(b) The response

(i) Offers under 1975 procedures for tropical products

In March 1976, or in some cases shortly thereafter, the eleven developed participants to whom requests had been addressed by developing countries in the course of 1975 put forward their initial offers.

There followed a process of bilateral and plurilateral consultations, aimed primarily at seeking improvements in the offers and the early implementation of whatever results were achieved. Early implementation was important, in view of the priority character to be given to these particular negotiations. Agreement was in fact reached that the concessions could be implemented on a de facto basis, pending the eventual binding of m.f.n. concessions in the GATT Schedules together with all other concessions resulting from the Tokyo Round.

Ten of the eleven developed participants proceeded to the implementation of their concessions and GSP contributions in 1976 or early in 1977: Australia, the European Economic Community, Finland, New Zealand, Norway, Sweden and Switzerland by 1 January 1977; Canada and Japan on 1 April 1977; and Austria on 1 July 1977. The United States had also offered m.f.n. concessions on a range of items but their implementation was deferred pending the completion of negotiations between the United States and its developing country trading partners.

(ii) Offers under 1977 procedures for negotiations on non-tariff measures and agriculture as well as tariff negotiations

As regards offers that were to be made later under the procedures established in July 1977 for non-tariff measures and agricultural products and in the tariff negotiations, these began to come forward from a number of countries, including the eleven developed participants, from mid-January 1978 onwards. They included a significant number of items subject to tropical products requests, especially with respect to items covered by chapters 25-99 of the Customs Co-operation Council Nomenclature (CCCN). The requests and offers were subject to a continued process of bilateral and plurilateral negotiations over the remaining period of the Tokyo Round, in the expectation by developing countries that additions or improvements would be secured.

An analysis of the results available to the GATT secretariat as of April 1979 is included in Chapter VI of Part II.

CHAPTER VII: TARIFFS

A. ISSUES

Although in all previous GATT multilateral negotiations tariffs had been the principal target and substantial reductions had been made, there was still considerable scope for further cuts.

An overriding issue - the implications of which went well beyond the tariff field - was whether tariff cuts applied to industrial goods should likewise be applicable to agricultural products. This was part of the general question as to how and where within the overall framework of the Negotiations agriculture should be dealt with.

The alternative techniques for tariff reduction had been thoroughly investigated in the course of the preparatory work in the years preceding the Tokyo meeting. Two approaches were the most favoured: the technique of harmonization, whereby the higher the tariff the greater would be the cut, and the linear technique which would involve equal percentage cuts on all tariffs.

A country's preference would be influenced by its tariff structure. The linear approach would still leave a country having peaks in its tariff with some relatively high duties, whereas a country with a fairly uniform tariff might favour the harmonization technique. Other issues would be of particular concern to individual countries, whatever general formula they were likely to support once the negotiations got under way. For some countries low tariffs - particularly if these were in a principal market - could be a barrier. Others were likely to resist an elimination of tariffs on the grounds that this would reduce their future negotiating possibilities.

An issue of considerable difficulty and sensitivity would concern exceptions from the general formula. This would involve both countries and products. It was recognized that developing countries would be excepted from the formula, although some contributions would be expected from these countries. Problems would, however, arise in the case of developed countries such as Australia and New Zealand which, although at a certain stage of industrialization, rely mainly on exports of agricultural products.

The products to be excepted would also pose difficult problems for governments. Great pressure for exemption would be exerted by industries - such as steel, textiles and shoes for example - that were in difficulties. In a situation of high unemployment and under persistent protectionist pressures governments, particularly those with minimal parliamentary majorities, would not find it easy to resist these demands. The more the exceptions, the more likely the withdrawal of offers or the addition of exceptions by others, and a general decline in the extent and value of the tariff-cutting exercise. Moreover, there would be the probability that products of considerable export interest to developing countries - often the target of the protectionists - would be prominent in exception lists; this would create a situation difficult to reconcile with the spirit and letter of important objectives of the Tokyo Declaration.

A fundamental issue would be how to provide, in terms of the Tokyo Declaration, differential and more favourable treatment for developing countries. The sort of questions to which answers would be required included whether the preferential duties existing in the Generalized System of Preferences should be bound in accordance with the wishes of the developing countries; whether deeper cuts than the general formula could be given to products of special export interest to these countries; whether products on which developing countries enjoyed preferences should be exempted from the m.f.n. cuts of the general formula and so maintain the margin of preferences; whether new sub-categories in the tariff classification should be created in order to provide opportunity for more favourable treatment for their exports; and whether there should be advance implementation of tariff cuts in the case of products of special export interest to developing countries.

B. THE MATERIAL BASE

The preparatory work done in the years before the Tokyo Meeting of Ministers established a material basis for the negotiations more comprehensive, detailed and useable than had been available for any earlier GATT negotiations.

1. Tariff study

The basic material on tariffs took the form of a tariff study. In this study, for the first time, the full facts on the tariff structure of each of the major trading countries, together with trade statistics that made it possible to

assess the importance of each tariff item, were recorded in full detail and subjected to thorough analysis.

For each of the major developed GATT countries[1] a basic file was established containing detailed information on duty rates, on tariff bindings and on the corresponding imports in recent years under each tariff line. This information was then summarized in three tabulations which classified the data for the countries concerned in terms of Customs Co-operation Council Nomenclature (CCCN) headings; of twenty-three industrial product categories sub-divided into 119 sub-categories; and of the duties applied at various stages of processing.

In the years following the Tokyo meeting, this tariff information was continuously kept up to date and refined, and the work of tariff collection and analysis carried forward for practical purposes. The GATT tariff study was unique in its field and provided a detailed objective basis enabling governments to explore, at the appropriate time, various approaches to action in the tariff field.

2. Examination of techniques and modalities

The examination of possible techniques and modalities for tariff reduction began in 1972. In this exercise, full use was made of the tariff study. Comprehensive information on tariffs in force was available through the study and could, employing computer calculations, show the precise impact which the application of various techniques could have on the tariff structures of the major trading countries.

While governments were not committed to any particular approach at that time, attention was mainly focussed on three possibilities: tariff elimination, linear reduction of tariffs, and harmonization techniques. However, no possible technique was excluded.

(a) Tariff elimination, or duty-free trade, would solve many difficulties such as the problems of disparities and tariff escalation, and problems connected with specific and mixed duties.

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[1] EEC, United States, Japan, Canada, Austria, Finland, Norway, Sweden, Switzerland, Australia, New Zealand.

Duty-free trade had been achieved successfully under certain regional arrangements. But, although a highly desirable objective, it was not likely to be a realisable proposition in the world of the 1970s. As was pointed out in the course of the preparatory work, too many pre-conditions were required, among them for example some assurances against the introduction of additional non-tariff barriers and more frequent resort to safeguards. An important side-effect would be the loss of tariff preferences by those developing countries which benefited from them.

(b) Linear reduction of tariffs

The linear approach and the negotiation across-the-board of tariff reductions had been used in the Kennedy Round and had proved its value.

Technically, the approach had certain advantages. It could be used to achieve different objectives and its effect would vary depending on the depth of the reductions, their phasing and the number of exceptions. Variations could be introduced in both the rate of reductions, for example by providing a smaller reduction of duties in sensitive sectors; and in the time-table for the reductions, for example by providing a different time-table for high and low duties.

A principal disadvantage was that the use of the technique could raise the question of tariff disparities, which had caused real difficulties in the Kennedy Round.

For developing countries, some flexibility in the working hypothesis in the application of the rate of reduction for products of interest to them would be important, so that the rate of reduction could be less than the general rule when there was an established trade flow under the Generalized System of Preferences, and above the general rule when products were not included in the GSP or when this was necessary to reduce tariff escalation. Any possible erosion of preferences was a matter of constant concern to many developing countries.

(c) Harmonization techniques

The preparatory work showed that harmonization techniques could be classified in four general categories. One was reduction of rates by an agreed percentage that would depend on the initial height of the tariff in the country concerned. This method would reduce disparaties, would not require the technically complicated establishment of concordance between tariffs and would reduce the tendency for tariffs to rise with the degree of processing.

A second category was the reduction of rates by a percentage that would depend on the initial height of the tariff in the other participating countries. This technique raised the problem of determining which participants should be taken for reference purposes, and would require tariff concordances.

A third approach was the reduction or elimination of differences between actual rates and lower "normative" or "target" rates. The target rates could vary from sector to sector, but the ultimate objective would always be to reduce tariffs. Different target rates could also be set for raw materials, semi-finished products and finished products.

A fourth category could be harmonization rules providing for reduction of the average duties in a given sector. A problem here would be choosing the type of average to be used.

(d) Item-by-item approach

GATT negotiations up to 1964 were conducted on the basis of the item-by-item approach. This involved a whole series of bilateral negotiations, the results of which were extended to all GATT member countries in accordance with the most-favoured-nation clause.

This technique had a number of disadvantages. There was always the possibility that offers would be made, not on important, sensitive items, but on items of much lesser significance in world trade. This could reduce the coverage of the negotiations. The technique, moreover, tended to be laborious and would become more so with the considerable increase in GATT membership.

The item-by-item approach was discussed in the course of the consideration of the various techniques and modalities, but it received little support. The reasons for its abandonment at the time of the Kennedy Round were still valid.

None of the Committees engaged on the preparatory work for the Negotiations was required to make a decision as to what technique, or combination of techniques, would be appropriate. This subject was one of several that would, when the Negotiations got under way, lead to basic differences of position and approach, particularly between the United States and the European Economic Community.

C. THE NEGOTIATIONS ON TARIFFS

1. Lack of substantive negotiations: 1975-1977

The mandate of the Group on Tariffs set up in February 1975 was "to draw up a tariff negotiating plan of as general application as possible, taking due account of the views of the developing countries, particularly as regards the Generalized System of Preferences".

The Group held a number of meetings in 1975 and 1976 but, because of the deadlock in the Tokyo Round generally at that time, it was not possible for substantive negotiations to be engaged.

Nevertheless, considerable progress was made in a number of important areas. There were wide-ranging discussions in the Group on issues that would predominate once the tariff negotiations got under way. These were mainly concerned with the elements that might be included in a tariff-negotiating plan such as the tariff-cutting formula, base rates and base dates, special and more favourable treatment for developing countries, and staging of cuts.

It was during this period that all the tariff cutting proposals were made. Canada was the first to suggest a hypothesis for a possible tariff-cutting formula in 1975. During 1976 the United States, the European Economic Community, Japan and Switzerland put forward proposals, adding to those already made by Canada. The European Economic Community favoured the harmonization approach, as did Japan and Switzerland. The United States favoured the linear reduction technique.

Activity in the Group slowed down considerably for some time after the autumn of 1976 during the later stages of the Presidential elections in the United States and, thereafter, pending the appointment by the President of the new Special Trade Representative.

2. Negotiations engaged: 1977-1979

The deadlock in the Tokyo Round was broken at the meeting in July 1977 between Mr. Strauss and Mr. Haferkamp in Brussels. As regards the negotiations on tariffs, it was agreed that a negotiating plan, including a tariff-cutting formula, should be established by 15 January 1978.

At a further meeting in Brussels between Mr. Strauss and Mr. Haferkamp in September 1977, there was agreement that the "working hypothesis" for the tariff-cutting exercise should be established along the lines of the proposal put forward by Switzerland. In the weeks thereafter most developed countries accepted the Swiss proposal as a working hypothesis and agreed to table their detailed tariff offers by 15 January 1978.

Expressed algebraically, with X representing the initial rate of import duty applied, A a coefficient to be agreed upon, and Z the resulting reduced rate of duty, the formula proposed by Switzerland was:

$$Z = \frac{A\ X}{A + X}$$

On the basis of a proposed coefficient 16, for instance, an initial 10 per cent tariff would be reduced to (16 x 10) ÷ (16 + 10) = 160 ÷ 26 = about 6.15 per cent. A higher tariff would be reduced by a greater proportion, a lower by a less one. If applied without exceptions, this formula would have the effect of reducing the average tariff level of the main industrialized countries by about 40 per cent. The new tariff levels would, in accordance with normal GATT practice, be "bound" against subsequent increase.

The autumn of 1977 was devoted to the preparation of detailed tariff offers in capitals. In mid-January 1978 the tabling of offers on industrial products and the submission of bilateral requests for tariff concessions began. Copies of these initial requests and offers were made available to all countries participating in the Tokyo Round.

By the middle of 1978 countries were proceeding to reciprocal adjustments in their initial offers, involving both improvements and exceptions. A high level of binding of duties by all participants continued to be an important objective. There still remained certain technical problems to be dealt with, such as how to treat specific duties, how to take account of the fact that some tariffs are levied on a c.i.f. and others on an f.o.b. basis, etc.

During the second half of 1978 and the early months of 1979 there were intensive bilateral and plurilateral negotiations among delegations, both in Geneva and in various capitals. The results achieved in these negotiations are described in Chapter II of Part II.

3. The process of negotiation

There was no formal tariff-negotiating plan as such in the Tokyo Round. A number of problems and differences of view had emerged relating to the various elements that would have been included in such a plan and countries decided that, rather than delay further, it would be better to push ahead with the actual negotiations.

(a) Tariff-cutting formula

Although the Swiss formula had been generally accepted by the main industrialized countries as a working hypothesis, there were considerable variations in its application. The European Economic Community and the Nordic countries - followed later by Australia - used the coefficient 16, whereas the coefficient 14 was used by the United States, Japan and Switzerland. These variations were designed to yield an approximately equal average cut in each country's overall tariff. Canada employed its own formula. Certain other countries, New Zealand for example, resorted to the item-by-item technique.

(b) Base dates and base rates

Countries used different base dates and base rates. A problem concerning Japan and Australia in particular was whether the legal or the effective rate should be used, the effective rates charged by these countries in recent years often being below the legal rates on which the reductions offered were calculated. It was not possible to reach agreement with the result that, when countries made their offers, it was on the basis of base dates and rates of their own choosing, it being left to the other countries to make an evaluation of this element of the negotiations along with all others.

(c) Staging of cuts

Staging would be decided upon by the time the Tariff Protocol was opened for signature. As the negotiations developed, an eight-year period seemed to be generally agreed. While, however, some countries considered that the period should begin on 1 January 1980 and go forward annually without interruption, there was also the

view that, after the first five years, the situation should be looked at in the light of the economic situation obtaining at that time before a decision was made on the cuts over the remaining three years. It was agreed that, in the case of certain products, special rules concerning staging would apply.

(d) The developing countries

The developing countries had hoped at the outset that there would be agreement with the developed countries on special measures to be taken on their behalf.

In the event, and despite intensive discussions between developed and developing countries as well as among the latter, the approach to special and differential treatment in the tariff negotiations remained unspecified.

An examination of initial offers indicated that less than formula reductions, or no reductions, had been offered for a good number of items of which the developing countries were already major suppliers. Such items were often excluded partially from the application of the tariff-cutting formula and did not at that time benefit from GSP treatment. The total or partial exceptions covered textile items for which developing countries were significant suppliers, as well as other sectors such as footwear, leather goods, cutlery, porcelain, wood or wood products, certain types of non-ferrous metals, etc.

In order to compensate in some degree for these partial or total exclusions deeper than formula cuts were offered on a number of other items where developing countries were still minor suppliers and at that time relying mainly on the GSP to achieve a breakthrough into the market.

The developed countries did confirm individually at a later date that their final offers would contain measures providing for special and differential treatment, although they would expect contributions from developing countries commensurate with their level of economic development. They invited developing countries to put forward their requests individually and requests were forthcoming from a number of countries seeking deeper m.f.n. cuts, accelerated implementation of m.f.n. cuts, exclusion of products from exception lists and the maintenance of GSP margins.

The results achieved as a result of subsequent bilateral and plurilateral negotiations between developed and developing countries are described in Chapter II of Part II below.

CHAPTER VIII: NON-TARIFF MEASURES

1. Background

The negotiations on a wide range of non-tariff measures were what most distinguished the Tokyo Round from earlier GATT multilateral negotiations, which had been concerned primarily with tariffs.

In the extensive preparatory work undertaken in the years before the Tokyo Meeting of Ministers, the characteristics of non-tariff measures, and the difficulties that would be involved in negotiating in this area, became clearer. There had been very little experience in GATT of negotiating multilaterally on these measures. Although it had been provided in the procedures for the Kennedy Round that all non-tariff barriers were negotiable, concrete results were negligible, with the important exception of the Anti-Dumping Code. The Code was important in itself. It was also a demonstration that non-tariff measures were negotiable.

Negotiating on non-tariff measures would obviously present problems. They were more diversified and changeable than tariffs. Similar negotiating techniques could not be applied to them. There was little, or no, uniformity between them as to their purpose. Many of those in national administrations dealing with such measures had little experience in international negotiations. A quantitative assessment of the impact of a non-tariff measure on trade, or of the value to be put on its reduction or elimination, was practically impossible. Some measures justified as being in the national interest - for example on grounds of security, health or safety - can have trade-distorting effects incidental to their main purpose.

There could also develop juridical complications. Many non-tariff measures are contrary to the GATT. Would these be considered negotiable and, if so, should they attract reciprocal concessions? A number of the modifications to the GATT rules would take the form of codes or agreements. Would the provisions of these instruments be applied only between those countries subscribing to them or to all GATT member countries in accordance with the most-favoured-nation clause? These were the sort of questions to which answers would have to be sought in the course of the negotiations.

2. The material base

Unlike tariffs, non-tariff measures were unfamiliar territory and a great deal of exploration in this complex field would obviously be necessary.

As a first step, a comprehensive inventory was drawn up in 1968 and subsequently kept up to date based on measures - some 800 in all - notified by exporting countries as adversely affecting their trade.

It was found that the approximately thirty categories of measures notified could be classified under five broad headings: government participation in trade; customs and administrative entry procedures; standards applicable to imported and domestic products; specific limitations on imports and exports; and limitations on imports and exports through price mechanisms.

On examination, it was considered that some of these measures might be dealt with through multilateral action. At the time, however, governments did not have the authority to negotiate substantive and binding solutions and it was therefore decided that the best way to proceed would be to elaborate solutions on an ad referendum basis - in other words solutions that would be submitted to governments for consideration, but which would, in the meanwhile, be without commitment on their part.

By the time of the Tokyo meeting in September 1973, ad referendum solutions had been elaborated for Valuation for Customs Purposes, Automatic Licensing and Licensing to Administer Import Restrictions, and Standards.

In addition, solutions were being sought to problems in the following areas: export subsidies, domestic subsidies that stimulate exports, subsidies that have import substitution effects and countervailing duties; import documentation including consular formalities, packaging and labelling; and quantitative restrictions, including embargoes and export restraints.

A number of other subjects were discussed but were not at that time being examined for ad referendum solutions. They included government procurement; State-trading enterprises in market economy countries; anti-dumping duties; customs classification; certificates of origin; samples requirements; marks of origin; minimum price regulations; motion picture restrictions; prior deposits; credit restrictions for importers; fiscal adjustments either at the border or otherwise; restrictions on foreign wines and spirits; discriminatory taxes on motorcars; statistical and administrative duties; and special duties on imports.

The list is quoted as a good indication of the extent, variety and complexity of non-tariff measures. It clearly shows the difficulty of putting a limitation on the type and number that can reasonably be described as "non-tariff measures".

At the meeting of the Preparatory Committee in 1973 the following common list of priorities was proposed:

(i) export subsidies and domestic subsidies that distort trade;
(ii) anti-dumping duties and countervailing duties;
(iii) government procurement;
(iv) valuation for customs purposes;
(v) standards, including packaging and labelling;
(vi) quantitative restrictions including embargoes and export restraints and licensing systems;
(vii) import documentation and consular formalities.

Although, strictly speaking, all non-tariff measures remained on the table, attention in the forthcoming negotiations would be mainly concentrated on this priority list.

3. The negotiations

The aim of the negotiations was to reduce or eliminate those non-tariff measures that are barriers to international trade, or, where this was not appropriate, to reduce or eliminate their trade-distorting effects and bring them under more effective international discipline.

(a) Machinery

A group to oversee the negotiations was set up by the Trade Negotiations Committee in February 1975. It established four Sub-Groups to deal respectively with the following subjects:

- quantitative restrictions (including import prohibitions and so-called voluntary export restraints) and import licensing procedures;
- subsidies and countervailing duties;
- technical barriers to trade, to include standards, packaging and labelling requirements, and marks of origin;
- customs matters, including customs valuation, import documentation (including consular formalities) customs nomenclature, and customs procedures.

A fifth Sub-Group - on government procurement - was set up in July 1976.

(b) Developments in the negotiations

The most important part of the work on non-tariff measures in the Tokyo Round concerned the negotiation of agreements on issues considered appropriate for multilateral solutions. These were subsidies and countervailing duties; technical barriers to trade; customs valuation; government procurement; and import licensing procedures. For each of these, agreements were negotiated.

There was uneven progress in the work of the Sub-Groups in the early years but the breakthrough in the deadlock in the Tokyo Round generally in July 1977 gave added impetus to this work. Thereafter negotiations went on, at differing rates of progress, right up to the final stages of the Tokyo Round in March and April 1979. The various agreements were before the Trade Negotiations Committee at its meeting on 11-12 April 1979, following which they were opened for acceptance by governments. Developments in the negotiations on the agreements are discussed in the following sections of this Chapter. The main features of the agreements are described in Chapters III and VI of Part II, the latter Chapter being concerned in particular with the results of the Tokyo Round as a whole as they relate to developing countries.

In July 1977, as part of the general forward movement in the Tokyo Round, there was initiated a procedure for submission of requests and offers on non-tariff measures not dealt with multilaterally. Requests were to be submitted by 1 November 1977 and offers by 15 January 1978. Special procedures were established for developing countries.

Certain countries which considered that everything connected with agriculture should be dealt with separately in the group on agriculture refrained in principle from submitting requests on measures affecting agricultural products under the procedures established by the Group "Non-Tariff Measures". The requests of other countries, however, covered both industrial and agricultural products, including tropical products.

Certain subjects, for example, quantitative restrictions and import documentation, including consular formalities, which had earlier been among those singled out for special attention in the Sub-Groups, were subsumed into this request and offer procedure. It was felt by many that the problems to which these measures gave rise did not lend themselves to multilateral solutions.

There then followed the normal process of bilateral and plurilateral negotiations between those who had requested and those who had made offers. This process, which could result in the improvement, modification or even withdrawal of offers continued into the last stages of the negotiations.

A. SUBSIDIES AND COUNTERVAILING DUTIES

1. Background

(a) Widespread use

Subsidies have become one of the most frequently used and controversial instruments of commercial policy. Together with countervailing duties, they were certain to be a critical and contentious issue in the Tokyo Round.

In the industrial sector the use of subsidies has greatly increased, particularly under the impact in recent years of recessionary world economic conditions, slackening demand and high unemployment. Under the influence of political and social necessity, governments have embarked on massive financial commitments in order, among other things, to prop up ailing industries, to support depressed areas, to stimulate consumer demand or to promote exports. Subsidies have become an important instrument of protection. In some sectors - shipbuilding is a good example - world trade is being conducted less in response to normal market forces than on the basis of competitive subsidization.

A principal difficulty is to draw a distinction between subsidies granted by governments in pursuit of valid economic and social policies and those which, directly or indirectly, intentionally or unintentionally, have the effect of distorting world trade and depriving other countries of legitimate trade opportunities.

Another problem is to define "subsidy". Support given to an industry may go well beyond the simple grant of an export or a domestic subsidy. It could be argued that free State education, providing as it does the skills for industry, is a form of government subsidy. This, of course, would be carrying things to extremes, although research grants for universities, e.g. on electronics, is another matter. The fact remains that, because of the range and extent of measures that might be considered subsidies, it has proved impossible to agree on a precise definition or on the criteria to be applied.

There is no general definition of a subsidy anywhere in the GATT, although, in 1960, a GATT Working Party drew up a list of practices considered to be export subsidies. The list was not to be considered as exhaustive.

Throughout GATT's existence there have been great difficulties in trying to achieve a common international view on subsidies and on how to deal with them.

It is of interest to note that, as far back as the Kennedy Round, agreement had been reached that rules governing the imposition of countervailing duties - the counter-measures governments are entitled to take against subsidized exports under Article VI of the GATT - should be drawn up similarly to what had been done in the Anti-Dumping Code. Following the Kennedy Round, the possibility of moving on this was discussed and, in December 1967, a GATT Working Party was established to study countervailing duties, subsidies and other export incentives. The European Economic Community was interested only in a possible code on countervailing duties, whereas the United States insisted that both subsidies and countervailing duties be covered in any exercise that might be undertaken. In the event, agreement could not be reached on terms of reference and the Working Party never met.

(b) Legal aspects

The legislative history in the GATT on the subject of subsidies is long and tortuous. It reflects the complicated character of the measures and their uses, and explains in part some of the problems that arose during the Tokyo Round.

Nearly all industrialized countries are committed to the 1960 Declaration Giving Effect to the Provisions of Article XVI:4 of the GATT, by virtue of which export subsidies on industrialized products are prohibited. Non-signatories to the Declaration, which include the developing countries, are free to use export subsidies on industrial products.

Primary products, on the other hand, are only subject to the provision that governments should "seek to avoid" export subsidies and should not apply them so as to secure "more than an equitable share of world export trade" in the product concerned.

The sharp difference between the obligations relating to industrial as compared with primary products has been a sore point with affected primary producing countries for many years.

There is no prohibition on the use of domestic or production subsidies. The requirement under Article XVI is for a country to notify any subsidy "which operates directly or indirectly to increase exports of any product from, or to reduce imports of any products into, its territory". The country concerned is required to consult about the measure, when so requested.

These provisions do not impose arduous restraints on governments. A government has only to notify and be prepared to consult on a subsidy applied, for example, as a measure of protection. Very modest restraints are imposed on the use of subsidies to promote exports of primary products. Only industrialized countries have accepted a prohibition on the use of subsidies to promote exports of industrial products.

(c) Preparatory work

Much preparatory work was done on subsidies and countervailing duties in the years prior to the Tokyo Ministerial meeting. Subsidies were selected as one of the subjects for which possible ad referendum solutions should be sought.

Attempts were made during this work to expand the list of prohibited export subsidies drawn up in 1960. A composite, expanded list was drawn up but, as it did not commit any government, the 1960 list remained unaltered.

As regards domestic subsidies, the general view was that recourse to countervailing duties was the appropriate procedure in the event of a determination that a domestic subsidy that encouraged exports was causing material injury. Recourse to Articles XXII and XXIII (consultation, dispute settlement and surveillance provisions) was also available in order to settle problems arising from a subsidy of any kind, including subsidies with import substitution effect.

2. Developments in the negotiations

The divergences of position and the deep-rooted attitudes that had prevailed for a long time made attempts at compromise impossible over the first years of the negotiations. Substantive negotiations really only began in 1978. Nevertheless, the detailed work done in the Sub-Group in the intervening period provided a solid technical base for the negotiations once they became engaged.

In July 1978, under the sponsorship of several delegations, a text describing a possible arrangement on subsidies and countervailing duties was tabled. The text was intended to serve as a basis for discussion from which a final document might be prepared.

During the second half of 1978 negotiations continued and, toward the end of December, a new draft text was tabled by several delegations of developed and developing countries. A new feature was the introduction of a provision specifically relating to primary products. While this by and large repeats the obligation contained in Article XVI:3 of the GATT, the definition of the phrase "more than an equitable share of world export trade" is given greater precision.

Further intensive bilateral and plurilateral negotiations continued in the early months of 1979, leading to completion of the text of the Agreement Concerning the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement which was transmitted by the Sub-Group to the Trade Negotiations Committee in the last days of March 1979.

3. Issues in the negotiations

In the beginning of the negotiations, there was a sharp division of opinion as to the relative weight to be given to subsidies and countervailing duties. Some participants took the view that subsidization was the prime distorting factor and that countervailing duties were only necessary to the extent that countries continued to subsidize their exports. Other participants considered that the main aim of the negotiations should be to establish uniform rules for the imposition of countervailing duties.

In 1975 a proposal was tabled that there should be an international code to deal with export subsidies, third country subsidization, import-replacing measures, and offsetting measures. The code should categorize all types of subsidy practices and set out the conditions on which offsetting measures could be taken against such practices. Subsidies should be divided into the following three categories:

- prohibited (practices designed to increase the competitiveness of national producers, thereby distorting international trade);
- conditional (practices directed toward domestic economic, political or social objectives, but which may distort international trade);
- permitted (practices with little or no impact on international trade against which offsetting measures could not be taken).

Although this proposal was not maintained as a basis for the negotiations, elements of it were eventually carried over into the final Agreement.

(a) Subsidies: approaches to the negotiations

There was a general impression that in the industrial field the Declaration of 1960 prohibiting export subsidies on industrial products, to which almost all industrialized countries had subscribed, had worked reasonably well. There was, however, discussion of the need to expand and bring up to date the 1960 list of prohibited export subsidies.

A principal concern, on the part of some governments, related to the use of domestic subsidies. Many countries grant various forms of subsidies to assist domestic industries, such as steel and shipbuilding, that are in difficulties. For certain participants it was of major importance to retain a large degree of freedom to grant subsidies for regional purposes, particularly in depressed areas with high levels of unemployment.

While it was generally agreed that domestic subsidies should not be used to cause injury to other countries, their elimination or substantial reduction would, because of the fundamental economic, political as well as social factors in play, obviously present serious difficulties. On the other hand, these measures could have important effects on trade and it was reasonable to expect at least some mitigation of these effects.

In the view of some participants the Agreement should contain a statement that domestic subsidies should not be used to cause injury to others and an indicative list of domestic subsidies should be attached to the Agreement. An indicative list was unacceptable to other participants because the attachment to an Agreement of such a list would tend to give the measures listed a prohibited character, particularly as the list of prohibited export subsidies would also be attached.

By late 1978 a compromise formula was reached which would include a few examples of internal subsidy practices in the provision recognizing the possible adverse effects on trade of such practices.

(b) Countervailing duties: approaches to the negotiations

The attention of several participants was principally focussed on countervailing duties and on a possible code to govern the application of these duties. They had in mind in particular the legislative situation in the United States.

The United States Tariff Act of 1930 did not require "material injury" as a condition for the imposition of countervailing duties and thus did not conform with the requirements of GATT Article VI:6(a). The imposition of countervailing duties against subsidized exports, without regard to any injury criterion, was a mandatory requirement under existing legislation.

Many participants took the firm position that the criterion of material injury in Article VI must be reaffirmed, defined more closely, and respected by all countries. The existence of a significant material injury must be proven and the causal link between injury and the particular subsidy established. The imposition of countervailing duties would require to be preceded by consultations with the country granting the subsidy.

For a number of developed countries acceptance by all of the "material injury" criterion was the crux of the negotiations.

Difficult and extensive negotiations - sometimes at a high political level - took place in this context. It was, however, ultimately agreed that the "material injury" criterion would be accepted by all governments adhering to the Agreement.

It was also agreed that signatories of the Agreement would have the possibility of taking counter-measures, not only on the basis of the "material injury" criterion of GATT Article VI, but also through Article XXIII action which should be handled, within strict time-limits, by the Committee of Signatories which, it was envisaged, would be set up under a code. Some participants were very hesitant about this suggestion, as it would seem to offer the easier option of "serious prejudice" under Article XVI instead of the "material injury" criterion of Article VI.

An issue in this context which caused much discussion was whether governments should be entitled to take provisional unilateral action under Article XXIII. Many countries could not accept that such unilateral action be taken in the absence of prior examination by an international body. They recognized, however, the need for quick action and were prepared to see strict time-limits fixed for action by the Committee of Signatories.

(c) Applicability of new rules

A central issue, as in other parts of the Tokyo Round, was whether any new rules on subsidies and countervailing duties - possibly in the form of a code - should be applied to agricultural and industrial products alike.

From the beginning the main agricultural exporting countries had strongly held that the same rules should apply to both sectors. Other participants took the contrary view. It was agreed that minerals, hitherto classed as primary products to which Article XVI:3 of the GATT applied, should in the future be classed as manufactured products to which Article XVI:4 of the GATT would apply.

The final outcome was that the definition of the ways in which export subsidies on primary products might give the exporting country more than an equitable share of world export trade was made more precise.

(d) The developing countries

The developing countries' case for special and differential treatment was advanced on many occasions. These countries stressed that subsidies are an integral part of their economic development programmes and they wished their right to continue the subsidization of exports of both primary and non-primary products to be more clearly spelt out in the negotiations. There was widespread recognition in the Sub-Group that this was an area where special and differential treatment was both feasible and appropriate.

Developing countries maintained that subsidies should be avoided by developed countries when these were to the detriment of exports from developing countries to their markets or the markets of third countries. Moreover, they wished a limitation to be put on the right of developed countries to use counter-measures against subsidized exports from developing countries; a proposition that developed countries found difficult to accept in cases where the criterion of "material injury" was met.

Late in 1978 the developing countries proposed the inclusion of a provision to the effect that they would undertake to apply export subsidy policies in such a manner as to avoid causing serious injury to a domestic industry in the importing country. They considered that they had sufficient information on industries and sensitive products in importing countries to enable them to make the necessary judgment. They maintained that such a provision should be sufficient.

Certain countries continued to take the view that there should be a gradual phasing-out of the use of export subsidies by developing countries as their economic development advanced.

These and other points continued to be the subject of intensive bilateral and plurilateral negotiations between developed and developing countries up to almost the end of March 1979, during which a number of compromise solutions were arrived at.

4. The Agreement Concerning the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement

See Chapter III of Part II for a description of the main features of the Agreement.

B. TECHNICAL BARRIERS TO TRADE

1. Background

Technical regulations are essential in modern society. They are adopted to protect human and animal life and health; to ensure that products offered to the consumer meet the necessary levels of quality, purity, technical efficiency and adequacy to perform the function for which they are intended; to protect the environment; and for reasons connected with safety; national security; and the prevention of deceptive practices.

However, international trade can be complicated and inhibited by disparities between regulations, adopted at local, State, national or regional levels; by insufficient information on the often complex and detailed requirements; by the introduction of regulations without allowing time for producers, especially foreign ones, to adjust their production; by frequent changes to regulations which create uncertainty; by the drawing up of regulations in terms of design rather than performance in order to suit the production methods of domestic suppliers, thus causing difficulties to suppliers using different techniques; by exacting testing requirements; by the denial of access to certification systems; and finally by the manipulation of regulations, testing or certification to discriminate against imports. The problem has been to strike a balance between the essential needs referred to in the preceding paragraph and the demand of exporters that their goods should not unreasonably or unfairly be excluded from the market.

In the Tokyo Round the negotiations in the field of technical barriers were essentially concerned with the trade aspects. The GATT approach, and the results achieved in the negotiations, complement and do not conflict with the activities of the many other interested international organizations such as the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), and the Codex Alimentarius.

Standards are covered in a general way in Article III of the GATT and in Articles XI and XX, butthe Code on Standards goes well beyond these provisions.

2. Preparatory work

Standards were prominent in the preparatory work before the Tokyo Ministerial meeting, and many countries notified their difficulties in this area (150 notifications in the non-tariff measures inventory).

Technical barriers was one of the subjects selected for possible ad referendum solutions. By the time of the Tokyo meeting in September 1973, a draft "Code for preventing Technical Barriers to Trade" (the Standards Code) had been prepared and was already in a reasonably advanced form.

3. Developments in the negotiations

When the Sub-Group began its work, it had at its disposal the draft Code already prepared before the Tokyo Meeting of Ministers. The draft was accepted as a basis for negotiations by all members of the Sub-Group, despite the fact that many of them had not been involved in the earlier preparatory work.

The availability of the draft gave the Sub-Group a good start and, throughout the Tokyo Round, the negotiations on the Standards Code remained well advanced. In fact, as at mid-July 1977, the negotiations on standards, together with those on tropical products, were the only areas of the Tokyo Round in which there had been substantive progress.

The Sub-Group's mandate required it to deal, in addition to standards, with packaging and labelling and with marks of origin. Proposals on these subjects were put forward in 1975 and early 1976. Regulations laying down the way in which products should be packaged and labelled are dealt with in the Agreement on Technical Barriers to Trade, as the Code was eventually to be called.

The Sub-Group held many meetings during the period 1975 to 1978. Particularly in 1976 a lot of time was taken up with the highly technical question of definitions. Representatives of the central secretariats of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) attended meetings of the Sub-Group in an expert capacity from November 1976 onwards.

There continued to be meetings of the Sub-Group in 1978 and early 1979 and, in particular, increasing bilateral and plurilateral negotiations among delegations. Before the end of March 1979, the text of an Agreement had been finally established and transmitted by the Sub-Group to the Trade Negotiations Committee.

4. The Agreement on Technical Barriers to Trade: Main issues

The principal features of the Agreement are described in Chapter III of Part II.

Many of the elements in the Agreement as finally agreed were already contained in the draft put together during the earlier preparatory work. The problems dealt with below are those that were prominent in the later stages of the negotiations.

(a) Balance of obligations

Possibly the most difficult of these issues - politically as well as in trade and legal terms - was the question of balance between obligations assumed under the Code by countries with centralized and those with federal structures of government.

Countries in which technical regulations are mainly adopted by the central government foresaw that they could be asked to assume wider obligations than countries with a federal system, in which regulations are in many cases made not by the federal government, but by State and local authorities. However, for a federal government to accept obligations under the Agreement committing a State to specified actions could raise constitutional and political problems.

Countries had this subject very much in mind from the beginning of the negotiations. It was, in fact, one of the subjects raised at the very first meeting of the Sub-Group in May 1975. From time to time throughout the period of the negotiations the matter was discussed. Plurilateral and bilateral negotiations were intensified in the second half of 1978 and a formula was agreed upon as part of a wider agreement relating inter alia to certification systems.

The formula has two elements. First, federal governments adopt a second level of obligations, under which they undertake to use their "best efforts" to ensure that State and local government, non-governmental and regulatory bodies other than those of the central government conform with relevant provisions of the Agreement, in particular those relating to the preparation, adoption and use of technical regulations or standards; and national, international and regional certification systems.

The second element of the formula provides that the dispute settlement provisions of the Agreement can be invoked in cases where another adherent considers that these "best efforts" have not achieved satisfactory results and that its trade interests are significantly affected. Such results shall be assessed as if the body in question were itself an adherent and shall be equivalent to those envisaged in the part of the text dealing with central government bodies.

As in the case of any other dispute regarding provisions of the Agreement, the Committee on Technical Barriers to Trade, if it considers the circumstances serious enough to justify such action and if everything else fails, can ultimately authorize the suspension by the complainant country of obligations under the Agreement in order to restore mutual economic advantage and balance of rights and obligations.

There is also provision for review of the operation and implementation of the Agreement not later than five years from its coming into force, and at the end of each five-year period thereafter, with a view to adjusting the rights and obligations of the Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations.

(b) Certification systems

A second issue concerned proposals related to the conditions under which national, regional and international certification systems are opened up to the outside world.

The solution reached provides that such certification systems must be so formulated and applied that foreign suppliers are granted access no less favourable than that granted to similar national products or products from any other country.

(c) Developing countries

A major issue concerned the requirements of the developing countries. For these countries, a standards code could be of assistance to the extent that it ensured that national or international standards, quality certification systems and testing requirements did not create unnecessary obstacles to their trade. While some of these countries have highly developed standards bodies, especially in relation to products of particular interest to them, many are without the technological capacity and know-how to meet the requirements of national or international standards, and lack the expertise necessary to participate in the establishment of international arrangements covering testing, certification of quality, etc. The problem can only increase in importance as the exports of developing countries become more diversified.

A lot of attention was given to this subject in the Sub-Group. It was raised at the Sub-Group's first meeting and discussed thereafter at intervals throughout the negotiations, often extensively.

Particular attention was focused on the advantages offered by technical assistance and this is reflected in the provisions that were finally embodied in the Agreement. The possibility is foreseen of such assistance being provided, not only by developed countries, but also, when they are in a position to do so, by developing countries in areas in which they have acquired a high degree of expertise.

The aim was to provide for practical assistance to meet the needs of developing countries in what is a complex technical field. Assistance would be focused on, among other things, such matters as the preparation of technical regulations; the establishment of national standardizing bodies and participation in international bodies; the establishment of regulatory or certification bodies; and the methods by which the technical regulations of importing countries can best be met.

The Agreement provides that, in the field of technical assistance, priority should be given to the least-developed countries.

The provisions regarding the supply of information are of particular importance to developing countries, for example those relating to "enquiry points" able to answer enquiries from interested parties in other countries on a wide range of technical and other questions; and the requirement, in the circumstances described in the Agreement, to notify other countries through the GATT secretariat of the products to be covered by proposed technical regulations and to provide a brief indication of the objective and rationale of the regulations.

Special and more favourable treatment for developing countries - in addition to technical assistance - is provided for in the Agreement. There are limitations to the granting of such treatment with respect to technical regulations or standards dealing with the protection of human, animal and plant life; health; the environment; national security; safety; and the prevention of deceptive practices, etc. Exemption from conformity with such regulations cannot be granted to any country, whether developed or developing. Where possible, however, some flexibility for developing countries has been introduced both in general and in specific provisions of the Agreement.

The Agreement provides for relief or even exemption under certain conditions for developing countries, against the background of their development, financial and trade needs, from certain obligations of the Agreement, for example, to enable them to preserve indigenous technology and production methods and processes compatible with the requirements of their development.

Developing countries have had in the past to deal bilaterally with Ministries in importing countries - possibly in no way interested in trade matters. Their participation in the Agreement would provide them with a multilateral forum and an added protection for their trade interests. Moreover, their adherence to the Agreement could represent a modest step toward narrowing the technological gap between them and developed countries in this particular area.

(d) Institutions and dispute settlement

A Committee on Technical Barriers to Trade is established under the Agreement. It is concerned in particular with the settlement of disputes.

An important factor influencing the arrangements for dispute settlement under the Agreement was the argument that technical regulations - for example those concerned with health or safety - and any dispute concerning their application were highly technical matters not suitable for treatment and settlement under the normal GATT rules. In other words, the matter should be looked at by people with the necessary technical and expert knowledge and not by those experienced essentially in commercial policy matters.

Put briefly, the dispute settlement procedure provides that, if no satisfactory result has been achieved from direct consultations between the parties or from subsequent consideration in the Committee on Technical Barriers to Trade, either party has a right to the establishment of a technical expert group. If no satisfactory solution results from this procedure, either party has a right to the establishment of a Panel - which would consist of commercial policy people - to consider the matter and report to the Committee which would make its recommendations or rulings.

(e) Applicability of Agreement to agriculture

A further important issue was whether, or not, the Agreement should apply to agriculture. There was a considerable delay in dealing with this question due, in large part, to the differences over a long period on how and where the negotiations on agriculture should be conducted. The matter was finally settled in December 1978, when the Group on Agriculture decided that the Agreement, appropriately amended, should apply to agricultural products.

For developing countries the application of the Agreement to agriculture is important, as it means that the provisions of the Agreement apply, for example, to health and sanitary regulations on agricultural and horticultural products, which are of particular importance in the export trade of these countries.

(f) Definitions

The question of definitions was obviously important, as these largely established the coverage of the Agreement. The question occupied the Sub-Group's attention for a long time, particularly in 1976. The International Organization for Standardization (ISO) and the Economic Commission for Europe (ECE) were the only organizations to have drawn up a general set of definitions, and it was considered desirable that the definitions in the Agreement should be based on internationally agreed definitions, so that those who would be involved on the technical side would find it easier to work with the Agreement. The ISO, for example, would be one of the organizations responsible for drawing up many of the international standards that the Agreement was attempting to promote.

C. CUSTOMS VALUATION

1. Background

Systems of customs valuation - which determines the value of goods on the basis of which the duty payable is calculated - show considerable differences as between countries. This fact, and the lack of precision in the GATT provisions on the subject, prompted governments to take up the question of customs valuation in the Tokyo Round and to elaborate rules providing for a greater uniformity and certainty in the implementation of the GATT provisions with

the ultimate aim that valuation rules should not act as unjustified barriers to trade.

The real value of goods may not, for various reasons, always be reflected in the invoice or declared price. The value then has to be determined by the customs official in conformity with criteria laid down in national laws and regulations.

Some hundred countries base their valuation systems on the Brussels Convention on Valuation, drawn up in 1950 by the Customs Co-operation Council. Some provisions of the Convention have, however, remained open to different interpretations, with the result that they are not applied consistently.

A number of other countries do not subscribe to the Brussels Convention and have their own independent valuation systems.

While the diversity of systems does not in itself necessarily constitute an obstacle to world trade, the adoption of internationally acceptable rules would certainly facilitate trade. An inequitable or arbitrary method of assessing the value of imported goods, and the consequential effect on the duty payable, is tantamount to an increase in the tariff, and thus has protective effects.

2. The negotiations

Over the years preceding the Tokyo ministerial meeting, a great deal of work had been done on customs valuation problems and efforts made to work out ad referendum solutions to these problems. Although no agreed solutions were arrived at, the draft principles and interpretative notes drawn up at that time were later to prove of value.

Early in 1975, customs valuation was one of the subjects selected on which negotiations would start initially. The Sub-Group charged with responsibility for the negotiations held its first meeting in May 1975.

(a) Approaches to the negotiations

Countries whose systems are based on the Brussels Definition of Value took the view that the lack of a common international system in itself constituted a barrier to trade. For some time, however, some of these countries had felt that the BDV - drafted as far back as 1950 - was not an adequate instrument to deal with the problems of modern trade, characterized as it is by a large volume of trade between transnational companies. This view incidentally received support in a resolution adopted some time ago by the International Chamber of Commerce. While the Customs Co-operation Council has, over the years, tried to adapt the Brussels rules to modern needs, this attempt has by and large been unsuccessful.

Other countries - particularly in the early years of the negotiations - had for a variety of reasons doubts as to whether a common international system was a practical proposition.

For yet other countries, which might not in principle be opposed to a common international system, legalistic and in some cases domestic political considerations presented difficulties. Some of them had, in the fairly recent past, incorporated the Brussels Definition into their legislation. It would be difficult to persuade importers and exporters, and parliaments, that another change was already desirable. As some countries pointed out at one stage, systems embodied in national legislation could not simply be harmonized in disregard of that legislation. The harmonization of the systems implied the harmonization of the legislation.

(b) Early stages

In 1975 and 1976 a number of subjects were discussed in the Sub-Group including: judicial and administrative review procedures; neutrality of valuation systems; precise and fair handling of non-arm's length transactions; publication of laws, regulations and administrative decisions; and appeal procedures to independent bodies. Subjects of this kind were basic to the subsequent detailed negotiations on a draft code.

Early in 1977 there developed a certain narrowing of differences on the subject of a common international valuation system. Consultations involving also countries not subscribing to the Brussels Definition were undertaken with the stated purpose of seeking a multilateral solution.

As a result of these consultations, a draft Code of Valuation was tabled toward the end of 1977 which combined features of the Brussels Definition and of other systems. With certain reservations on the part of some countries this text was accepted as a basis for negotiations.

There followed over the first half of 1978 intensive bilateral and plurilateral negotiations in which attention was concentrated on what would be the key feature of any code on valuation - provisions covering methods of valuation. A new draft incorporating such provisions was tabled in July 1978.

(c) Final stages

When negotiations were resumed in the second half of 1978, a number of questions remained to be followed up, such as special and differential treatment for developing countries; procedures for dispute settlement; and the rôle of the Customs Co-operation Council in the context of a valuation code. Certain aspects of the provisions on methods of valuation also continued to present considerable difficulties for some countries. In mid-December a new, comprehensive draft was presented by a number of delegations. It was a complete draft, supplemented by a number of interpretative notes.

However, the new draft failed to overcome the objections of a number of countries as regards certain aspects of some of the proposed methods of valuation. An issue of considerable importance was the question of valuing goods between transnational companies. Strong opposition came from developing countries to the provision in the draft stipulating that the transaction value shall be accepted whenever the value declared closely approximated certain other transaction values which were established under fully competitive conditions ("open market" conditions). The developing countries and other countries for whom trade between transnationals across the border is especially important also wanted the Customs to have greater authority to reject the transaction price when it differed substantially from prices relating to transactions in like goods and when the difference was not duly accounted for. The developing countries especially had concerns throughout the negotiations about trade between related companies and their opposition to the provision was to continue very strong. By the same token, these countries tried unsuccessfully to considerably broaden the definition of "related persons" in another provision to include "any other relationship".

The deductive and the computed value methods as set out in the draft also presented difficulties for some countries - both developed and developing - while there was outright opposition in particular from developing countries to the provision that provided the importer, and not the customs authorities, with the choice between the deductive method of valuation and the computed value.

Objections to these provisions continued into the ultimate stages of the negotiations.

(d) Special and differential treatment for developing countries

Developing countries took an active rôle in the negotiations as the final version of the text of a valuation code began to emerge following the summer recess of 1978. A number of them, including the least-developed countries, tabled specific proposals directed toward special and differential treatment for developing countries. The importance to them of technical assistance and their need, in the light of their special situation, for a delay to enable them to adapt to certain provisions of the Code, were repeatedly stressed by these countries.

Developed countries took the position that customs valuation systems must be applied in a non-discriminatory manner and that preferential treatment in this field was not feasible. They emphasized that a fairer and more neutral system of valuation would also be of considerable benefit to developing countries. They recognized, however, and this is reflected in the draft tabled in mid-December 1978 that technical assistance, a flexible time-table for the assumption of obligations under the Code and temporary exemption from the application of the computed value method, would be necessary and justified in the case of developing countries.

There were numerous and intensive bilateral and plurilateral negotiations between delegations of developed and developing countries in the early months of 1979. As time passed, it became evident that there were differences of view between these delegations that were not likely to be bridged. The developed countries considered that the draft text before the Sub-Group represented a fair, neutral and reasonable compromise between importers and exporters and a balanced result. The developing countries took the contrary view, maintaining that the draft text was not neutral as between related and non-related traders, that on a number of points it favoured firms and enterprises of developed countries and that it did not deal adequately with the problem of price reductions not freely available or with the question of sole agent or distributor. The developing countries put forward their own paper incorporating

the changes and additions they would wish to see made in the text before the Sub-Group.

In the event it had not proved possible to reach agreement by early April 1979. It was, therefore, decided that both the document containing the full text that had been before the Sub-Group, and the document containing the amendments proposed by the developing countries, would be transmitted to the Trade Negotiations Committee. Both documents would have equal status.

In spite of continued efforts to find a basis for a common document, no agreement could be reached. Following further discussion of the matter in the Trade Negotiations Committee, the two texts were opened for acceptance by governments.

3. Texts of an Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade

See Chapter III of Part II for a description of the main features of the texts.

D. GOVERNMENT PROCUREMENT

1. Background

In nearly all countries, developed and developing, the government is the largest single purchaser of goods. The total market represented by government procurement has been put at several hundred billion dollars. As government activity in this area continues to increase, discrimination in favour of domestic suppliers, or between foreign suppliers, creates important obstacles to trade.

Preferential treatment for domestically-produced goods takes the form of price preference or preferential procurement conditions, which can be many and varied. Often such treatment is required under national mandatory legislation. Sometimes it is the result of administrative discretion or long-standing practice and habit.

A distinction needs to be drawn between State-trading and government procurement. In State trading, the government or its agent is involved in buying, selling and sometimes in manufacturing operations. Government procurement involves the government or its agent acting as a consumer, procuring for its own consumption and not for commercial resale.

Discrimination by governments in their procurement activities is permitted by existing GATT provisions.

Article III:4[1] of GATT states: "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product."

However, Article III:8(a) states: "The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental

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[1] Article III concerns national treatment on internal taxation and regulation.

purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale." Article III:8(b) states further: "The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article, and subsidies effected through governmental purchases of domestic products."

While paragraph 1 of Article XVII, which concerns State trading, provides that State trading shall be carried out on the basis of the non-discrimination provisions of the General Agreement, paragraph 2 states that with respect to imports involving government procurement, "each contracting party shall afford to the trade of the other contracting parties fair and equitable treatment".

The general exceptions provided for in Article XX and the national security provisions in Article XXI are also applicable to purchases by governments.

2. International Discussion

(a) Discussion in OECD

The lack of international obligations in the area of government procurement and the widespread discrimination that existing legislation practices and procedures permitted, progressively brought the subject under multilateral scrutiny.

It was first taken up in the OECD where much detailed work was done over a period of years, culminating in a "Draft Instrument on Government Purchasing Policies, Procedures and Practices". This was made available to GATT to form part of the documentation available to the Sub-Group on government procurement in the context of the Tokyo Round.

The OECD Draft Instrument represented an attempt to achieve a concrete solution that would make government procurement more open to international competition, broadly through the removal of discrimination against foreign suppliers and affording equal treatment to foreign and domestic products in the process of tendering.

(b) Establishment of Sub-Group

While the subject continued to come up from time to time, government procurement did not become a subject for negotiation in the Tokyo Round until July 1976, when it was agreed to establish a Sub-Group, which held its first meeting in October of that year.

The creation of a sub-group to deal with this matter was pressed by the developing countries - in particular some of the more advanced - who believed that government procurement held out possibilities for the expansion of their trade and provided scope for special and differential treatment in their favour in accordance with the provisions of the Tokyo Declaration.

The prospect of negotiations on government procurement provoked differing reactions from developed countries. Some, unconvincingly, expressed concern about overloading the Negotiations while others supported the introduction of this area into the Negotiations. Among other things, concern was expressed about the prospects of achieving a real balance in benefits as between countries with systems based on a federal structure and other systems involving greater central control. On the other hand, some developed countries were of the view from the outset that government procurement practices were one of the most important obstacles to world trade and should be dealt with in the course of the Tokyo Round.

3. The Negotiations

(a) Developments in the negotiations

As a first step, the Sub-Group undertook the collection of relevant data which would assist it in identifying the main issues and problems affecting this area of commerce. This work led to the conclusion that the objectives on government procurement should be to provide for greater international competition and the application of commercial considerations. While it was considered that government procurement offered considerable potential for expanding world trade, many countries also stressed the need, inter alia, to make more efficient use of tax revenues allocated to government procurement and also through competition to undertake purchases at the most favourable price, thus providing an additional instrument in the battle against inflation. It was also recognized that government procurement was an area where special and differential treatment for developing countries was feasible and appropriate.

In the light of these conclusions, there was a broad measure of agreement that an overall solution might take the form of a code of conduct on government procurement focussing on non-discrimination and national treatment in laws, procedures and practices, transparency of operations, surveillance and dispute settlement and provisions for special and differential treatment for developing countries, with the widest possible coverage of such a code.

Following the tabling of a number of proposals concerning various elements of a possible Agreement, the GATT secretariat, in December 1977, prepared and circulated a "Draft Integrated Text for Negotiations on Government Procurement".

Extensive consultations and the submission of further draft texts followed and, in July 1978, certain developed countries tabled a "Draft Integrated Text" in which the number of alternative and disputed passages were further reduced.

Negotiations on the basis of the draft Agreement tabled in July 1978 continued after the summer recess. In meetings of the Sub-Group attention was focussed on outstanding issues which had become the subject of intensive bilateral and plurilateral negotiations among delegations, particularly toward the end of the year and in the early period of 1979.

(b) Issues

The main issues in the order in which they appear in the text were the following.

(i) Threshold

The minimum value of individual government purchases above which the provisions of the Agreement would apply was subject to detailed examination. It was recognized that too low a threshold would cause an unwarranted administrative burden on governments, because of the great number of small purchases undertaken almost daily by some of them, and that too high a threshold would limit and to a certain extent frustrate the objectives of the Agreement. Developing countries were aiming for the lowest possible threshold in developed country markets as they felt they had greater prospects at the lower end of the purchasing scale probably involving the less sophisticated requirements of governments. In the event, agreement was reached on a threshold to cover any procurement contract of a value of SDR 150,000 or more. For contracts below the threshold, the Committee on

Government Procurement intends to review the practices and procedures utilized and the application of non-discrimination and transparency for such contracts, so as to consider whether the Agreement could be applied as a whole or in part, recognizing that further negotiations will take place on government procurement within three years of the Agreement's entry into force.

(ii) Entities

The question of the entities - the bodies that make the purchases - to which the Agreement would apply, was crucial for the effective application of the Agreement and its principles of non-discrimination and national treatment. It was necessary for the Agreement to have the widest possible coverage.

In June 1978, agreement was reached on a procedure for negotiations on entities, through the familiar GATT process of offers and requests. Countries were to notify in their offers those bodies to be considered as entities for purposes of the Agreement and in their requests, those entities in other countries that they would like to be so considered. Developing countries were given greater flexibility in tabling their offers consistently with their development, financial and trade needs (see below under special and differential treatment). Offers began to come forward as from July 1978.

(iii) Best endeavours

While the initial coverage of the Agreement as it evolved was concerned, with a few exceptions, with entities generally under the direct control of central authorities, it was felt that provision should be made in the Agreement to encourage regional and local governments and authorities to follow its provisions when making purchases in the light of the overall benefits to be secured through trade liberalization in this area.

Thus the relevant provision finally agreed upon took the form of requiring governments to inform regional and local governments and authorities

of the objectives, principles and rules of the Agreement and to draw their attention to the overall benefits of liberalization in government procurement.

(iv) Special and differential treatment for developing countries

Much attention was devoted to this question and efforts made to include provisions so as to make easier the acceptance of the Agreement by developing countries. A significant number of developed and developing countries offered comments and suggestions on this aspect within the Sub-Group itself and also in the extensive bilateral and plurilateral consultations held on this and other matters among interested delegations.

As already indicated above, there was early recognition that this was an area where special and differential treatment for developing countries was feasible and appropriate and where the situation of the least-developed countries could also be taken into account. The special provisions in the Agreement provide for such treatment.

The provisions aimed at meeting the requirements of developing countries are discussed in Chapter VI of Part II, which deals with the results of the Tokyo Round as a whole with respect to these countries.

(v) Tendering procedures

Tendering procedures are spelt out in detail in the Agreement, for it is on the basis of these procedures and of their transparency that will depend an effective application of the principle of non-discrimination and national treatment.

The general stipulation is that entities are required to use open or selective tendering procedures. Single tendering may be used in closely defined conditions. The provisions on tendering relate basically to matters such as non-discrimination and national treatment with regard to the technical characteristics of products, the qualification of suppliers, and other conditions affecting their participation, including transparency in all phases of the tendering process and the rules for submission and the criteria for the award of contracts.

(vi) Information and review

While the Agreement provides for government procurement to be carried out on the basis of non-discrimination and national treatment, it was felt to be equally important to be able to see that this was in fact the practice. The amount and type of information (particularly ex post) to be made available to the relevant parties was the subject of detailed discussion, having regard to the concerns of some countries with respect to the possibilities of collusion in subsequent contracts etc.

The matter was resolved in Part VI of the Agreement which spells out the type of ex post and ex ante information to be made available to participants and the conditions on which it would be provided.

(vii) Dispute settlement

As in other areas of the Tokyo Round, there was extensive discussion on the question of the settlement of disputes and the procedures relating thereto.

It was agreed that there should be a body to oversee the procedures for consultation and dispute settlement. For this purpose a Committee on Government Procurement was established. While it was agreed that parties to a dispute should make every endeavour to resolve the issue bilaterally in the first instance, the discussion centred around the mechanisms to be used if this was not possible. In the event, it was agreed that parties to a dispute have an automatic right to the establishment of a Panel to take up the matter in dispute, to make a statement concerning the facts of the matter and make such findings as would assist the Committee in making recommendations or give rulings on the subject at issue.

(viii) Review and negotiations

Because the Agreement is an innovation in the field of government procurement, some delegations felt it should be reviewed fairly soon in the light of the initial experience in its operation. Accordingly, it was agreed that, not later than the end of the third year from its entry into force, the parties to it shall undertake further negotiations with a view to broadening and improving the Agreement. In this regard, the possibilities of expanding the coverage to include service contracts will be explored at an early date.

(c) The Agreement on Government Procurement

With the resolution of the above issues, the text of the Agreement on Government Procurement was finally established in early April 1979 and transmitted to the Trade Negotiations Committee. The main features of the Agreement are set out in Chapter III of Part II.

E. IMPORT LICENSING

1. The Problem

There are two kinds of import licences: those applied in the administration of quantitative restrictions or other measures; and so-called "automatic" licences for which approval is freely given.

Both types of licences can create trade barriers. They can result in arbitrary decisions, with the importer not informed of the conditions for the grant of a licence nor of the reasons for refusal of a licence. They can cause unnecessary delays and thereby increase importation costs. The simplification of procedures with a view to avoiding unnecessary obstacles to international trade was obviously a desirable objective.

2. Preparatory Work

In the preparatory work on non-tariff measures prior to the Tokyo Round, import licensing was one of the subjects selected for which ad referendum solutions would be sought. By June 1972 two texts had been developed: one on automatic import licensing and the other on licensing to administer import restrictions.

3. Developments in the negotiations

(a) Early stages

In March 1975 it was decided that import licensing would be among those non-tariff barriers on which negotiations in the Tokyo Round would start initially. A Sub-Group was set up with responsibility for both quantitative restrictions and import licensing. It held its first meeting in April 1975.

As a starting point for its work on import licensing the Sub-Group had at its disposal the two draft texts formulated during the preparatory work before the Tokyo Round, together with information provided by countries in response to questionnaires.

The Sub-Group held meetings in the period up to early 1979 but, until late in 1978, little substantive progress had been made. By and large, the discussions were inconclusive and wide differences of view on a number of issues continued to prevail until late in the negotiations.

(b) Issues

The question of automatic licensing was a stumbling block from the beginning. There were differences of view between developed and developing countries. These differences were extreme and remained until well into 1978. Among the views advanced were that all automatic licensing systems should be eliminated and other methods found for the monitoring and surveillance of imports; that developing countries had no other preferable methods available for monitoring and surveillance purposes; that developed countries should not apply non-automatic licensing procedures to imports from developing countries, and should abandon automatic licensing procedures altogether; that discrimination among suppliers through the use of automatic licensing should be avoided; and that the use of automatic licensing could operate as a pre-safeguard mechanism and obviate harmful restrictive measures.

Until a late stage in the negotiations there were varying views as to whether or not any code that might eventually be agreed upon should be applied to agriculture as well as to industrial products.

Whether export licensing should be included in the work of the Sub-Group was an issue that also persisted until late in the negotiations.

(c) Later stages

There was an important development at a meeting of the Sub-Group in November 1977 when, for the first time, some countries acknowledged that automatic licensing procedures might be justified for purposes such as the monitoring of trade flows, and indicated their readiness to discuss this question in the Sub-Group. This was a turning point to some extent, although there were still important differences on certain points to be reconciled.

There was no further formal meeting of the Sub-Group until September 1978 but the intervening period - particularly June and July 1978 - was usefully taken up with informal plurilateral consultations among a number of delegations from both developed and developing countries. There was some further forward movement as a result of these consultations and, later in July 1978, the secretariat, at the request of those delegations, produced as a basis for further negotiations a single draft text, based on earlier discussions and containing general provisions applicable to all import licensing procedures, together with separate provisions applicable to different types of systems.

At the meeting of the Sub-Group in September 1978, the discussions were mainly devoted to other matters, followed by intensive informal plurilateral negotiations among delegations. Toward the end of December 1978 a draft Agreement on Import Licensing Procedures was tabled by a number of delegations. Thereafter, bilateral and plurilateral negotiations continued in the early months of 1979, leading finally to the establishment of the text of an Agreement which was transmitted by the Sub-Group to the Trade Negotiations Committee early in April 1979.

4. The Agreement on Import Licensing Procedures

The main features of the Agreement are described in Chapter III of Part II.

F. QUANTITATIVE RESTRICTIONS

The major issues that arise in the field of quantitative restrictions were well-known before the Tokyo Round opened. These important obstacles to trade had been the subject of a great deal of attention and exhaustive examination in GATT over many years. Past efforts to eliminate them had met with stubborn resistance and it was certain that attempts to make substantive progress in the Tokyo Round would be difficult.

1. The issues

The Sub-Group on Quantitative Restrictions was set up in March 1975. The following were the kind of issues that would face the Sub-Group:

(i) whether compensation should be sought or granted for reduction, or elimination, of a restriction for which there was no GATT justification;

(ii) whether quantitative restrictions authorized under Protocols of Accession should be subject to examination in the Sub-Group, or only in the context of the Protocols in question;

(iii) the position as regards discriminatory quantitative restrictions maintained by some countries against imports from certain other countries, in particular Japan and countries of Eastern Europe;

(iv) whether quantitative restrictions under GATT waivers and restrictions covered by the Multi-Fibre Arrangement on textiles should be examined in the Sub-Group;

(v) whether quantitative restrictions on agricultural products should be dealt with in the Sub-Group or in the Group on Agriculture;

(vi) whether export restrictions fell within the competence of the Sub-Group;

(vii) whether to attempt to deal in the Sub-Group with "voluntary" restraints on exports;

(viii)whether any surveillance mechanisms should be considered;

(ix) how to deal with quantitative restrictions maintained by countries participating in the Tokyo Round that were not members of GATT;

(x) whether a standstill on quantitative restrictions should be put into effect pending the final outcome of the negotiations.

In the light of the requirements of the Tokyo Declaration, a major issue would be special and differential treatment for developing countries. This involved two considerations: whether and how to accord priority to the lowering of import restrictions affecting the exports of developing countries; and whether developing countries should make contributions as a quid pro quo for the benefits they would expect to receive from the reduction or elimination of restrictions by developed countries.

Issues of a more procedural character included:

(i) whether negotiations on quantitative restrictions should be bilateral or multilateral;

(ii) whether there should be drawn up rules of automatic application, or general objectives and guidelines to govern the negotiations; or whether negotiations should be engaged directly on an item-by-item basis;

(iii) the link to be established between the work of the Sub-Group and that of other Sub-Groups, especially "Safeguards".

2. Lack of substantive progress 1975-1977

As in most other parts of the Tokyo Round, there was no movement toward substantive negotiations on quantitative restrictions before July 1977.

In 1975 and 1976 there was a whole series of bilateral consultations between countries on the subject of their quantitative restrictions. This was largely a process of clarification, justification, and the removal of misunderstandings or errors. It was a useful exercise. By November 1976, twenty-seven countries had requested consultations with sixty-nine countries or groups of countries.

Apart from these consultations, most of the period was taken up with the restatement by the various countries of well-known positions. There was some attempt to initiate discussion of procedures for negotiations, but this did not get off the ground. Attitudes were divided on many issues and the same issues continually came up.

Quantitative import restrictions are of particular importance to developing countries. As a general approach, these countries proposed the elimination of all such restrictions applied against their exports by developed countries. Where restrictions could not be eliminated immediately, they proposed significant and progressive quota increases for developing countries; or removal from quota systems of those aspects that discriminated against them.

On the bilateral versus multilateral issue, the line-up was very much what would be expected. For understandable reasons developing countries were concerned at a tendency toward a bilateral approach for dealing with quantitative restrictions. These countries are in a weak position when negotiating individually with developed countries or groups of countries.

An examination of other issues - for example, compensation for elimination of illegal restrictions or inclusion of export restrictions in the discussions - would show the same kind of juxtaposition of views. On none of the important issues was there a consensus. The positions by and large remained what they had been for many years. Certainly in the phase of discussion and consultation alone there would be no movement.

3. Developments

In the event, the negotiations on quantitative restrictions became subsumed into the request and offer procedures for non-tariff measures adopted in July 1977. Many countries hoped that, through these procedures, at least some of the problems posed for them by the application of quantitative restrictions against their exports would be resolved or mitigated.

A great number of the requests on item-related non-tariff measures concerned the elimination or reduction of quantitative restrictions. At the conclusion of the Negotiations it was evident that the offers made in response to these requests would leave a large body of such restrictions still intact.

CHAPTER IX: SECTOR APPROACH

This was an approach which called for all factors affecting trade in specific sectors, including tariffs and non-tariff measures, to be dealt with together.

The view was held by a number of countries that the sector approach could be used to liberalize trade on a most-favoured-nation basis in precisely-defined and closely-related groups of products. It was defined in the Tokyo Declaration as being a complementary technique.

Canada was a principal sponsor of the sector approach. In its opinion, it would be feasible and desirable in certain identifiable sectors - in Canada's case probably certain ores, metals and metal products, wood and paper products - for the removal of trade barriers to go beyond the trade liberalization that would result from the general rules and formulae applicable to tariffs and to non-tariff measures. More especially, Canada believed that there were certain sectors where it would be feasible for all barriers, at all stages of processing - in other words from the raw material stage to that of the finished product - to be removed.

The sector approach had an appeal also for developing countries, whose exports tend to be concentrated in certain sectors. In their view, the approach would facilitate a solution, at least in part, to the problem of tariff escalation; all stages of production should be included in the process of liberalization. The kind of products of interest to these countries in this context would include, for example: fish and fishery products; leather and leather products; pulp and paper products; copper and handicraft products.

As a form of special and differential treatment, some developing countries had indicated that, in the event of the application of the sector approach, sectors of interest to them should be negotiated on a priority basis, with the application where feasible and appropriate of special procedures in their interest. These procedures should be sufficiently flexible to take into account the need for establishing, improving and preserving preferential access for developing countries in the framework of the Generalized System of Preferences.

There were, however, some key questions. What should be the approach to the problems of tariff escalation, effective protection and tariff disparities?

What position should be adopted as regards reciprocity among the countries participating in the negotiations? To what extent can the search for reciprocity be limited to one isolated sector or must an overall balance be achieved within the framework of global negotiations? How much flexibility should be allowed in the staging of concessions granted under this approach? These would be the kind of questions that would need to be answered before, or in the course of, any sector negotiations.

The sector approach was not a new idea, but, as now presented, it was different in conception. The supporters of this approach believed that any sector negotiations should aim at extending trade liberalization in the sectors concerned further than would otherwise be achieved through application of the general negotiating formulae adopted for the Tokyo Round; they should not be used as an excuse for partial exclusion of these sectors from the scope of trade liberalization. The approach had been employed to some extent in past multilateral negotiations, but its purpose then had usually been to bring about, in a particular sector, less rather than more liberalization than the general rules provided.

Some participants, however, remained to be convinced about the usefulness of the sectoral approach and indicated that before any conclusions could be reached on this point, it would be necessary to see what results were likely to be achieved in the various areas of the negotiations. In the event, the approach was not pursued.

Certain important substantive objectives in the area of tariff and non-tariff measures envisaged in the Canadian proposal were achieved through negotiations within the framework of the various groups and sub-groups. However, a number of others were not achieved. As a result Canada made it clear that it had not been able to undertake obligations additional to those already in the GATT regarding export restrictions and charges. Canada continues to consider that the negotiating technique advanced in its sector proposals would be an effective one for future negotiations, particularly those involving the range of measures affecting trade in resource-based products.

CHAPTER X: MULTILATERAL SAFEGUARD SYSTEM

A. THE BACKGROUND

1. GATT Provisions

GATT Article XIX is the main escape provision in the GATT. Before being able to take emergency action under the Article, a government is required to show that imports of a certain product are taking place in such increased quantities and under such conditions as to cause, or threaten to cause, serious injury to domestic producers of like or directly competitive products. Any measures taken have traditionally been applied in a non-selective, non-discriminatory manner as between all GATT member countries. There is provision for prior notification and consultation and for the possibility in certain circumstances of retaliatory action by the country against whose exports safeguard action has been taken.

Practical experience over the years before the Tokyo Round had shown that Article XIX had deficiencies that made its effective use difficult.

In the first place, there has been a certain reluctance to take action on a non-discriminatory basis when products from one or a few countries only may be causing problems and this has led to the proliferation of so-called voluntary export restraints or orderly marketing arrangements outside GATT. These at present escape any kind of multilateral scrutiny or surveillance, which makes it easier for the stronger countries to impose what they want on their weaker trading partners.

The desire of governments to have legal cover for their actions has, on occasions, led to the invocation of Article XIX to justify safeguard measures which patently fell far short of the requirements of the Article.

The varying interpretations given to the criteria that need to be satisfied before safeguard action can be taken has given rise to difficulties: these include such phrases as "critical circumstances", "cause serious injury" or "threaten to cause serious injury". Exporting countries have in particular disliked the phrase "threaten to cause" which, in their view, leaves too much discretion to the unilateral, subjective judgement of the importing country. There is no comprehensive definition as, for example, in the case of the term

"market disruption" in the Multi-Fibre Textiles Arrangement. The need for prior notification and consultation, as well as the provision for possible retaliatory action, has also presented problems.

2. The issues

Given the structural and cyclical crises the world economy and trading system had experienced since 1973, the question of the adequacy or otherwise of the existing multilateral safeguard system progressively increased in importance as a key issue in the Tokyo Round. For developing countries, it probably exceeded the importance they attached to the subsidies and countervailing duties issue.

Even during the preparatory stage, before the Tokyo Meeting of Ministers, the major industrialized countries had stressed the need for the renegotiation and improvement of the GATT safeguard provisions. The argument was a familiar one: that countries were far more likely to move toward further trade liberalization if there were adequate provisions for safeguard action against imports when these became disruptive and created unacceptable social costs. In other words, prospects for a more liberal trading system would be increased if there were a good safeguard system.

It was certain that it would be difficult for some developed countries, in the light of their economic difficulties and of the political and social problems to which these gave rise, to accept further trade liberalization without there being changes in the existing provisions on safeguard action and the possibility of taking such action on a selective basis as between countries. The question of selectivity was certain to be the crux of the negotiations on safeguards.

In this connexion it is interesting to note the language of the Tokyo Declaration which takes a positive view on what the aim of the negotiations should be. It calls for "an examination of the adequacy of the multilateral safeguard system considering particularly the modalities of application of Article XIX, with a view to furthering trade liberalization and preserving its results".

Developing countries, and many developed countries, were apprehensive about any possible loosening of the requirements of Article XIX that would permit emergency action on a discriminatory, selective basis. Pressures in developed countries over recent years for protection against so-called low-cost import in sectors other than textiles, for example leather, footwear, cutlery and other miscellaneous goods, made it highly likely that a reinforced safeguard clause would be principally used against the exports of developing countries.

For the more advanced of these countries in particular, a selective application of safeguard measures created a threat of discrimination on lines with which they had become familiar under the Multi-Fibre Textiles Arrangement.

B. THE NEGOTIATIONS

Before the Tokyo Meeting it was already apparent that safeguards would be an issue in the Negotiations.

However, there was little forward movement in a substantive sense in the Group dealing with safeguards in the early years of the Tokyo Round. In fact, intensive bilateral and plurilateral negotiations did not really get under way until early in 1978. There were two principal reasons for this. The first was the impasse in the Tokyo Round generally that lasted until July 1977. The other was the general view that negotiations in other parts of the Tokyo Round should be further advanced before negotiations on safeguards were taken too far. It was not desirable for progress on safeguard restrictive action to be seen to be in advance of that on trade liberalization.

1. Early proposals

As a result of its meetings in 1975 and 1976, the Group had identified the following as being among the major problems confronting it:

(i) should safeguard measures be applied on a discriminatory or non-discriminatory basis?

(ii) should there be a requirement that any safeguard measures be degressive in their effect?

(iii) should specific time limits be established during which safeguard measures could be applied?

(iv) should adjustment assistance be a requirement for the application of safeguard measures?

(v) how does one provide for sharing the burden among importing nations of disruptive or injurious imports coming from one or a few exporting nations?

(vi) what conditions constitute market disruption and serious injury?

(vii) what provisions should be made for international surveillance?

In July 1976 a "proposal" for an improved multilateral safeguard system was tabled. This was not in the form of a draft code or agreement, but rather as a set of principles which could be the basis for reaching agreement on a new safeguards system.

A short time before this submission was made, some developing countries had tabled their own proposals. In essence they proposed that, in any new safeguard system, special rules should be provided for developing countries, including the general rule that these countries be excluded from the application of safeguard measures by developed countries. Exceptions to this exemption would require a detailed examination by a multilateral surveillance body to demonstrate that it was impossible in practice to provide the exemption. It followed that it would be necessary to define the concepts of damage, injury, threat of injury, and critical circumstances so as to afford exemption to developing countries, or at least to allow them differential treatment. It would also be a requirement that a developed country imposing such restrictions must provide adjustment assistance designed to bring about the movement of the affected industries into other lines of economic activity. In no case should the safeguard measures applied by a developed country be used so as to affect adversely the growth of developing country production and exports.

2. Developments since 1978

(a) Draft text tabled

In June 1978, a number of developed countries put forward, as a basis for further discussion, a draft integrated text on safeguards. At that time the developing countries' approach continued to be broadly in line with that put forward by them in the early part of 1976.

(b) Principal problems

Discussions in the early part of July 1978 revealed that positions on the major problems remained as far apart as ever. It would obviously be a major task to bring these positions closer together in the coming weeks and months.

(i) Selectivity or non-selectivity

There were wide divergences of view, even among the developed countries that had tabled the draft integrated text in June 1978. On one side were those who favoured an approach that permitted unilateral, selective action with ex post facto review by a Committee on Safeguard Measures immediately thereafter. On the other side were those who were insistent that any selective action be preceded by an agreement on the part of the exporting country, or approval by the Committee. Some others, including the most frequent users of Article XIX in the past, strongly favoured the continued m.f.n. application of the Article.

Developing countries maintained in principle that safeguard measures should be applied on a global basis without discrimination as between sources of supply and in conformity with Articles I and XIII of the GATT. They were also opposed to the provision in the draft integrated text put forward by the seven delegations of developed countries, according to which developed countries would cease to afford special and differential treatment when individual developing countries, or the relevant sectors within those countries, had achieved substantially higher levels of economic development, or the developing country had become internationally competitive in the product concerned.

(ii) Surveillance and dispute settlement

On the question of multilateral surveillance and dispute settlement there were differences of approach. There were those who favoured, in addition to a Committee on Safeguard Measures, the establishment of a permanent body for continuing surveillance, monitoring and conciliation purposes. Others considered that all matters could and should be handled in the Committee.

(iii) Determination of serious injury

Here again there were differences - in particular between the developed and developing countries - as to the criteria to be applied in the determination of "serious injury". Many of the arguments advanced during the negotiation of the Multi-Fibre Arrangement were reiterated. A particular concern of the developing countries was that action by developed countries would be taken, more frequently than in the past, on the basis of low-priced imports; in other words the price level would tend to become the sole factor for such action.

(iv) Structural adjustment

The question of structural adjustment in developed countries was an issue of long standing. This was a matter of great importance to developing countries. In their view, such adjustment, rather than safeguard action, should as a rule be used where difficulties experienced by domestic producers in developed countries derive from structural problems or shifts in comparative advantage in favour of developing countries. It was also considered a rational and necessary process in economic terms. The developing countries have pressed their point of view on this subject over many years.

These problems have been spelt out so as to give an indication of the considerable differences of approach that existed when negotiations were resumed after the summer recess of 1978. The differences existed not only between developing and developed countries but, on some issues, between the developed countries themselves.

In an attempt to bridge the considerable gaps between the various positions, intensive bilateral and plurilateral negotiations were engaged in the weeks and months following the summer recess.

By December 1978 and through the early months of 1979 serious problems continued to exist, in particular those relating to selectivity, export restraints and special and differential treatment. As regards selectivity there was considerable discussion on the criteria under which there might be a selective application of the safeguard clause. A number of developing countries, while continuing to maintain their position of principle, stressed that before any possible proposal for selectivity could be considered, they would need to be satisfied that criteria and conditions were laid down providing adequate assurances against the unilateral, discriminatory application of restrictive measures.

In the event, in spite of intensive efforts made in February, March and early April, and a narrowing of differences, it did not prove possible to conclude the negotiations at that stage. Agreement was reached in the Group - and subsequently endorsed by the Trade Negotiations Committee - that the work should be continued as a matter of urgency, the aim being to complete it by 15 July 1979.

The full text agreed upon in this connexion is contained in Chapter V of Part II.

CHAPTER XI: FRAMEWORK FOR CONDUCT OF INTERNATIONAL TRADE

A. BACKGROUND

The Tokyo Declaration provided for consideration to be given to "improvements in the international framework for the conduct of world trade which might be desirable in the light of progress in the negotiations".

When the Tokyo Round opened, the multilateral trading system had been operating for over thirty years on the basis of the GATT rules as amended from time to time. An examination of the adequacy of these rules to meet the needs of the 1980's, and possibly beyond, was therefore timely.

The far-reaching developments that had taken place in international trading relationships, and in the extent and diversity of GATT's membership, had put strains on the GATT rules. Departures from rules that had been designed to deal with a different set of economic circumstances had become frequent and on occasions flagrant, particularly in periods of economic difficulties and increased protectionist pressures. Developing countries stressed what they considered to be the inadequacy of the rules as a vehicle for the promotion of their trade and economic development.

B. THE NEGOTIATIONS: MACHINERY

In the Tokyo Round, changes were brought about in two ways.

In certain specific areas, such as subsidies and countervailing duties, customs valuation, government procurement, technical barriers to trade, import licensing, and safeguards, there was need to achieve a greater clarity, uniformity and certainty in the implementation of certain GATT provisions or, in some cases, to compensate for their inadequacies. Here the necessary improvements were effected through Agreements negotiated in the special Groups and Sub-Groups set up for the purpose.

There was, however, a range of other issues which, over a long period, had been central to any debate on GATT reform. For many countries, a settlement of these issues was essential to a more efficient and more equitable operation of the GATT system. The negotiations in this area were entrusted to the last of the Tokyo Round negotiating groups to be established - the so-called "Framework" Group. This was set up in November 1976 on a proposal by Brazil, widely supported by developing countries generally as well as by several of the developed countries.

The subjects included in the Group's work programme were the following:

- The legal framework for differential and more favourable treatment for developing countries in relation to GATT provisions, in particular the most-favoured-nation clause;
- Safeguard action for balance-of-payments and economic development purposes;
- Consultations, dispute settlement and surveillance procedures under Articles XXII and XXIII of the GATT;
- For the purpose of future trade negotiations: applicability of the principle of reciprocity in trade relations between developed and developing countries and fuller participation by the developing countries in an improved framework of rights and obligations under the GATT that takes into account their development needs;
- An examination of existing GATT rules concerning the application of restrictions at the border that affect exports, taking into account the development needs of developing countries.

There were considerable differences of view as to the relative importance and significance of these subjects. The above list represented a compromise between the various negotiating interests.

C. THE NEGOTIATIONS: DEVELOPMENTS

In February 1977, Brazil put forward its ideas on certain changes which, together with the results of negotiations undertaken elsewhere in the Tokyo Round, "would add up to an important package for GATT reform, representing an important breakthrough for an improvement of trade relations between developed and developing countries". In February 1978 several developing countries, prominent among whom was Brazil, were to table a comprehensive proposal covering in detail the first four of the five subjects in the Group's work programme spelt out above.

Many other delegations, in stating their positions on individual issues, suggested ways of dealing with them which were reflected in specific proposals submitted later by these delegations.

Substantive negotiations did not, however, get underway until early 1978. Thereafter, and particularly from April 1978 onwards, there were intensive informal consultations between delegations and between delegations and the GATT secretariat.

Throughout the whole period of the negotiations the secretariat took a number of initiatives and presented texts and proposals to facilitate discussion in the Group. By the middle of July, on the basis of the consultations that had taken place and of the various proposals that had been tabled earlier, draft texts were put forward by the secretariat, covering all issues, either on its own responsibility or as reflecting the views of delegations. Consultations and negotiations continued in the autumn and were intensified in December 1978 and the first months of early 1979. By April 1979, all the relevant texts had been agreed upon and submitted to the Trade Negotiations Committee.

1. (i) Legal framework and (ii) Reciprocity and fuller participation by developing countries

These two topics are dealt with together as the results of the negotiations were embodied in a single text, which has been described as the "Enabling Clause".

(a) Background

Over a long period of time, developing countries had pressed for inclusion in the GATT of legal recognition of preferences as a means of promoting their export trade and economic development. In their view, such recognition would reflect a more equitable trading relationship between developed and developing countries and remove the anomalous application of "equal rights and obligations among unequals".

The possible inclusion of a provision in the GATT to authorize the grant of preferences was the subject of some consideration when the new Part IV of the GATT on Trade and Development was under negotiation in 1964. Nothing concrete resulted from this consideration however. Later, when the Generalized System of Preferences and the preferences resulting from negotiations among developing countries were brought to the GATT, the necessary authorization took the form of waivers dated 25 June 1971 and 26 November 1971 respectively. Developing countries always took the view that this waiver approach was unwarranted and outmoded.

(b) Outcome of the negotiations

The Enabling Clause finally agreed upon allows GATT contracting parties to provide differential treatment in favour of developing countries in respect of: (i) tariff preferences accorded under the Generalized System of Preferences; (ii) non-tariff measures governed by codes negotiated under GATT auspices; (iii) tariff and, under certain conditions, non-tariff preferences granted to one another by developing countries in the framework of regional or global trade arrangements; (iv) special treatment of least-developed countries.

The Clause requires that any action taken under it be designed to facilitate and promote the trade of developing countries and to respond positively to these countries' development, financial and trade needs. Arrangements providing for differential treatment of developing countries must not prevent the further reduction of trade barriers on a most-favoured-nation basis, nor create obstacles to the trade of countries not parties to the arrangements.

It is understood that differential treatment, by way of GSP preferences or under codes regulating the use of non-tariff measures, can be modified to respond to the changing needs of developing countries. The Clause establishes consultation procedures that may be used to deal with any difficulties arising from such modifications or from other aspects of the operation of arrangements covered by it.

The provisions of the Clause relating to reciprocity reaffirm and strengthen the commitment by developed countries not to seek concessions inconsistent with the needs of their developing partners in trade negotiations. This commitment applies with particular force to least-developed countries. In turn, the Clause states the expectations of developing countries regarding their future participation in the GATT system in line with their increased capacity to do so. This would reflect the expected progressive development of their economies. Any action taken in this context would be related to the basic objectives of the GATT, due regard being paid to the serious difficulty of least-developed countries in making concessions and contributions.

The Enabling Clause meets a fundamental concern of developing countries by introducing differential and more favourable treatment as an integral part of the GATT system, no longer requiring waivers from the GATT. It also provides the perspective against which the participation of developing countries in the trading system may be seen.

2. Safeguard action for balance-of-payments purposes

(a) Background

In terms of the provisions of the GATT, governments may, under specific conditions, use quantitative import restrictions for balance-of-payments purposes. Consultations with countries applying such restrictions are provided for in the GATT and are carried out regularly by a Balance-of-Payments Committee. Procedures for these consultations - conducted under Articles XII:4 and XVIII:12(b) for developed and developing countries respectively - were approved by the GATT Council in April 1970 and December 1972.

Over a period of many years, however, countries confronted with balance-of-payments difficulties have had frequent recourse to measures other than quantitative import restrictions, and such measures can escape GATT surveillance. These have included countries with widely different levels of economic development.

(b) The Negotiations

A principal issue in the negotiations concerned the possible extension of the type of measures that could be used for balance-of-payments purposes. The desirability, or otherwise, of bringing within the provisions and procedures of the GATT surcharges and other so-called sophisticated trade measures was the subject of lengthy debate. A second principal issue, against the background of the current monetary situation and the considerable movement in exchange rates, was the question of a self-denying ordinance by the developed countries regarding the use of trade measures for balance-of-payments purposes.

It had long been contended by those in favour of surcharges that these measures were easier to handle, were likely to do less damage to the trade interests of other countries and avoided the necessity for the cumbersome

administrative machinery required for the application of quantitative restrictions. A subsidiary argument was that such machinery, once established, tended to take longer than was strictly necessary to dismantle, thus prolonging the life of the restrictions. An opposing view was that an increase in the types of measures that could be used would facilitate and tend to make more frequent the use of restrictive import measures.

The developing countries' case was that GATT should explicitly recognize that, as a result of the growth process in their economies, the disequilibrium in the balance-of-payments of developing countries was structural and not conjunctural in character. It should be accepted in their case that application of trade measures for balance-of-payments reasons was likely to be a necessity.

Another question concerned the functioning of the procedures used for balance-of-payments consultations with developing countries. There are two types of consultations - the "full" and the "simplified", the latter type having been introduced in procedures adopted by the GATT Council in December 1972 when it was recognized that the extensive and time-consuming preparation required for a "full" consultation was often disproportionate to its value.

These and other issues - such as a strengthening of the procedures of the Balance-of-Payments Committee - were taken up in a Draft Declaration on Trade Measures Taken for Balance-of-Payments Purposes put forward by the GATT secretariat in July 1978.

Throughout the second half of 1978, discussions and intensive bilateral and plurilateral negotiations continued. Toward the end of December 1978, a draft Declaration reflecting the outcome of these discussions and negotiations was tabled. A text was agreed upon by the Group at the beginning of April 1979.

Its main features are described below:

(c) Declaration[1] on Trade Measures taken for Balance-of-Payments purposes

(i) General

The draft Declaration states principles and codifies practices and procedures regarding the use of trade measures to maintain or restore balance-of-payments equilibrium. Particular attention is paid to the situation of developing countries and to the application of special procedures to deal with balance-of-payments measures taken by them.

(ii) Use of trade measures

Restrictive trade measures are described as in general an inefficient means of solving balance-of-payments problems. It is recognized that developed countries should avoid the imposition of such measures for balance-of-payments purposes to the maximum extent possible. The needs of developing countries are recognized both as regards the implementation of trade measures for balance-of-payments purposes and the selection of the type of measure to be applied.

(iii) Procedures under the Balance-of-Payments Articles of the GATT

The procedures for carrying out the necessary examination stipulated in Articles XII and XVIII will apply to all restrictive import measures taken for balance-of-payments purposes.

In the Declaration, the procedures for regular consultations on balance-of-payments measures taken by a developing country establish certain criteria on the basis of which the Balance-of-Payments Committee will decide whether to apply "simplified" or "full" procedures in each particular case. Provision is also made for the Committee to draw attention to the relation that may exist between restrictive trade measures maintained by other countries and the balance-of-payments measures of the developing country concerned. These are new provisions. The technical assistance of the GATT secretariat is made available on request to developing countries in preparing for their consultations.

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[1] The use of the words "Declaration" and "Understanding" in this Chapter is without prejudice to the description and legal status that might finally be given to these texts.

By giving recognition to the particular situation of developing countries with regard to the balance of payments, and by improving the procedures for review of difficulties they may have in this area, the Declaration provides an equitable and secure basis for their participation in the adjustment mechanisms provided for under the GATT.

(iv) Balance-of-Payments Committee

Other matters relating to consultations undertaken in the Balance-of-Payments Committee are spelt out. Subjects covered include membership of the Committee; procedures for consultations under Article XII and XVIII (the question of "full" or "simplified" procedures for developing countries has been referred to above); reporting by the Committee to the GATT Council.

3. Safeguard action for development purposes

This issue related to the derogations from other GATT provisions which are accorded to the developing countries under Sections A and C of Article XVIII of the GATT. Section A deals with the modification or withdrawal of tariff concessions by developing countries and Section C with the adoption by them of measures not otherwise consistent with the GATT, e.g. quantitative restrictions, whether or not these affect the value of previous tariff concessions.

(a) The Negotiations

The concept of import substitution underlying the facilities offered in these Sections and the link with the establishment of particular industries were considered out-dated by developing countries. The approach to economic development was, as they saw it, much broader, involving among other things measures affecting infrastructure, production and possibly consumption. The speed of economic development brought about big changes in conditions and prospects. Article XVIII should be updated and additional flexibility introduced. The delays set in the Article for implementation of particular measures should be shortened or eliminated.

Up to mid-1978 the developed countries generally took the position that there was insufficient justification for a loosening of the provisions of Sections A and C of Article XVIII. However, by December 1978, they had moved from their original position and a draft text was agreed by the Group at the beginning of April 1979.

(b) The outcome of the negotiations

The purposes for which Sections A and C can be invoked have been extended. Whereas under the existing provisions of these Sections developing countries can take measures only for the purpose of establishing a particular industry, they would now be entitled to do so in order to attain broader development objectives. These countries are also given the possibility, in certain circumstances, of avoiding procedural time-limits in implementing such measures.

These amendments of Article XVIII are expected to make it easier for developing countries to adapt their import policies to the changing needs of their economic development. They should also ensure a more effective application of GATT provisions which were specifically designed to meet such needs.

4. Notification, Consultation, Dispute Settlement and Surveillance

(a) GATT provisions

The provisions for consultation and dispute settlement in the GATT are spread over a number of Articles. There are many provisions that require countries to consult in specified circumstances. Similarly, several provisions cover the compensatory withdrawal or suspension of concessions, for example Articles XIX and XXVIII.

However, there are two GATT Articles that focus essentially on consultation and dispute settlement: Articles XXII and XXIII.

Article XXII provides for consultation on any matter affecting the operation of the GATT. Provision is made for reference to the GATT Contracting Parties should bilateral consultations fail to produce a mutually satisfactory solution.

Article XXIII is more complicated. It is broad in application; a country can invoke the Article even when the action by another country about which it is complaining falls outside the GATT, or when its complaint relates to "the existence of any other situation".

The practice in recent years has been for the GATT Council, on receipt of a complaint following a breakdown in bilateral consultations, to establish a Panel to examine the complaint and in appropriate cases to make recommendations, particularly if it is claimed that there has been nullification or impairment of GATT rights.

The main aim of a panel is both to get an independent assessment of the facts of the case and to promote conciliation between the parties and withdrawal of the action or measure the subject of complaint. Often the recommendations of a Panel, endorsed by the GATT Council, are quickly accepted. When they are not, the recurring appearance of the item on the Council's agenda usually has the desired effect in due course. Although, as a final sanction, the Contracting Parties can authorize the suspension of concessions or other obligations by the offended country, such action under Article XXIII has rarely been contemplated and has only once been taken.

In April 1966 the GATT Contracting Parties adopted new procedures under Article XXIII to cover complaints by developing countries against actions or measures taken by developed countries. The main innovation in the procedures was making available the good offices of the Director-General of GATT as conciliator or mediator before a complaint reached the stage of being referred to the Contracting Parties.

(b) The negotiations

The aim of the negotiations was to secure reaffirmation of the current GATT practice, while giving the existing procedures greater precision. The main issue was whether or not the procedures should be strengthened so as to expedite consideration of the matters involved. A particularly contentious question was whether a country submitting a complaint should have the automatic right to a Panel.

Some countries favoured a strengthening of the procedures and more effective Panels. Others were at first opposed to the inclusion of this subject in the negotiations. Although they later withdrew this opposition, they continued to be sceptical and to hold the view that the existing procedures, which had evolved satisfactorily and pragmatically over the years, were adequate.

For a long time, the developing countries had stressed the inadequacy, from their point of view, of the GATT procedures for the settlement of disputes.

Proposals in 1978 by the developing countries were aimed at the reaffirmation and strengthening of the April 1966 procedures under Article XXIII. The possibility of calling upon the good offices of the Director-General, the Chairman of the GATT Contracting Parties or of the Chairman of the Council was provided for. If no satisfactory solution resulted from this process, a Panel should automatically be established to examine the matter and recommend appropriate solutions. There was provision for a "ruling" by the Contracting Parties and for sanctions against an offending developed country including, as the extreme sanction, "suspension of rights under the General Agreement of the developed contracting party causing the damage".

In July 1978, the GATT secretariat put forward a draft Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance. This took account of the various proposals that had been tabled, and was aimed in particular at improvements in the procedures for dispute settlement and at making the Panel mechanism more effective.

Late in 1978 bilateral and plurilateral negotiations continued on the basis of the GATT secretariat draft in an effort to reconcile the continuing differences of view. By early December 1978 a compromise text had been tabled. With some modifications the text was agreed upon by the Group in early April 1979.

(c) Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance

Attached to the Understanding is an "agreed description" of the customary practice of the GATT in the field of dispute settlement.

The "agreed description" aims at codifying past practice so as to bring as much clarity and transparency as possible into the operation of the dispute settlement provisions of the GATT. Thus the implications of resorting to these provisions will be more predictable and the rights and obligations of individual countries more clearly defined.

The customary practice of the GATT will be continued but with certain improvements. Procedures regarding notification of trade measures and consultations have been refined and rules have been developed concerning conciliation and resolution of trade disputes. With regard to the latter, detailed provisions in the Understanding govern the establishment of panels to examine complaints, their composition, prerogatives and functions. Also regulated are the submission and handling of panels' findings and follow-up action by the GATT Contracting Parties on their recommendations.

A number of provisions deal specifically with the problems and interests of developing countries, which should be given special attention during consultations. Special procedures available for the settlement of disputes between developing and developed countries have been reaffirmed; in such cases the developing countries concerned may request the good offices of the Director-General of GATT.

In their surveillance rôle the Contracting Parties will carry out a regular and systematic review of developments in the trading system. They will pay particular attention to trade developments affecting the interests of developing countries. The latter may request technical assistance by the GATT in connexion with all aspects of the dispute settlement process.

The adoption of commonly agreed rules for the resolution of trade disputes is an important contribution to the maintenance of an open and balanced international trading system. Such rules are of value for the safeguarding of the trade interests of all countries.

5. Export restrictions

Although the increased interest in the question of export restrictions was in part prompted by events during the period of the oil crisis, temporary restrictions on other products had also caused great concern in some countries. The problem of assuring adequate access to supplies of raw materials and finished goods had come very much to public and political attention. Many countries had great difficulties in negotiating on this issue, especially in relation to the question of sovereignty over natural resources. The need for the establishment of a proper balance in the Tokyo Round between access to markets and access to supplies was being stressed in a number of industrialized countries.

Some progress proved possible in the course of December 1978 and further negotiations in the early months of 1979 resulted in agreement on the text of a draft Understanding regarding export restrictions and charges.

In the Understanding the participants request the GATT Contracting Parties to reassess, as one of their priority tasks after the conclusion of the Tokyo Round, the GATT provisions relating to export restrictions and charges, in the context of the international trade system as a whole, taking into account the development, financial and trade needs of the developing countries. Attached to the Understanding is a statement of the relevant GATT provisions.

CHAPTER XII: TECHNICAL ASSISTANCE TO DEVELOPING COUNTRIES

A. THE NEED FOR TECHNICAL ASSISTANCE

It was felt by the GATT secretariat as early as 1972 during the preparations for launching the Tokyo Round that the negotiations would be so complex and highly technical and would cover such a wide range of specialized subjects, that the resources and expertise even of some developed countries could be extended. Given the particular difficulties of the developing countries, the GATT secretariat felt that technical assistance going far beyond that already provided would be needed by nearly all developing countries if their participation in the negotiations was to be active.

B. PROVISION OF ASSISTANCE

The technical assistance activities of the GATT secretariat got under way in 1972. In September 1974, a Special Assistance Unit was established within the secretariat. Its broad task was to keep in continuing close touch with developing countries so as to assist them, individually and collectively, with advice and information on all aspects of the various problems relating to their preparations for and participation in the Tokyo Round.

Apart from the major task of meeting the day-to-day operational needs of the developing countries, the GATT secretariat was engaged throughout the period of the Negotiations on many specific tasks, some continuous or recurring, others more ad hoc in character. These were undertaken sometimes on the initiative of the secretariat; often at the request of developing countries; sometimes at the request of the Groups or Sub-Groups concerned with particular areas of the negotiations.

These specific tasks were directed to one end: to provide practical assistance to developing countries so as to enable them to be better equipped for participation in the Tokyo Round. In no case was any particular data, documentation or study an end in itself. Because of the nature of the subject-matter, the material provided was often technical and on occasions complicated. It was one of the many tasks of the Special Assistance Unit to assist developing countries where necessary - through a process of clarification and explanation - in making full and effective use of the material provided.

In the early stages, the principal technical assistance activities of the secretariat were focussed on the provision of background information in order to facilitate the overall identification by developing countries of their trading and negotiating interests in different import markets, and of the various trade barriers under negotiation relevant to their export trade. This work took three main forms: detailed country studies, provision of data on tropical and other products of interest to developing countries, and notes on the implications for developing countries of various alternative techniques and modalities suggested for negotiations on industrial and agricultural products.

(a) Country studies

Over the period 1972 to 1976 almost all developing countries, including non-GATT members, were provided at their request with detailed data on their present and, to the extent possible, their potentially important exports to major developed country markets at both the four-digit level of the BTN and the tariff line level.

Among other things, these data showed the total imports into each such market from the developing country for whom the study had been prepared, and its percentage share of that market. At the same level of detail, the data covered the incidence of m.f.n. duties, the type of duty applicable (ad valorem, specific, or mixed duties), their GATT binding status, existence of a levy, where applicable, status under the Generalized System of Preferences (GSP), quantitative restrictions, if any, and an indication whether or not the tariff position concerned had been the subject of a notification to GATT in regard to the existence of other non-tariff measures.

(b) Tropical products

Because of the predominant importance of tropical products in the exports of developing countries, it was to be expected that there would be many requests for technical assistance in this area. The work started in 1972. It continued up to the last stages of the Tokyo Round, with progressively increasing attention being given to the technical back-up needed by the developing countries in the actual process of negotiation.

Particular aspects of this work included the initial identification of, and provision of background data relating to tropical products of export interest to developing countries, including products which, although not prominent in world trade, were nevertheless of considerable importance to individual developing countries; continuing assistance to developing countries, or groups of such countries, in the preparation, revision or resubmission of their request lists for concessions, including the identification of tariff and non-tariff treatment applicable to individual products and of trade flows in those products; continuing assistance in the examination of offers made by developed countries and the provision of background data for use in further consultations and negotiations regarding the offers; the consideration and periodic up-dating, of the requests and offers made and, subsequently, of the concessions and contributions implemented by the different countries.

(c) Other products

A number of developing countries had an export and negotiating interest in other product areas, such as certain fruits and vegetables, both in fresh and processed forms; fish and fishery products; hides and skins and various items in the leather goods sector; certain wood products; and various metallic ores. The secretariat assembled data on these products in the form of background notes, covering developments in production, trade, import treatment and other relevant data which could be useful in the context of the negotiations. In addition, the data bank which had been built up by the secretariat on trends in production, trade and consumption in different countries of various products was available for consultation by developing countries. As in other areas of its activities, the secretariat was available to clear up any particular points and to facilitate the most effective use of the material.

(d) Implications of tariff reductions for developing countries

It was clear that, in the initial stages, developing countries would need to have a clear picture of the implications for them of alternative methods of tariff reductions suggested for the negotiations. Two notes were prepared by the secretariat analyzing these various techniques and modalities in general terms in the fields of agriculture and industry.

In addition, the possible erosion of benefits derived from the Generalized System of Preferences by m.f.n. tariff cuts was a matter of particular concern to developing countries. In this connexion the secretariat had also prepared statistical studies analyzing the implications of m.f.n. reductions for the GSP. These studies, which came to be known as Brown and White Books, were intended to enable developing countries to assess the pattern of m.f.n. tariffs and GSP treatment applicable to their exports, and the rates of m.f.n. tariffs resulting from the application of the various tariff-cutting schemes that were then under consideration.

C. ACTIVE PHASE

In the active phase of negotiations, the main lines of technical assistance covered the provision of information and practical advice for the preparation, submission and revision of request lists, and for bilateral and plurilateral consultations and negotiations, as well as day-to-day assistance in relation to the implications for developing countries of the various codes under negotiation. Here, likewise, the aim of the secretariat was to help create a good material basis for negotiation and to supplement this by personal day-to-day contacts with individual delegations, or groups of delegations, geared essentially to the technical needs arising from developments in the negotiations.

(a) Tariffs

Technical assistance was provided to facilitate participation by developing countries in the negotiations on tariffs. In particular, a system was prepared for the rapid evaluation of the implications of various tariff-cutting formulae for the exports of developing countries. Sets of tabulations for each requesting developing country in respect of each of the eleven developed country markets were made available. These consisted of detailed information on the effects of different formulae selected by requesting countries on individual items of trade interest, together with summary tabulations showing the results of these formulae on tariff profiles in CCCN Chapters 25-99, 1-24 and 1-99. At their request, over seventy developing countries were provided with such tabulations covering statistical years up to 1976. In addition, details of the offers made by main developed countries on products of export interest, together with trade data were supplied on request to some fifty developing countries negotiating individually or as groups.

(b) Non-tariff measures

In the field of non-tariff measures, information was provided on product-related non-tariff measures, including quantitative restrictions, applicable to products of interest to requesting developing countries. This information was used primarily in the preparation, submission and revision of request lists and consultations.

(c) Agriculture

Similarly, individual countries were provided with data on tariff and non-tariff measures affecting trade in agricultural products of special concern to their export trade. As with tropical products, this assistance took the form, not only of the provision of information, but also of practical advice in the preparation, submission or revision of request lists, in the examination of offers, and in connexion with consultations and negotiations in these areas generally.

(d) Multilateral instruments

Another important area of secretariat technical assistance activity was the provision of information and clarification on issues dealt with in the multilateral codes and instruments in response to requests on a day-to-day basis.

(e) Documentation and briefing

In order to assist developing countries, particularly those which were not in a position regularly to follow Tokyo Round meetings, the secretariat provided and kept up to date, a guide to documents of particular relevance and interest to developing countries as well as a document containing a selection of Tokyo Round and other GATT material providing, on a product basis, factual information and data of interest to developing countries.

Throughout the period of the Tokyo Round the secretariat took the initiative as far as this was practicable to keep delegations which were new to the Negotiations, and those which did not have resident missions in Geneva, informed of developments of interest to them. The secretariat was also frequently called upon to provide technical facilities required by delegations for informal exchanges of views or consultation.

The secretariat arranged special seminars for familiarizing officials from capitals in developing countries with the various issues being negotiated in the Tokyo Round. Some sixty-six senior officials from some fifty-seven developing countries participated in these seminars. It also organized in Geneva in 1977 and 1978 briefing sessions of short duration for officials from capitals on specific topics relating to the Negotiations of particular interest to the countries concerned.

Between 1975 and 1979 the secretariat, on request, made available staff members for participation in fourteen seminars held on a regional or sub-regional basis under the auspices or joint sponsorship of UNDP, UNCTAD, UN regional economic commissions and other intergovernmental organizations such as the Commonwealth Secretariat.

(f) The least-developed countries

In the Tokyo Declaration Ministers recognized that the particular situation and problems of the least developed among the developing countries should be given special attention, and stressed the need to ensure that these countries received special treatment in the context of any general or specific measures taken in favour of the developing countries during the negotiations.

A technical assistance note was prepared by the secretariat in order to assist delegations of least-developed countries participating in the negotiations. The paper attempted to identify the main products of export interest to these countries and provided data on tariffs and non-tariff measures affecting such products in developed country markets. It was up-dated in June 1977. Further data on various aspects of the negotiations were provided on an ad hoc and continuing basis by the secretariat. These data were intended to facilitate consideration of specific requests by least-developed countries for concessions on tariff and non-tariff measures, as well as other appropriate action on products of particular interest to these countries.

PART II: RESULTS OF THE NEGOTIATIONS

CHAPTER I: INTRODUCTION

In the tariff field, there were hundreds of bilateral and plurilateral negotiations covering tens of thousands of tariff headings and sub-headings. At the end of this process, the results were multilateralized and the benefits will be extended to all countries participating in the Negotiations in accordance with the most-favoured-nation rule. An analysis of the results is given in Chapter II.

The Agreements negotiated on specific non-tariff measures constitute the most significant results in the field of non-tariff measures. Their importance will be evident from the description of the Agreements in Chapter III. There were important results in the area of item-related non-tariff measures, but insufficient information is available to the GATT secretariat at the present time to permit an analysis of the totality of these results. Also included in this Chapter are summaries of the main features of the agricultural Arrangements that were negotiated and a reference to the Multilateral Agricultural Framework.

A major aspect of the Negotiations was the consideration given to improvements in the international framework for the conduct of world trade as called for in the Tokyo Declaration. The texts agreed upon and to be submitted to the GATT Contracting Parties for consideration concern certain important provisions of the GATT. They are dealt with in Chapter IV.

Possibly the most sensitive issue in the Tokyo Round was that of safeguards, which assumed progressively increasing prominence. The position reached in the negotiations in this area is given in Chapter V.

Chapter VI deals with the results of the Tokyo Round in all sectors as they relate to the developing countries. An overall picture is presented, covering, inter alia, the results in the field of tropical products, tariffs, non-tariff measures, agriculture and in the negotiations relating to improvements in the international framework for the conduct of world trade.

CHAPTER II: TARIFFS

A. INTRODUCTION

The calculations cover the following ten developed import markets: Austria, Canada, the European Community, Finland, Japan, New Zealand, Norway, Sweden, Switzerland and the United States. Although other countries have made concessions in the course of the negotiations, it has not been possible at this stage to include their contribution in this assessment. The pre-MTN[1] tariffs reflect in general the consolidated duties or the base rates as used in the negotiations. These may be higher than the rates actually applied. The post-MTN tariffs are the rates shown in the comprehensive records of agricultural and industrial tariff commitments deposited with the GATT secretariat, as of 12 April 1979. The initial GSP rates are those in force in 1976. The trade figures refer to m.f.n. imports in 1976. Imports eligible for GSP treatment are included in the m.f.n. total. Agricultural and tropical products referred to in this chapter cover commodities classified in CCCN Chapters 1-24, Industrial products refer to Chapters 25-99 of the CCCN.

Any attempt to measure the importance of tariff reductions encounters a number of technical difficulties which negotiators had to face each time tariff concessions were exchanged. The main problem stems from the impossibility to correctly assess the volume of trade which will be generated by the agreed duty reductions. Instead of the future trade increment the past volume of trade is usually taken into consideration when the depth of the duty cut on individual customs tariff lines is combined in the overall assessment. Attempts to account for additional factors reflecting for example the relationship between the level of initial duties and the depth of tariff cuts, the reduction or increase of tariff quotas, the modification of existing preferential margins or the value to be attached to the binding of prevailing zero rates render the evaluation process even more complex. Since the theoretically correct solution is not feasible, a more pragmatic though less satisfactory approach to the measurement problem had to be adopted in the past. The method used in the present assessment is based on the practice adopted by the negotiators themselves and on the methodology worked out by the Working Party on the tariff study. The measurement is based on the comparison of the average level of duties in the reference period before the negotiations and the concessional rates agreed. The first tariff

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[1] MTN = Multilateral Trade Negotiations

average is a simple arithmetic average of duty rates. The second tariff average gives to each duty the weight of the imports on which such duty was collected. In other words the simple average measures the straightforward level of the tariff whereas the weighted average measures the average duty collection.

The calculations of the tariff cuts on products of interest to developing countries refer to products already exported by developing countries to the ten developed markets including, in addition, goods included on the request lists notified by developing countries in the course of the negotiations. Significant imprecisions could not be avoided in comparing the average rates and the trade flows affected by the changes in the m.f.n. and the GSP rates. These are described in Annex D which also includes detailed definitions of the data used.

B. THE RESULTS

The assessment presented here is based on incomplete concession schedules, since at the date of writing a number of bilateral negotiations were still proceeding. It will therefore be some time before the reductions agreed on can be fully analyzed. Very tentative estimates suggest, however, that as of today the level of all industrial duties taken together was reduced by one third if measured on the basis of customs collections and by about 38 per cent if based on simple average rates. The overall figure, however, conceals considerable variations in the level of concessions by individual participants, reflecting inter alia the overall level of initial duties as well as the type of rates and the base date considered in the negotiations.

Out of the total of $190 billion of m.f.n. imports of industrial products into the EEC and nine other developed countries, $60 billion (about 32 per cent) were already duty free, over $112 billion (i.e. nearly 60 per cent) would be affected by tariff reductions, leaving only $17 billion (9 per cent) of imports of industrial products on which no reduction would be granted. In agriculture, m.f.n. imports amounted to $48 billion out of which nearly $15 billion (30 per cent) would benefit from tariff concessions. Thus the total value of trade affected by m.f.n. tariff reductions and bindings at prevailing rates amounts to more than $125 billion.

In addition to the overall tariff cut, the harmonization effect of the Swiss formula[1] should also be considered an important achievement of the negotiations. While comprehensive calculations could not be carried out at this stage it appears that the standard deviation of national tariffs will be reduced by nearly 30 per cent on average. The differences in the national tariff levels were diminished considerably. Finally, mention should be made of the consolidation of a number of tariff lines at the prevailing duty-free rates.

Taking the industrial tariffs together, the progressive rate of reduction according to the height of initial duty can be illustrated by the table below. It gives the breakdown of 1976 m.f.n. dutiable imports of industrial products into the countries considered here.

	Initial level of duty					
	5%	5.1-10	10.1-15	15.1-25	25	Total
Value of dutiable imports ($ bn.)	32.0	43.3	32.3	17.4	4.3	129.3
per cent	100	100	100	100	100	100
of which:						
subject to cut						
up to 20%	38	9	15	18	44	20
20.1-40%	25	60	47	23	19	42
40.1-99.9%	6	16	30	42	19	20
cut to zero	13	2	3	-	-	5
no reduction	18	13	5	17	18	13

The progression in the depth of cut can be followed up to the initial duties of 25 per cent. In the initial duty ranges up to 10 per cent ad valorem only 18 or 19 per cent of trade would be cut by more than 40 per cent while for trade at present subject to duties of 10.1 to 15 per cent and 15.1 to 25 per cent the proportion affected by higher than 40 per cent cuts will become 33 per cent and 42 per cent respectively. Above the 25 per cent initial duty level a large number of exceptions would apply and duties will either not be reduced at all or the cut will be less than according to the formula.

[1] See page 46.

The tariff reductions vary according to the stage of processing of the products in question. The reduction on raw materials is not significant in this connexion since most primary products were already admitted duty-free or at very low tariffs. (The tariff cut on the relatively small amount of raw material imports which are dutiable amounts to about 50 per cent.) Comparing processed goods, the MTN reductions are deeper on finished manufactures than on semi-manufactures. As a result, the tariff differential between the three processing stages will on average be reduced from 5 and 4½ percentage points to about 3½ and 3 points respectively. The pre- and post-MTN averages and the depth of cut are shown below:

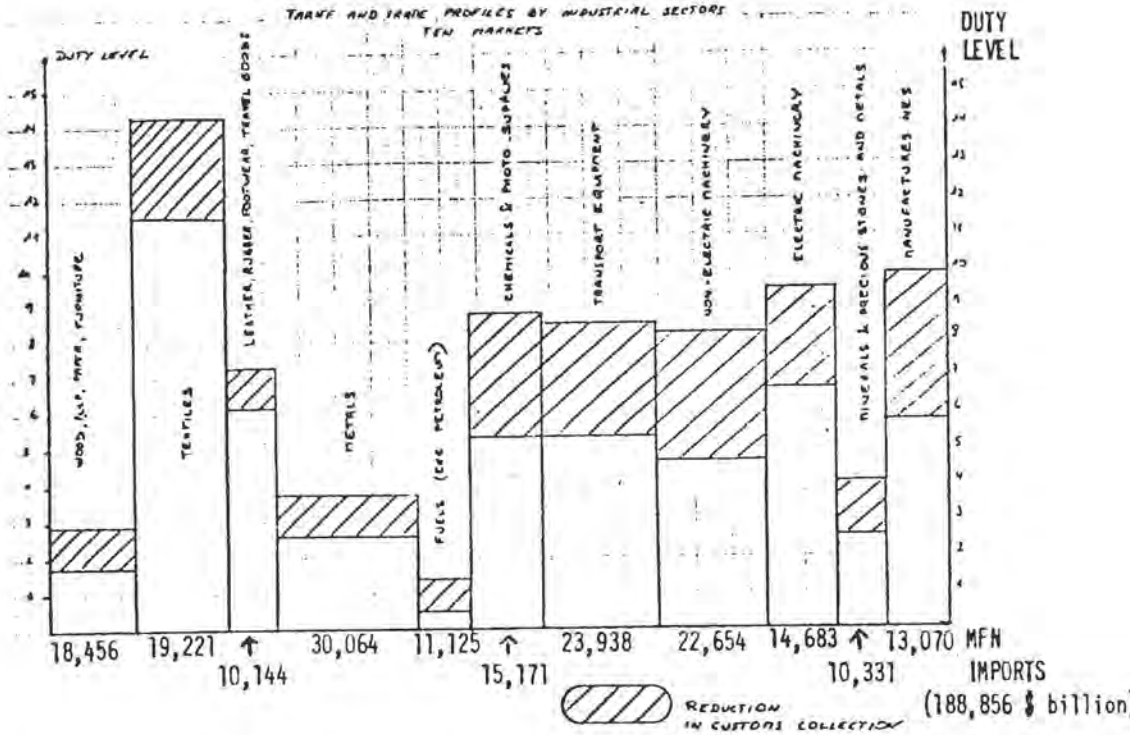
		Tariff Average		
		Pre-MTN	Post-MTN	Rate of reduction
Total industrial products	W	7.2	4.9	33
	S	10.6	6.5	38
- Raw materials	W	0.8	0.4	52
	S	2.6	1.7	36
- Semi-manufactures	W	5.8	4.1	30
	S	9.7	6.2	36
- Finished manufactures	W	10.3	6.9	33
	S	12.2	7.4	39

W = weighted average
S = simple average

On agricultural products, an overall average could not be calculated since many commodities are affected by measures other than tariffs. Taking only those items on which concessions were exchanged (and which represent about 30 per cent of trade in agricultural products), the average reduction amounts to about 40 per cent on the basis of weighted average and about 32 per cent if calculated from simple averages.

As to industrial sectors, the deepest cuts have been concentrated in non-electrical machinery, wood products, chemicals and transport equipment while less than average reductions are being made in the textiles and leather and rubber sectors. The deeper than average cut on engineering products reflects the complete dismantling of obstacles to trade in products falling under the civil aircraft agreement agreed by the major industrial countries.

The changes in the average level of duties and the value of trade involved can be seen from the following chart:



As for tariffs facing exports of developing countries, data available so far are only fragmentary. Nonetheless it appears that the average m.f.n. reduction on industrial products was less deep than the overall cut, about one quarter compared with one third. This reflects the fact that the products to which the tariff cutting formula was not applied are relatively more important with regard to exports from developing countries and, to a lesser extent, that the rate of reduction affecting products eligible for the Generalized System of Preferences was somewhat lower than the average overall cut. In the case of tropical products classified under Chapters 1-24 the m.f.n. rates are being cut by about one tenth only, the tariff action being mainly taken in the form of improvements in the GSP.

The picture regarding m.f.n. cuts on industrial products would, however, be different if products of potential interest to developing countries were also taken into account. Based on the simple average the rate of cut appears to be over 35 per cent, i.e. only slightly less than that for all industrial products combined. The depth of cut is again different if products of interest to developing countries are considered separately by stage of processing:

		Tariff Average		
		Pre-MTN	Post-MTN	Rate of reduction
All industrial products	W	7.5	5.5	26
	S	10.3	6.5	37
- raw materials	W	1.1	0.5	60
	S	2.0	1.4	32
- semi-manufactures	W	4.6	3.3	27
	S	9.1	6.1	32
- finished manufactures	W	13.6	10.3	24
	S	12.3	7.5	39
Agricultural products	W	7.9	6.9	12
	S	11.7	11.0	7

The reduction of the average m.f.n. tariff differential between raw materials, semi-manufactures and finished manufactures (based on the weighted averages) appears to be of the order of one and two percentage points:

	Pre-MTN	Post-MTN
raw materials/semi-manufactures	3.5	2.8
semi-manufactures/finished manufactures	9.0	7.0

A large number of products of export interest to developing countries benefit from more favourable treatment under the GSP scheme.

In assessing the effect of the negotiations on the Generalized System of Preferences, the trade considered covers combined imports of GSP products into the ten markets, originating in countries entitled to the GSP with the exclusion of Eastern trading area countries. This trade covers in fact also imports benefiting from other preferential or free-trade-area agreements. On the other hand, an important part of the eligible trade included here did not actually benefit from the GSP.[1]

[1] As reported in UNCTAD document TD/232 the rate of utilization of the various national GSP schemes varied among the ten markets from 13 to 76 per cent of imports eligible in 1976.

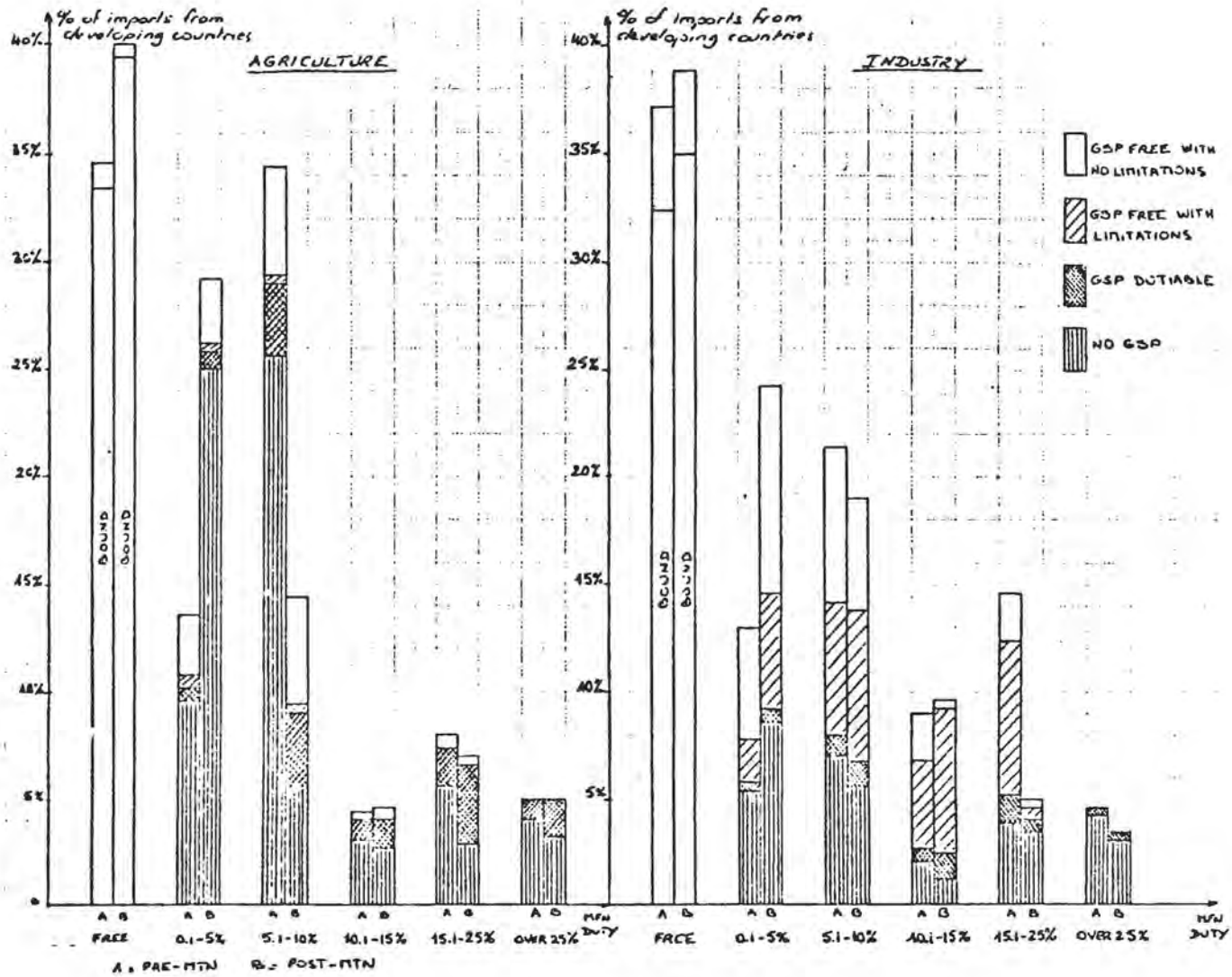
A different picture would emerge in agriculture and in industry. While concessions on tropical products significantly enlarge GSP coverage of agricultural products no comparable effect occurs with regard to industrial products.

Imports into the markets considered here of agricultural products originating in GSP beneficiaries amounted in 1976 to $23.3 billion. Two thirds of those imports ($15.2 billion) were dutiable on a most-favoured-nation basis of which about 27 per cent ($4.1 billion) were eligible for the GSP. As a result of the negotiations 60 per cent of imports from GSP beneficiaries would remain dutiable on an m.f.n. basis of which 35 per cent ($4.9 billion) would now be covered by the GSP. Moreover, full elimination of m.f.n. duties would affect $1.2 billion of imports, mostly not eligible for the GSP. GSP concessions, the bulk of which at GSP positive rates, result in an increase of GSP coverage of $0.8 billion (or 20 per cent).

Imports of industrial products amounted to $45.9 billion of which 63 per cent ($28.9 billion) were dutiable on an m.f.n. basis. Imports eligible for the GSP amounted to $18.5 billion or 64 per cent of dutiable imports on a most-favoured-nation basis. This percentage remains on the whole unchanged as a result of the negotiations. Most-favoured-nation duty-free concessions affect $0.8 billion of imports out of which $0.4 billion were covered by the GSP. The table below summarizes the value of 1976 imports from GSP beneficiaries and the changes in m.f.n. and GSP trade which would be affected by the m.f.n. concessions (billion dollars):

	AGRICULTURE		INDUSTRY	
	PRE-MTN	MTN CHANGE	PRE-MTN	MTN CHANGE
TOTAL	23.3		45.9	
m.f.n. free	8.1	+1.2	17.0	+0.8
m.f.n. dutiable	15.2	-1.2	28.9	-0.8
GSP covered	4.1	+0.8	18.5	-0.4
dutiable	1.9	+0.7	1.8	-
duty free	2.2	+0.1	16.7	-0.4

The chart below illustrates the changes in m.f.n. and GSP imports according to the level of pre- and post-MTN most-favoured-nation rates:



The bulk of agricultural imports not covered by the GSP which were subject to most-favoured-nation rates ranging from 5.1 to 10 per cent would be admitted after the negotiations at rates up to 5 per cent only. On the other hand a significant number of products offered for inclusion in the GSP schemes in the context of tropical products negotiations are facing most-favoured-nation rates ranging between 15 and 25 per cent and some even over 25 per cent.

As a result of the harmonizing effect of the formula on the m.f.n. rates, the distribution of GSP imports of industrial products according to m.f.n. rates shows a significant decrease in the m.f.n. duty range 15 to 25 per cent and a parallel increase in the m.f.n. duty range 0.1 to 5 per cent. On the other hand the value of GSP imports under m.f.n. duties ranging between 5 and 15 per cent is not significantly affected.

As already mentioned, the levels of post-MTN m.f.n. and GSP tariffs cannot be properly assessed. The final table illustrates nevertheless the parallel evolution of the m.f.n. and GSP tariff levels weighted by GSP imports before and after the MTN. Here again it can be noted that for all agricultural products included in the ten GSP schemes the m.f.n. weighted average shows a marginal decrease of the order of 5 per cent (from 11.7 to 11.2 per cent). On the other hand the GSP average shows a decrease of over 26 per cent (from 6.8 to 5 per cent) reflecting the GSP concessions offered in the tropical and agricultural products negotiations.

For industrial products the evolution of the two tariff levels reflects the more extensive coverage of the various GSP schemes in industry compared to agriculture. For industrial products eligible for GSP the percentage reduction of the m.f.n. rates is 32 per cent or one percentage point lower than the m.f.n. cut on all industrial products; the GSP average shows a marginal decrease from 1 per cent to 0.7 per cent, mainly

Evolution of M.F.N. and GSP Tariff Levels

(billion dollars and percentages)

		IMPORTS FROM GSP BENEFICIARIES	TARIFF WEIGHTED AVERAGE		RATE OF REDUCTION
			PRE-MTN	POST-MTN	
AGRICULTURAL PRODUCTS					
All GSP items		4.9			
	MFN		11.7	11.2	5
	GSP		6.8	5.0	26
GSP under limitations		0.6			
	MFN		11.2	10.8	4
	GSP		4.8	3.4	28
GSP without limitations		4.3			
	MFN		11.8	11.2	5
	GSP		7.1	5.2	26
GSP countries share in total imports:					
over 60%		4.0			
	MFN		12.1	11.5	5
	GSP		7.1	5.3	26
35 to 60%		0.6			
	MFN		10.7	10.3	3
	GSP		5.9	4.3	28
10 to 35%		0.2			
	MFN		8.5	7.7	9
	GSP		3.9	2.4	39
under 10%		0.1			
	MFN		10.4	9.5	8
	GSP		6.7	4.5	33
INDUSTRIAL PRODUCTS					
All GSP items		18.5			
	MFN		11.0	7.5	32
	GSP		1.0	0.7	28
GSP under limitations		10.4			
	MFN		12.2	9.2	24
	GSP		0.8	0.8	4
GSP without limitations		8.1			
	MFN		9.4	5.2	45
	GSP		1.1	0.6	51
GSP countries share in total imports:					
over 60%		6.6			
	MFN		10.4	6.2	40
	GSP		1.1	0.9	22
35 to 60%		5.3			
	MFN		13.5	10.1	25
	GSP		0.9	0.5	44
10 to 35%		4.6			
	MFN		9.5	6.7	29
	GSP		0.7	0.6	22
under 10%		2.0			
	MFN		9.2	6.1	33
	GSP		1.2	0.9	30

reflecting the reduction of positive GSP duties defined in relation to m.f.n. duties. However, the post-MTN average of the m.f.n. tariff on GSP products remains relatively high (at 7.5 per cent) compared to the m.f.n. tariff average on all industrial products (4.9 per cent).

The majority of GSP imports of industrial products ($10.4 billion) took place under GSP items subject to limitations. For these products, the m.f.n. average will remain substantially higher than the corresponding average on GSP products not subject to limitations.

On the other hand, the m.f.n. cut will be lower than average on products where the GSP beneficiaries account for 10 to 60 per cent of total supplies. It will be considerably higher with respect to products principally supplied by developing countries.

In conclusion, it appears that, for agricultural products, supplies from developing countries would benefit from increased m.f.n. duty-free admission and increased GSP coverage. For industrial products, the GSP coverage would be marginally reduced while duties on supplies not benefiting from the GSP would in general be reduced significantly.

CHAPTER III: AGREEMENTS ON SPECIFIC NON-TARIFF MEASURES AND ON AGRICULTURE

A number of multilateral Agreements were negotiated in the Tokyo Round. These have a prominent place among the results of the Negotiations. They should facilitate a more effective operation of GATT in the areas covered.

The following relate to specific types of non-tariff measures:

A. Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT (known as the Code on Subsidies and Countervailing Duties);

B. Texts of an Agreement on Implementation of Article VII of the GATT (known as the Customs Valuation Code);

C. Agreement on Government Procurement;

D. Agreement on Technical Barriers to Trade (known as the Standards Code);

E. Agreement on Import Licensing Procedures;

The following relate specifically to agriculture:

F. Texts on International Dairy Arrangement;

G. Arrangement Regarding Bovine Meat;

H. Multilateral Agricultural Framework

The agreements relating to non-tariff measures are in the main designed to bring more clarity and precision in the interpretation of the relevant GATT provisions and a greater uniformity and certainty in their application. Those on agriculture aim, inter alia, to achieve an increased level of international co-operation and consultation. The Standing Committees and Councils to be established will be serviced by the GATT secretariat.

There follow below summaries of the Agreements. An account of developments in their negotiation is given in Chapters V and VIII of Part I above.

During the negotiation of the Agreements, considerable attention was paid to the particular problems of the developing countries. As, however, this question is discussed in detail in Chapter VI below, where the results of the Tokyo Round as a whole as they affect developing countries are dealt with, it is not taken up in this Chapter.

A. AGREEMENT ON INTERPRETATION AND APPLICATION OF ARTICLES VI, XVI AND XXIII OF THE GENERAL AGREEMENT (CODE ON SUBSIDIES AND COUNTERVAILING DUTIES)

1. Main GATT provisions

(a) Subsidies

The relevant Article of the GATT (Article XVI) does not provide for the prohibition of subsidies in general. It does, however, impose two obligations on GATT member governments. The first is that subsidies likely to increase exports, or reduce imports, must be notified to the GATT. The second is that an injured party must be offered an opportunity to consult when serious prejudice has been established.

The Article recognizes that export subsidies may cause injury. Consequently, it provides:

(i) that GATT member governments must avoid granting export subsidies on primary products which would result in them obtaining a more than equitable share of world exports in these products; and

(ii) that, in the case of non-primary products, they should not grant, either directly or indirectly, any form of subsidy which would lower export prices below prices in domestic markets. This prohibition on the use of export subsidies is in force for developed countries that have subscribed to the 1960 Declaration on Export Subsidies, which provides for such prohibition.

(b) Countervailing duties

The relevant GATT Article (Article VI) provides that no countervailing duty shall be levied on any product in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, upon the manufacture, production or export of any merchandise. The right to impose a

countervailing duty requires that the subsidy whose effects it should offset is such as to cause, or threaten, material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

The Article provides for the imposition of countervailing duties by an importing country at the request of a third country whose export interests are adversely affected by the subsidized exports. This procedure has, however, never been used in practice.

In cases where domestic subsidies in an importing country adversely affect imports, and thereby nullify concessions that an exporting country has negotiated under the GATT, that country may have recourse to the GATT complaints procedures (Article XXIII) and as a last resort - if so authorized by the GATT Contracting Parties - apply countermeasures.

2. Main features of the Agreement

The Agreement covers subsidies for industrial and primary (i.e. agricultural, fisheries and forestry) products. Minerals, hitherto classed as "primary products", will in the future be classed as "manufactured products" to which stricter disciplines are applied.

The main objective of the Agreement is to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory to the Agreement, and that countervailing measures do not unjustifiably impede international trade. For this purpose it establishes an agreed international framework of rights and obligations and a mechanism of international surveillance and dispute settlement.

The Agreement is based on the relevant GATT Articles (VI, XVI and XXIII) the key provisions of which have been described above. The most important elements elaborated or interpreted by the Agreement are the following:

(a) Subsidies

Signatories undertake to seek to avoid causing serious prejudice to the interests of other signatories through the use of any kind of subsidy (essentially domestic subsidies, export subsidies already being prohibited for developed countries under the 1960 Declaration referred to above). Examples of domestic subsidies likely to cause such serious prejudice are given.

The list of prohibited export subsidies on manufactured goods established in connexion with the preparation of the 1960 Declaration is modernized and enlarged. The dual pricing requirement is no longer obligatory.

The definition of the ways in which export subsidies on primary products may give the exporting country more than an equitable share of world export trade has been made more precise.

More transparency has been brought to the practice of granting subsidies in general. A signatory may address a written request for information on subsidies granted by another signatory, who should make such information available as fully and as quickly as possible.

A consultation and conciliation procedure is established for cases where a signatory considers that an illegal export subsidy is being granted or that another subsidy causes injury, nullification of benefits or prejudice to its trade interests (and countervailing duties cannot easily be applied).

(b) Countervailing duties

Signatories are required to ensure that the imposition of countervailing duties is in accordance with the provisions of Article VI of GATT (i.e. includes a material injury test). The definition of material injury provides that the determination of injury should be based on the objective examination of both:

- the volume of subsidized imports and their effect on prices in the domestic market for like products; and
- the consequent impact of these imports on domestic producers of such products.

The Agreement also provides:

(i) detailed provisions on procedures for countervailing investigations;

(ii) an obligation to consult with the exporting country before the opening of a countervailing investigation;

(iii) that countervailing duties may be replaced by voluntary price undertakings;

(iv) rules on provisional and retroactive application of countervailing duties.

(c) Settlement of disputes

The procedures for settlement of disputes provide that if a mutually acceptable solution has not been reached within the period specified following the request for consultations, any signatory party to such consultations may refer the matter to the Committee of Signatories which is established under the Agreement.

Signatories are to make every effort to reach a mutually acceptable settlement within the specified period. Failing this, either party may request the Committee to appoint a special panel to consider the matter. Such a panel, consisting of three or five members according to the nature of the matter involved, can be convened at short notice if necessary. It will submit its report to the Committee which would make recommendations. If these are not followed, the Committee may authorize countermeasures. This possibility already exists under the established GATT complaints procedures (Article XXIII) referred to above; the important change here is that the authority to act has been transferred from the GATT Council to the Committee of Signatories and that strict time-limits have been established.

This provision will be of special importance in cases of import substitution subsidies and subsidization in third markets, in which cases countervailing duties are not an effective countermeasure.

B. TEXTS OF AN AGREEMENT ON THE IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT (CODE ON CUSTOMS VALUATION)

1. The GATT provisions

Customs valuation can constitute an important element of trade restriction. Uncertainty over the value for the assessment of customs duties on a particular imported good can have a more serious effect on trade than the customs duty itself. The customs value is important not only for the assessment of customs duties. It is also used as a basis for taxes and charges levied at the border and for the administration of licences and import quotas when these are based on the value of goods.

The principles and the administration of customs valuation methods are dealt with in GATT Articles II, VII and X.

(a) Article II lays down an obligation on GATT members not to alter their methods of determining value or of converting currencies so as to impair the value of any tariff concessions bound in the GATT.

(b) The basic provisions relating to valuation are contained in Article VII. This lays down that the customs value should be based upon the "actual value" of the imported merchandise, or of a similar merchandise, and not on the value of products of national origin or on arbitrary or fictitious values. The "actual value" is the price at which, at a specific time and place, in the ordinary course of trade, imported merchandise or similar goods are sold or offered for sale under fully competitive conditions. When it is not possible to determine the actual value, the nearest ascertainable equivalent of such value must be sought.

Article VII also says that the customs value should not include any domestic duty or tax applicable within the country of origin, from which the product would have been exempted or which would be relieved by means of refunds.

(c) Article X provides for publication of all laws and regulations related, inter alia, to customs valuation and for the establishment of independent judicial or administrative tribunals for the purpose of prompt review and correction of administrative action relating to customs matters.

2. Aims in the field of customs valuation

The GATT provisions, however, do not set forth the elements of a complete valuation standard. Lacking are certain elements commonly present in such standards which the GATT member governments are free to define as they wish. In particular, each party is free to determine, in its own national rules, the criteria to be used to calculate the value of the imported goods when it is not possible to establish the actual value. In addition, by virtue of the provisional application of GATT, those countries whose pre-GATT legislation contained provisions not in accordance with GATT Article VII (for example, valuation on the basis of the value of merchandise of national origin) were not

obliged to modify them in order to bring them in line with the GATT provisions. This is why governments have so far used widely varying assessment methods, some of which have a clearly protective character.

The objective of the negotiations in the field of customs valuation was to elaborate rules for the application of GATT provisions in order to ensure greater uniformity and certainty in their application, and to provide for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values and which conforms to commercial realities.

3. Main features of the texts of an Agreement

As indicated on page 74, two separate texts on customs valuation were opened for acceptance by governments following the April 1979 meeting of the Trade Negotiations Committee. Elements described under (a), (b) and (c) below are common to both texts. The version supported by many developing countries includes the additional elements described under (d).

(a) Valuation methods

Five valuation methods are set out. These methods are arranged in a hierarchical order which is to be followed by customs officers in all cases. Only when no valid customs value can be found under the first method, can the second method be used, and so on.

Under the first, and primary, method, the transaction value as expressed by the invoice price should be accepted as accurate, to be adjusted by such elements as commissions, brokerage fees, packaging costs, some materials and services, to the extent they were not included in the price actually paid or payable.

If the transaction value is not acceptable because there is no invoice price and/or the sale does not take place under fully competitive conditions, then Customs will use the second method, e.g. transaction value of identical goods sold under fully competitive conditions, for export to the same country of importation, and exported at or about the same time as the goods being valued.

If this method cannot be used, then the next one provides for determination of customs value on the basis of the transaction value of similar goods sold under the same conditions as described in the preceding paragraph.

If all three methods turn out to be inadequate, the importer can choose between the fourth and fifth methods to establish the value. If he does not exercise this option, then the hierarchical order will be maintained and the fourth method will be applied. Under this method, the imported goods' resale price will be used as a starting point, from which the estimated commission or profit and all the necessary expenses and taxes incurred in the importing country and/or associated with the resale of the goods will be deducted. If the resale price of the goods in question is not available, then the price of identical or similar imported goods can be used.

The fifth method is based on a computed value which consists of material and manufacturing costs, profits and general expenses for the goods being valued. The relevant information should be supplied by the producer and if he cannot or does not want to do this then the use of this standard will be virtually impossible.

If all the five methods turn out to be inapplicable then the customs value shall be determined using reasonable means consistent with the principles of the Agreement and of Article VII of the GATT, on the basis of data available in the country of importation. The Agreement excludes certain methods from application of this context.

Provision is made for the transaction value to be accepted by the Customs in sales between related persons when the importer demonstrates that this value closely approximates for instance the transaction value in sales between unrelated buyers of identical or similar goods for export to the same country.

Each party to the Agreement may choose whether it will apply it on an f.o.b. or c.i.f. basis.

(b) Supervision of the Agreement

The Agreement provides for the establishment of a Committee on Customs Valuation to supervise the implementation of the Agreement and allow signatories to consult on matters concerning management of the Agreement. A Technical Committee under the auspices of the Customs Co-operation Council is also established.

(c) Other provisions of the Agreement

The Agreement also contains provisions on more technical aspects such as currency conversion, right of appeal to a judicial authority, publication of laws and regulations concerning customs valuation and prompt clearance of the goods.

(d) Provisions appearing in developing-country text only

These provisions should be applied to or by developing countries only, with one exception concerning the comparison tests referred to in Article 1:2(b) and (c) which all parties should make available to both related and non-related persons. Special provisions for developing countries should have precedence and be applied as if other provisions of the Agreement were not existing or were accordingly modified. The main elements of these provisions are the following:

(a) a developing country, accepting the Agreement may delay its application for a period of ten years;

(b) the burden of proof that a relationship between buyer and seller does not influence the price lies with the importer;

(c) an importer may exercise his option between the fourth and fifth method of valuation only if the Customs so agree;

(d) in addition to the elements specified in the Agreement the following may be included in the customs value:

(i) any additional consideration which may influence the price (e.g. advertising costs);

(ii) any price reduction not freely available;

(e) definition of related persons is more flexible, to cover, for example, sole agents or sole distributors;

(f) special derogations, if agreed by all parties, are envisaged in special cases (e.g. minimum prices).

C. AGREEMENT ON GOVERNMENT PROCUREMENT

1. GATT provisions

Existing GATT provisions permit discrimination by governments in their procurement activities. The relevant Article states, inter alia,

- "the provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale."

2. Main features of the Agreement

(a) Principles

The objective of the Agreement is to secure greater international competition and thus more effective use of tax revenues and other public funds through the application of commercial considerations when governments purchase for their own use.

To this end, the Agreement establishes the principles of non-discrimination and national treatment as between domestic products and suppliers and products and suppliers of other participating countries, with respect to laws, procedures and practices regarding government procurement.

(b) Scope and coverage

The Agreement will apply when all the following conditions are met:

(i) that the procurement is for products (services only to the extent that they are incidental to the supply of products and cost less than the products themselves);

(ii) that the buyer is a governmental entity or agency which the party in question has listed in an annex to the Agreement;

(iii) that the purchase is of a value of SDR 150,000 (approximately US$195,000) or more.

A "best endeavour" clause provides that signatories are to inform entities not covered, including those of regional and local governments or authorities, of the Agreement and the overall benefits it entails.

To join the Agreement, a country is required to make a contribution by way of a list of entities. For developing countries, this contribution would be in relation to their individual development, financial and trade needs with least-developed countries making the smallest contribution.

(c) Procedural obligations

To ensure the effective application of the basic principles

- entities shall use open or selective tendering procedures and only in closely defined circumstances contact suppliers individually. Open

tendering procedures are those under which all interested suppliers may submit a tender. Selective procedures are those under which suppliers invited to do so may submit a tender,

- these procedures shall function in a transparent and equitable manner so as to ensure that the principles of the Agreement are applied and seen to be applied. The provisions in this regard relate basically to:

  (i) the prescription of technical characteristics of products to be purchased;

  (ii) the qualification of suppliers and other conditions affecting participation, such as ex-ante publicity/information, time-limits, invitation and selection procedures, etc.

  (iii) rules for the submission, receipt and opening of tenders;

  (iv) criteria for award of contracts;

  (v) the amount and type of ex post information to be given to suppliers or other parties; procedures for the hearing and reviewing of complaints;

  (vi) the collection of basic annual statistics.

(d) Dispute settlement

A Committee on Government Procurement, consisting of representatives of signatories, to administer the Agreement is established. The parties shall make every endeavour to resolve disputes bilaterally. Rules on multilateral dispute settlement are also provided.

(e) Review and negotiations

The Committee shall review annually the implementation and operation of the Agreement. Not later than the end of the third year, and regularly thereafter, the parties shall undertake further negotiations with a view to broadening the coverage and improving the Agreement, especially by enlarging the lists of entities subject to the Agreement. The possibilities of expanding the Agreement to cover service contracts will be explored at an early date.

(f) Exceptions

General and security exceptions are provided for broadly along the lines of the relevant GATT Articles (XX and XXI). Purchases made under tied aid are excluded from the Agreement.

(g) Participation

Non-contracting parties to GATT may join the Agreement on terms related to the effective application of rights and obligations to be agreed between such countries and the parties to the Agreement. In this context it should be noted that measures cannot be taken at the border which would have the effect of frustrating the objectives of the Agreement.

D. AGREEMENT ON TECHNICAL BARRIERS TO TRADE

1. GATT provisions

The relevant provisions of the GATT are not sufficient in themselves to enable all the problems that arise in the field of technical barriers to trade to be dealt with. There was a need to go beyond the GATT provisions.

2. Main features of the Agreement on Technical Barriers to Trade

(a) Aims

The objective of the Agreement cannot be to abolish all restrictions. Its aim is to remove unnecessary barriers to trade. It does not set out to draw up new technical regulations, testing and certification schemes, which fall within the activities of other institutions and organizations. For the first time in the field of standardization, there will be rules of a legally binding character between governments which will enable them to complain and obtain redress in the case of code violations by other signatories.

(b) Scope

The Agreement's provisions are applicable to all products, both agricultural and industrial.

(c) Provisions

Specific provisions in the Agreement have as their aim;

(i) to encourage governments to adopt international standards as a basis for their technical regulations whenever appropriate. This is a long-term aim to reduce disparities between regulations between different countries and within countries;

(ii) to avoid the creation of unnecessary obstacles to trade and to accord national and non-discriminatory treatment to imports;

(iii) to encourage the adoption of international standards whenever appropriate;

(iv) to ensure that signatories are kept informed about standards or technical regulations under preparation, when these have a significant effect on trade, through notification to the GATT secretariat of the products involved and through consultation with other signatories;

(v) the creation of enquiry points to ensure transparency of information;

(vi) the application of the discipline of the Agreement to local, state and regional regulations, etc., and to voluntary standards. Central governments accept a "best endeavours" clause (often referred to as a second level obligation) to this effect and accept responsibility for compliance;

(vii) the establishment of a Committee on Technical Barriers to Trade concerned in particular with settlement of disputes and formulation of the necessary procedures.

E. AGREEMENT ON IMPORT LICENSING PROCEDURES

1. Background

Import licensing requirements in some countries frequently involve time-consuming, needlessly complicated and often expensive procedures. At best, these requirements are an annoyance to the local importers and the foreign exporters trying to do business with one another. At worst, the procedures can become import barriers in themselves, used by governments to limit imports.

On the other hand, many governments find the issuance of such licences helpful, and sometimes indispensable, in two ways:

First, by using so-called "automatic" licensing procedures, administrations can frequently gather statistical and other factual information with regard to imports in a relatively efficient and inexpensive manner. Such licences are not related to any restrictions on the inward flow of goods, and are issued freely, with little or practically no delay.

Secondly, in countries where there are restrictions on imports (for instance, in the form of quotas), administrations often issue so-called "non-automatic" licences which are evidence that the particular goods being imported are permitted under those restrictions.

The Agreement on Import Licensing Procedures is aimed at ensuring that both types of licensing procedures do not act as restrictions on imports.

2. Main features of the Agreement

(a) Provisions applying to import licensing procedures generally

The Agreement will operate side by side with the relevant GATT provisions. It provides that the various countries' rules for import licensing procedures are to be neutral in application and administered in an equitable manner. Rules and information concerning filing procedures are required to be published by governments and made available to the GATT secretariat. Application forms and procedures have to be as simple as possible, with applicants given a reasonable period within which to submit applications and required to approach only one administrative body in nearly all instances. Refusals cannot be based on minor errors in documentation or on minor variations in value or quantity; and foreign currency has to be made available to licence holders on the same basis as to importers of goods not requiring licences. Any person or firm otherwise eligible to engage in particular import operations would be equally eligible to apply for an import licence, whether "automatic" or "non-automatic".

(b) Provisions applying specifically to automatic licensing procedures

Automatic import licensing procedures, that is, those where approval of the application is freely granted, have to be administered so as to have no restrictive effects, and may be maintained as long as the circumstances that gave rise to their introduction prevail or as long as their underlying administrative purposes (for example, the collection of statistical information) cannot be achieved in a more appropriate way. Licence application may be made at any time prior to customs clearance of the goods, with approval within a maximum of ten working days.

(c) Provisions applying to non-automatic licensing procedures

Non-automatic licensing procedures, that is, those related to the administration of quotas and other types of import restrictions, should not as such have trade restrictive effects on imports in addition to the effects of the restrictions themselves. Governments have to provide all relevant information concerning the administration of the restrictions, and are required to provide information concerning any quotas. In the event of a refusal, a licence applicant is entitled to know the reasons therefor, and shall have a right of appeal or review of his case, as provided under domestic law. The period for processing applications is to be as short as possible. Licences will remain valid long enough to permit imports, including those from distant sources, except in certain unforeseen circumstances. Governments are not to discourage or prevent full utilization of quotas. When issuing licences, including those sought by new importers (for whom consideration would be given, so as to ensure a reasonable distribution of licences to them), governments are required to take account of the desirability of issuing licences for goods in economic quantities, that is, in such large or small amounts as normally would be imported. In allocating licences, account is to be taken of whether previously issued licences have been utilized. Also, in the case of quotas not allocated among supplying countries, licence holders will be able to decide freely as to where to purchase the foreign products to be imported.

(d) Provisions related to the operation of the Agreement

A Committee on Import Licensing is established under the Agreement, to be composed of representatives of the countries parties to the Agreement. Consultations and the settlement of disputes on the operation of the Agreement will be subject to the normal GATT procedures.

Provision is made for review of the operation of the Agreement and amendments to its text, as well as for withdrawal from the Agreement.

F. TEXTS ON INTERNATIONAL ARRANGEMENT ON DAIRY PRODUCTS

1. Aims

The Arrangement aims:

(a) to expand and liberalize world trade in dairy products;

(b) to achieve greater stability in world trade;

(c) to avoid surpluses and shortages, undue price fluctuations and, more generally, serious disturbances in world trade;

(d) to improve international co-operation in these areas.

2. Coverage

The Arrangement in general covers all dairy products; more specifically certain milk powders, milk fats including butter, and certain cheeses.

3. Provision and exchange of information

Participants undertake to provide regularly and promptly information which will enable the Council (which will administer the Arrangement) to monitor and assess the world market situation for the products concerned. This information will include past, current and forward-looking data on production, consumption, prices, stocks and trade, as well as information on domestic policies, trade measures, trade agreements, etc.

4. Establishment of the International Dairy Products Council

The Council set up under the Arrangement will:

(a) evaluate the world market situation and outlook;

(b) review the functioning of the Arrangement;

(c) identify possible remedial solutions for consideration by governments if it finds that a serious market disequilibrium has developed or threatens;

(d) be made up of representatives of all the participants; take decisions by consensus; and normally meet at least twice a year;

The Arrangement will enter into force on 1 January 1980 for three years with provision for further three-year extensions.

5. Main economic features of the Arrangement

(a) Food aid

Participants agree:

(i) within the limits of their possibilities, to furnish dairy products, to developing countries as food aid;

(ii) that harmful interference of food aid or concessional transactions with normal patterns of production, consumption and trade should be avoided.

(b) Protocols on certain dairy products

The Arrangement includes three Protocols, containing specific obligations. Each Protocol will be administered by a Committee.

As indicated on page 34, two separate texts on dairy products, were annexed to the Procès-Verbal following the meeting of the Trade Negotiations Committee on 11-12 April 1979. In the text supported by some developing countries, provisions have been included relating inter alia to maximum prices for products covered by the three Protocols.

(i) Protocol Regarding Certain Milk Powders

The Protocol establishes minimum export prices for the following "pilot" products, defined in terms of milk fat and water content, packaging, and terms of sale (f.o.b. in general, but for certain countries "reference points" are foreseen):

Skimmed milk powder	US$425 per metric ton
Whole milk powder	US$725 per metric ton
Buttermilk powder	US$425 per metric ton

The levels of the minimum prices can be modified, taking into account the operation of the Protocol and developments in the international market. They will be subject to review at least once a year.

Adjustments in the minimum prices are provided for to take account of differences between the product as exported and the "pilot" product.

Subject to certain conditions, participants may export or import skimmed milk and buttermilk powders for animal feed at prices below the minimum. The main condition is that the powder has been denatured by a process approved by the Committee, so as to ensure that it is used exclusively for animal feed.

The price provisions of the Arrangement do not apply to exports to developing countries which are donated or destined for relief purposes, food-related development purposes or welfare purposes.

The Committee has the authority to grant derogations from certain provisions of the Protocol in order to remedy difficulties which observance of minimum prices might cause to certain participants.

(ii) Protocol Regarding Milk Fat and Protocol Regarding Certain Cheeses

These Protocols are similar to the one on milk powders, but have no provisions for food aid.

The Protocol on Milk Fat establishes minimum export prices for:

Anhydrous milk fat	US$1,100 per metric ton
Butter	US$925 per metric ton

The Protocol on Certain Cheeses establishes a minimum export price for cheese (defined, among other things, as having a fat content in dry matter, by weight, equal to or more than 45 per cent and a dry matter content equal to or more than 50 per cent) of US$800 per metric ton.

A provision particular to this Protocol permits exports, in exceptional circumstances, of small quantities of natural unprocessed cheese which would be below normal export quality as a result of deterioration or production faults.

6. Consultation and settlement of differences

Under the Arrangement:

(a) provision is made for consultations aimed at avoiding or resolving problems that arise; each participant is required to afford adequate opportunity for consultation;

(b) it is recognized that nothing in the Arrangement shall affect the rights and obligations of participants under the GATT. This means, for instance, that if a participant considers that his problem has not been solved to his satisfaction, he can resort to the general

GATT procedures for the settlement of differences. (GATT Article XXII or XXIII.). Normally, he would not do so until he had exhausted all the possibilities offered under the Arrangement;

(c) where there are differences or difficulties in connexion with any of the three Protocols, participants unable to reach a satisfactory solution among themselves may bring the matter to the Committee which administers the Protocol concerned. If a satisfactory solution cannot be reached there, the matter can be brought to the Dairy Council with a view to facilitating a solution. Subject to certain conditions, a participant to a Protocol is permitted to take unilateral emergency action to safeguard his position if his commercial interests are seriously endangered and likely to be materially prejudiced by a country not bound by that Protocol.

G. ARRANGEMENT REGARDING BOVINE MEAT

1. Aims

The aims of the Arrangement are to promote expansion, liberalization, stabilization and international co-operation in the international meat and livestock market and trade. The Arrangement covers beef and veal; and live cattle.

The means to achieve these aims consist largely of a system of information on developments in the market and a procedure for discussion of, and consultation on, all matters of importance in this area. Participants are required to provide regularly information, including past, current and forward-looking data on production, consumption, prices, stocks and trade, as well as information on domestic policies, trade measures, trade agreements, etc.

2. The International Meat Council

The Council established under the Arrangement will have functions in line with those of the International Dairy Products Council, namely:

(a) to evaluate the world market situation and outlook;

(b) to review the functioning of the Arrangement;

(c) to identify possible remedial solutions for consideration by governments in situations of serious market disequilibrium or threat thereof.

The Council will be made up of representatives of the participants. Decisions will be taken by consensus. The Council will meet at least twice a year.

The Arrangement will enter into force on 1 January 1980 for three years with provision for further three-year extensions.

3. Consultation and settlement of differences

As in the case of the International Dairy Arrangement - with which it has many common features - the Arrangement Regarding Bovine Meat stresses the importance of the process of consultation between participants when problems arise. Similarly, nothing in the Arrangement affects the GATT rights and obligations of participants including, if necessary, the possibility of final resort to the general GATT procedures for the settlement of differences. (Articles XXII and XXIII.)

H. MULTILATERAL AGRICULTURAL FRAMEWORK

The question of the Multilateral Agricultural Framework and the negotiations relating thereto are discussed in Chapter V:G of Part I.

The agreed text reads:

It is recommended to the CONTRACTING PARTIES to further develop active co-operation in the agricultural sector within an appropriate consultative framework.

It is therefore recommended to the CONTRACTING PARTIES that the definition of this framework and its tasks be worked out as soon as possible.

CHAPTER IV: FRAMEWORK FOR CONDUCT OF INTERNATIONAL TRADE

The aim of the negotiations in this area was to reinforce certain GATT provisions in their application, through the refinement or establishment of appropriate rules and procedures, and to bring about the adaptations necessitated by the important changes in trade relations, in particular those between developed and developing countries.

The specific subjects dealt with in the negotiations were the following:

1. the legal framework for differential and more favourable treatment for developing countries in relation to GATT provisions;
2. the applicability of the principle of reciprocity in trade relations between developed and developing countries and the fuller participation of developing countries in the framework of rights and obligations under the GATT;
3. safeguard action for development purposes;
4. safeguard action for balance-of-payments purposes;
5. notification, consultation, dispute settlement and surveillance;
6. export restrictions and charges.

Five texts were agreed upon covering these questions, 1 and 2 above being incorporated in one text.

A description of the negotiations on these subjects and of the texts that emerged is given in Chapter XI of Part I. This Chapter indicates some of the more important results of the negotiations.

A. Enabling Clause

The single most important element in this area of the Tokyo Round was the establishment of differential treatment for developing countries as an integral part of the GATT system. The Enabling Clause, which covers both items 1 and 2 above, provides for such treatment in respect of:

- tariff preferences accorded under the GSP
- non-tariff measures governed by codes negotiated under GATT auspices
- tariff and, subject to conditions that may be prescribed, non-tariff preferences granted to one another by developing countries in the framework of regional or global trade arrangements
- special treatment for least-developed countries.

The Clause also, inter alia:

- provides that the extension of differential treatment for developing countries must not prevent the reduction of trade barriers on an m.f.n. basis, nor raise barriers to the trade of countries to which such treatment is not applied
- provides that differential treatment accorded by developed countries must be designed to respond positively to the needs of developing countries
- establishes consultation procedures to deal with difficulties that may arise in connexion with the introduction, modification or withdrawal of differential treatment
- reaffirms and strengthens the developed countries' commitment not to seek in trade negotiations concessions inconsistent with the needs of the developing countries concerned
- states the expectation of developing countries that they will be able to participate more fully in the framework of rights and obligations under the GATT with the progressive development of their economies and improvement in their trade situation. In this connexion, the serious difficulties of the least-developed countries in making concessions and contributions are recognized.

B. Safeguard action for development purposes

The purposes for which the relevant GATT provisions can be invoked have been extended so that:

- measures hitherto permitted only for the purpose of establishing a particular industry could now be used by developing countries to modify or extend existing production structures to meet the priorities of their economic development.

Developing countries are also given the possibility, in certain circumstances, of avoiding procedural delays in implementing such measures, by being allowed to take action after notification but prior to consultations or negotiations.

C. Safeguard action for balance-of-payments purposes

Some important points to note in the Draft Declaration on Trade Measures for Balance-of-Payments Purposes, including those relating to developing countries, are the following:

- recognition that developed countries should avoid the imposition of restrictive trade measures for balance-of-payments purposes to the maximum extent possible.
- the application of GATT procedures to all types of restrictive trade measures used for balance-of-payments purposes, including surcharges and other so-called sophisticated trade measures. This means that, procedurally, all such measures will be dealt with in the same way and will all be subject to consultations in the GATT Balance-of-Payments Committee. This should lead to an improvement in the surveillance of these measures.
- the requirement that governments should give preference to the type of measure having the least disruptive effect on trade; avoid the simultaneous application of more than one type of trade measure; and, whenever practicable, publicly announce a time-table for the removal of the measure.
- the possibility of notification of balance-of-payments restrictions imposed by other countries.

- the simplification of procedures for consultations on balance-of-payments restrictions imposed by developing countries and the possibility of focussing attention in these consultations on external factors that might be contributing to the balance-of-payments difficulties of these countries.
- the requirement that the developed countries which are compelled to apply restrictive import measures for balance-of-payments purposes take into account the export interests of developing countries.
- the availability of the technical assistance facilities of the GATT secretariat for developing countries in preparing for their balance-of-payments consultations.

D. Notification, consultation, dispute settlement and surveillance

The draft Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance represents a tightening up of the existing GATT procedures for consultation and the resolution of disputes. The improvements introduced include:

- the requirement for governments, in addition to their existing GATT obligations regarding publication and notification, to notify to the maximum extent possible the adoption of trade measures that affect the operation of GATT.
- strengthening of the procedures for consultation.
- introduction of rules for conciliation and resolution of trade disputes.
- detailed provisions on establishment and composition of panels to examine complaints, and rules covering the handling of panels' findings and follow-up action on their recommendations by the GATT Contracting Parties.
- a regular and systematic review of developments in the trading system by the GATT Contracting Parties.
- confirmation of special facilities for use of the procedures by developing countries and of the availability of the GATT secretariat's technical assistance.

- the requirement that the Contracting Parties, in their surveillance rôle, should pay particular attention to trade developments affecting the interests of developing countries.

E. Export restrictions and charges

One of the priority tasks for the GATT Contracting Parties in the post-Tokyo Round period will be to reassess the GATT provisions relating to export restrictions and charges in the context of the international trade system as a whole. This is provided for in the draft Understanding Regarding Export Restrictions and Charges.

CHAPTER V: MULTILATERAL SAFEGUARD SYSTEM

A full description of developments in the negotiations on safeguards and on their outcome is given in Chapter X of Part I. When the Trade Negotiations Committee met in April 1979, negotiations had been carried as far forward as they could be at that time. It was agreed that the work on safeguards, referred to in paragraph 3(d) of the Tokyo Declaration (see Annex B) should be continued within the framework and in terms of that Declaration as a matter of urgency, taking into account the work already done, with the objective of reaching agreement before 15 July 1979.

CHAPTER VI: THE RESULTS FOR DEVELOPING COUNTRIES

A. Introduction

A major objective of the developing countries in the Tokyo Round was to seek improved and predictable conditions of access for an increasingly diversified range of export products, an improved framework for the conduct of international trade taking into account their development, financial and trade needs, and special and differential treatment where this was feasible and appropriate, including special treatment for the least-developed countries. They were also concerned to ensure that any liberalization achieved would be placed on a secure footing.

In the following pages, a summary of the picture which has emerged in the various areas of the negotiations in response to developing country objectives has been documented. Individual countries will no doubt make their evaluation in the light of their own particular interests.

In the context of the uncertain financial and economic conditions in which the Tokyo Round took place, the results achieved represent a significant improvement of trading conditions for developing countries, including the tariff treatment of their exports.

The multilateral Agreements that have been negotiated will produce greater transparency in trade, reduce the scope for arbitrary use of non-tariff measures in a number of areas and provide mechanisms for consultation, aimed at greater international co-operation and more effective monitoring of trade practices. The effective working of agreed rules and procedures will become of growing importance to developing countries in the protection of their trade interests as they participate increasingly in world trade.

A major result of the Tokyo Round is the provision of a legal basis for the Generalized System of Preferences, for preferential trade relations among developing countries and for other forms of special and differential treatment for these countries, including special treatment for the least-developed among them. Overall, the result achieved in this area is a positive step in terms of international trade relations and a response to a number of pre-occupations of developing countries.

However, as indicated below, progress in certain areas of the Tokyo Round falls below the expectations of developing countries. For example, the need has been stressed for further efforts in the field of item-related non-tariff measures, such as quantitative restrictions. Some specific concerns of developing countries in such areas as customs valuation and anti-dumping are identified in the alternative texts of certain provisions put forward by these countries.

Likewise, participants in the Tokyo Round have agreed to continue negotiations towards an acceptable safeguards arrangement which is of major importance to developing countries in the context of future international trade relations.

The subjects covered in the sections that follow are:

B. Tropical products

C. Tariffs

D. Non-tariff measures

E. Agriculture

F. International framework for the conduct of world trade.

B. TROPICAL PRODUCTS

Following the establishment of procedures for negotiations in the Group "Tropical Products", developing countries submitted requests for concessions and contributions to their developed-country trading partners. These requests not only covered typical tropical products, but also a broad range of other products - agricultural, raw materials and minerals, semi-manufactures and manufactures - of which they were producers and actual or potential exporters. For many countries, the requests broadly represented their "shopping lists" in terms of the product-related negotiations dealing with tariffs and non-tariff measures. The following should therefore be read with this background in mind.

The first results in the Tokyo Round were achieved in the framework of the Group "Tropical Products", m.f.n. concessions being implemented without phasing, and GSP contributions and certain non-tariff measure actions being put into effect in 1976 and 1977. Requests not fully met or not responded to were subsumed into the negotiations on agriculture and non-tariff measures as well as more generally into the negotiations on tariffs. The Group "Tropical Products" continued to meet from time to time, however, to review developments in these areas with respect to products originally subject to requests in the framework of the Group "Tropical Products" and to provide an opportunity for comments and suggestions as to how further progress might best be made.

In the paragraphs that follow, a global picture of the results of the negotiations on requests made initially in the framework of tropical products is illustrated in relation to the coverage of concessions and contributions according to tariff lines[1], bearing in mind that negotiations were continuing on certain aspects of interest to developing countries, including tropical products, at the time of preparation (early April 1979) of this summary and not all results, including additions and/or withdrawals, had been reported. For a global picture of the situation regarding tariff reductions, reference might be made to Chapter II of this Part.

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[1] It should be noted that the level of tariff line detail may vary significantly in the tariff schedules of the participants making concessions and contributions.

As indicated in Table 1, pages 162 and 163, of the 4,400 dutiable items at the tariff-line level subject to requests for concessions under procedures established by the Group "Tropical Products", m.f.n. concessions and GSP contributions were granted with respect to some 2,930 tariff lines. It might be noted that within the above figure, approximately 940 m.f.n. concessions and GSP contributions were implemented in the initial phase of the tropical products negotiations during the period 1976-1977. Developing country requests fell about equally within CCCN Chapters 1-24 and CCCN Chapters 25-99.

Of 1,180 dutiable tariff lines subject to m.f.n. concessions or GSP contributions falling within CCCN Chapters 1-24, a preliminary analysis indicates that 615 concessions at the line level were granted on an m.f.n. basis, 460 tariff lines were subject to GSP contributions and 105 to both m.f.n. duty reductions and GSP contributions. With respect to m.f.n. concessions, the duties on some 150 lines were reduced to zero. Duty reductions m.f.n. for other items have varied according to product. Influencing the level of m.f.n. tariff reductions were such factors as existing special preferential arrangements, substitutability between certain products, protection of domestic processing industries etc.

While m.f.n. tariff concessions and GSP contributions were made on items in each of the twenty-four chapters of the CCCN dealing with agricultural products (Table 1(a)), it would seem that concessions and contributions were granted more particularly on such categories of products as coffee and tea and extracts thereof, spices, cocoa and cocoa products and miscellaneous meat and animal products. Although some significant concessions and contributions were granted, less progress was made in a number of other areas of importance to developing countries as reflected in the number of requests made. Such categories of products included fishery products, honey, certain unprocessed and processed fruits and vegetables, vegetable oils, sugar and sugar products and tobacco.

A preliminary analysis of 1,750 dutiable tariff lines falling within CCCN Chapters 25-99 subject to concessions and contributions indicates that some 1,260 concessions were granted on an m.f.n. basis, 170 tariff lines

were subject to GSP contributions and 320 to both m.f.n. concessions and GSP contributions. With respect to m.f.n. concessions, the duties on some 100 tariff lines were reduced to zero. The majority of products in this sector were subject to "formula" m.f.n. reductions applied by each of the developed participants, although there were a number of instances where greater or less than "formula" cuts were applied according to the circumstances of the product concerned.

Requests covering items in CCCN Chapters 25-99 focussed around such areas of interest to developing countries as rubber and rubber products, leather and leather products (including footwear), wood and wood products, paper and paper products, textile fibres and textiles mostly not covered by the Multi-Fibre Arrangement and carpets. For some of these areas, action was taken for the greater part in line with the m.f.n. "formula" reductions applied by individual developed participants although some GSP contributions were also made. While some important concessions on certain sensitive areas such as leather products and footwear were granted, the overall level of concessions in such areas was however smaller than for some other product categories. Responses to a great majority of requests were obtained mostly on an m.f.n. basis for such product categories as wood and wood products, certain rubber and rubber products, paper and paper products, jute and hard fibres, and yarns and fabrics. Of the 490 GSP contributions made with respect to CCCN Chapters 25-99 such items as rubber and rubber products, leather and footwear, wood and wood products and textile products received particular attention.

With regard to action in the field of non-tariff measures in response to requests submitted in the tropical products negotiations, the information which follows will need to be verified in the light of the final documentation arising from the Tokyo Round.

With respect to CCCN Chapters 1-24 some 540 tariff lines were covered by requests concerning quantitative restrictions and import licensing. In the course of consultations and negotiations between interested delegations and in the

submission of offers by developed participants, it was indicated that with respect to 310 of the items covered by requests, the measures in question no longer applied, did not affect developing countries or had no restrictive effects. Almost 110 of the restraints were justified by developed participants as being consistent with existing GATT provisions.

Available information indicates that concessions in the field of quantitative restrictions and import licensing had been granted on eighteen items (fishery products, plants and cut flowers, vegetables, and vegetable and fruit preparations, certain processed oils and tobacco). Requests for concessions on 110 other items in CCCN Chapters 1-24 had not been responded to, in particular in the areas of fruit and vegetables (processed and unprocessed), which accounted for two-thirds of such requests.

Requests relating to State trading focussed particularly on tobacco and alcoholic beverages. In a number of cases consultations were held between the delegations concerned together with the relevant State-trading authorities, to clarify matters relating to the purchasing procedures and approaches of such authorities.

Almost 250 requests were submitted with respect to internal taxes affecting products falling within CCCN Chapters 1-24. More than half (140) were taxes of general application such as sales taxes or value-added taxes applied without discrimination and as such were justified by developed participants as being consistent with Article III of the General Agreement. About 100 requests were made for the removal of selective taxes applied in particular to such items as coffee, cocoa, tea, processed and unprocessed (47 requests), spices (15 requests), vegetable oils (11 requests), and tobacco (10 requests). Reponses to some of these requests on selective taxes consisted basically of an undertaking by certain developed participants not to increase such taxes on beverage crops and spices.

As regards CCCN Chapters 25-99, requests relating to quantitative restrictions and licensing covered 222 tariff lines, of which it was stated by the developed participants concerned that restrictions no longer applied on 115 of these items or had no restrictive effects for developing countries. The

majority of requests related to leather products and footwear, wood and wood products, carpets, textiles and certain rubber products. On another 64 items, these countries likewise indicated that the restrictions were justified as being in accordance with existing GATT Articles. On 22 items (basically also textile goods, leather and footwear) there was no response. Available information indicates that action was taken with respect to 22 requests (textile products and footwear). With regard to requests for the removal of internal taxes on some 50 tariff lines falling within CCCN Chapters 25-99, these were mostly taxes of general application and as such were justified by the developed participants concerned under Article III of the General Agreement.

In general, with respect to such matters as on health and sanitary regulations, standards, and packaging and labelling, it was noted that these could be expected to be dealt with in the context of multilateral agreements negotiated to respond to problems in these areas.

TROPICAL PRODUCTS NEGOTIATIONS

MFN CONCESSIONS AND GSP CONTRIBUTIONS BY 11 DEVELOPED PARTICIPANTS[1]

Symbols used

(R)	=	Reduction of MFN duties
(B)	=	Binding of MFN duties without reduction
Limited	=	Sensitive and semi-sensitive GSP items and GSP items having been subject to country and/or quantitative limitations
Other	=	GSP items other than above.

[1] Australia, Austria, Canada, EEC, Japan, Finland, Norway, Sweden, Switzerland, New Zealand, United States.

TROPICAL PRODUCTS NEGOTIATIONS

M.F.N. CONCESSIONS AND GSP CONTRIBUTIONS

Table 1(a) CCCN Chapters 1-24

(Unit: tariff line)

CCCN chapters	Product description	GRAND TOTAL 1/	No GSP						Covered by GSP											
									GSP Dutiable							GSP Duty-free				
			TOTAL	OFFER				NO OFFER	TOTAL	OFFER				NO OFFER	TOTAL	GSP Limited		GSP Other		NO OFFER
				MFN		GSP	MFN GSP			MFN		GSP	MFN GSP			OFFER-MFN				
				(R)	(B)					(R)	(B)					(R)	(B)	(R)	(B)	
01, 02	Miscellaneous live animals and meat	33	21	10	-	6	-	5	2	-	-	1	1	-	10	1	-	4	-	5
03	Fishery products	158	128	34	-	27	9	58	13	1	-	9	1	2	17	1	-	3	-	13
04	Honey	10	8	1	-	-	-	7	1	-	-	1	-	-	1	-	-	-	-	1
05	Animal products (bristles, guts, horns, etc.)	14	5	2	-	2	-	1	2	1	-	1	-	-	7	-	-	2	-	5
06	Plants and cut flowers	59	54	5	-	22	-	27	1	1	-	-	-	-	4	-	-	2	-	2
07	Vegetables, manioc	171	130	17	12	27	2	72	9	-	-	5	2	2	32	4	1	4	-	23
08	Fruit, fresh or dried	269	175	54	21	39	7	54	26	7	-	7	2	10	68	-	-	15	2	51
0901-0902 2102	Coffee, tea and extracts thereof	58	37	13	-	14	4	6	14	2	1	6	1	4	7	-	-	5	-	2
0904-0910	Spices	137	46	15	1	15	4	11	43	4	-	17	19	3	48	-	-	22	-	26
10, 11, 19	Maize, rice, grain sorghum, flour of vegetables and fruit, starches, tapioca	85	66	9	2	24	3	28	5	-	-	2	2	1	14	1	1	4	-	8
12	Oilseeds, pharmaceutical plants, etc.	52	36	9	2	2	-	23	2	1	-	-	-	1	14	1	-	1	-	12
13	Lacs, resins, vegetable saps and extracts	26	16	4	-	2	2	8	-	-	-	-	-	-	10	-	-	3	-	7
14	Vegetable materials for plaiting, etc.	13	6	1	-	-	-	5	-	-	-	-	-	-	7	2	-	4	-	1
15	Vegetable oils, fish oils and their cleavage products	153	88	21	2	15	5	45	19	4	-	3	-	12	46	2	-	8	-	36
16	Meat and fish preparations	167	78	28	2	7	7	34	30	11	-	8	-	11	59	3	-	21	-	35
17	Sugar, molasses, sugar confectionary	83	54	4	-	17	-	33	18	3	-	15	-	-	11	-	-	-	-	11
18	Cocoa and cocoa preparations	74	34	4	-	22	-	8	14	3	-	3	2	6	26	2	-	10	-	14
20	Vegetable and fruit preparations	438	269	47	3	82	3	134	92	14	-	44	10	24	77	12	-	19	-	46
2104-07	Miscellaneous edible preparations	70	45	29	-	3	6	7	18	6	-	3	5	4	7	-	-	2	-	5
22	Alcoholic beverages	60	39	7	-	3	1	28	4	3	-	1	-	-	17	-	-	8	-	9
23	Residues from food industries	26	19	3	1	4	-	11	3	1	-	-	-	2	4	-	-	1	-	3
24	Tobacco, manufactured or not	66	53	10	2	-	4	37	11	4	-	4	3	-	2	-	-	1	-	1
01-24	Total	2,222	1,407	327	48	333	57	642	327	66	1	130	48	82	488	29	2	139	2	316
	%		100	23	3	24	4	46	100	20	-	40	15	25	100	6	-	29	-	65
	%	100	63						15						22					

1/ Total number of dutiable tariff lines subject to requests. Requests also covered some 390 tariff lines already subject to zero duty, of which 320 were bound in the Tokyo Round or in the previous rounds of GATT negotiations. It should be noted that the level of tariff line detail may vary significantly in the tariff schedules of the participants making concessions and contributions.

TABLE 1(b)

CCCN Chapters 25-99

(Unit: tariff line)

CCCN chapters	Product description	GRAND TOTAL 1/	No GSP						Covered by GSP											
									GSP Dutiable						GSP Duty-free					
				OFFER						OFFER						GSP Limited		GSP Other		
			TOTAL	MFN		GSP	MFN+GSP	NO OFFER	TOTAL	MFN		GSP	MFN+GSP	NO OFFER	TOTAL	OFFER - MFN				NO OFFER
				(R)	(B)					(R)	(B)					(R)	(B)	(R)	(B)	
25, 26, 27	Mineral products,	12	7	3	-	-	1	3	-	-	-	-	-	-	5	1	-	4	-	-
28-33	Vegetable alcaloids and extract, essential oils etc.	38	4	2	-	-	-	2	5	2	1	-	2	-	29	5	-	18	-	6
36, 38, 39	Matches, artificial resins, turpentine, plastic material etc.	51	10	3	-	1	1	5	9	8	-	-	1	-	32	4	-	24	4	-
40	Rubber and products thereof	200	62	7	7	26	5	17	30	8	-	2	18	2	108	4	-	70	1	33
41-43	Leather, fur and products thereof	336	127	57	1	17	1	51	63	10	-	1	29	23	146	24	-	91	-	31
44	Wood and wood products	284	58	8	-	32	4	14	62	9	1	12	29	11	164	17	-	121	-	26
46	Processed plaiting materials and basketwork	28	3	2	-	1	-	-	8	-	-	-	8	-	17	6	-	11	-	-
48	Paper and paper products	212	20	10	-	9	-	1	46	3	2	-	35	6	146	2	-	136	-	8
50-55	Fibre, yarn and fabrics of silk, wool, cotton, flax, ramie and m.m. fibres	144	73	51	3	6	8	5	37	2	1	1	30	3	34	13	-	19	-	2
57	Fibre, yarn and fabrics of jute and hard fibres	86	19	9	-	4	2	4	33	1	-	-	30	2	34	8	-	21	-	5
58-62	Carpets, clothing and other textile goods	361	205	115	8	24	4	54	83	11	1	-	70	1	73	18	-	40	2	13
64	Footwear	185	127	16	1	23	4	83	24	-	1	-	10	13	34	3	2	23	-	6
65-71	Hats, walking sticks, mica articles, ornaments, precious stones, etc.	35	7	4	-	2	1	-	6	1	-	-	5	-	22	7	-	11	-	4
73, 75, 76, 78, 80, 83 85	Products of iron, nickel and tin, insulated wire, insulating fittings	145	8	3	-	5	-	-	20	-	-	-	19	1	117	9	-	99	-	9
92-99	Furniture, shell and ivory articles, brooms and brushes, fishhooks etc.	83	7	3	-	4	-	-	20	8	1	-	8	3	56	10	-	45	-	1
25-99	Total	2,200	737	293	20	154	31	239	446	63	8	16	294	65	1,017	131	2	733	7	144
	%		100	40	3	21	4	32	100	14	2	4	66	14	100	13	-	72	1	14
	%	100	34						20						46					

1/ Total number of dutiable tariff lines subject to requests. Requests also covered 215 tariff lines already subject to zero duty of which 190 were bound in the Tokyo Round or in the previous rounds of GATT negotiations. It should be noted that the level of tariff line detail may vary significantly in the tariff schedules of the participants making concessions and contributions.

C. TARIFFS

1. Background

Two of the major considerations governing the attitude of developing countries to the tariff negotiations in the Tokyo Round were the structure of most-favoured-nation tariffs in industrialized countries, and the impact which the successive introduction by developed countries of Generalized System of Preference schemes had had on the duties effectively chargeable on developing countries' exports of manufactures.

The developing countries basic problem in relation to the industrial tariff structure of developed countries stems from the added protection given to successive stages of manufacturing by tariff escalation. Although most raw materials and many basic manufactures are either duty free or enter at low rates of duty in the majority of developed markets, products at further stages of industrial processing have tended to be more highly protected. The nominal rate of tariff does not, moreover, reflect the effective protection given to manufacturing in protected markets; the effective protection of value added in processing is frequently much higher than nominal tariff rates would suggest. Countries seeking to move from basic manufacturing or raw material extraction into more elaborate lines of production may therefore be handicapped by the high barriers raised through effective protection of value added.

Although the Kennedy Round had reduced overall the average level of developed countries' tariffs on a linear basis, analysis of the results showed that in many sectors a considerable measure of m.f.n. tariff escalation by stage of processing remained, as did important differences in the tariff structures of the developed countries. However, the successive introduction by developed countries of schemes of preferential treatment for industrial products imported from developing countries under the Generalized System of Preferences also affected the structure of tariffs actually imposed on imports from these sources. The extension by developed countries of GSP treatment, generally on a duty-free basis, to the developing countries' manufactured exports naturally tended to affect the latter countries' attitude to tariff reductions in the Tokyo Round.

The negotiations for special and more favourable treatment in the field of tariffs as in the case of tropical and other agricultural products took place on the basis of requests made by individual developing countries on a product-by-product basis. The requests tabled reflected the views of developing countries individually on the value to them of GSP or m.f.n. concessions on individual items, depending on the pattern of the trade of each country in these items.

Though some conflicting requests might have been made at the product level, it is difficult to ascertain how far this influenced the outcome of the negotiations with individual developed countries for the following reasons. Some developed countries had, as the negotiations proceeded, made it clear that their governments would not be able to consider in the Tokyo Round requests for improvements in GSP or for the maintenance of the margins of preferences. Even though other developed countries had not ruled out consideration being given to requests for GSP improvements they had always emphasized that requests for the maintenance of preferential margins could be considered only in respect of a very limited number of products. Various other factors may also have led developing countries to keep such requests to the minimum. Among these factors may have been the realization that GSP beneficiaries did not always enjoy preferential advantages vis-à-vis developed countries, in particular because of the existence of preferential trade among developed countries in Europe; the non-contractual nature of GSP treatment; and the fact that any erosion of preferential margins resulting from m.f.n. cuts would be phased over a period of eight years.

2. The results

For the results for developing countries in the tariff field, see Chapter II (pages 121 to 127).

D. NON-TARIFF MEASURES

Introduction

The negotiations in this area took two forms. First, there were negotiations for the elaboration of multilateral agreements whose basic aim was to bring more clarity and precision to the relevant GATT provisions and a greater certainty in their application. Secondly, there were negotiations carried out mainly on the basis of requests made for the removal of specific non-tariff measures affecting particular products.

Descriptions of the main features of the multilateral Agreements on specific non-tariff measures are given in Chapter III. The observations in this Chapter focus only on the implications of these Agreements for developing countries.

A general point relevant to all the Agreements, as well as to the results achieved in connexion with the Arrangements on agricultural products and on improvements in the international framework for world trade discussed in sections E and F below is that the reaffirmation and strengthening of the GATT rules, coupled with effective international consultation, surveillance and dispute settlement procedures is of importance for all countries, including the developing countries.

Agreements on the following are covered below:

1. Subsidies and Countervailing Duties
2. Technical Barriers to Trade
3. Customs Valuation
4. Government Procurement
5. Import Licensing.

1. Subsidies and countervailing duties

(i) Background

In addition to the more general aims of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement (Code on Subsidies and Countervailing Duties), the developing countries had two particular objectives: to ensure that the importance of subsidies, including export subsidies, in their industrial and development programmes was fully recognized and that adequate liberty to undertake such subsidy programmes could be maintained; and to ensure that special and more favourable treatment was also attained in respect of the conditions under which the Committee of Signatories may authorize the application of counter-measures against their exports of products subsidized at the production or export stage.

(ii) Provisions of interest to developing countries

The Agreement recognizes that subsidies are an integral part of the economic development programmes of developing countries and that governmental intervention in the economy through financial support measures should not, per se, be considered as subsidization in the case of these countries. Developing countries are not subject to the commitment made by the developed countries not to use export subsidies on industrial products, although they agree not to use such subsidies in ways which cause serious prejudice (which must be demonstrated by positive evidence) to the trade or production of another signatory. The Agreement however, inter alia, provides that developing countries should endeavour to enter into commitments to reduce or eliminate export subsidies when their use is inconsistent with their competitive and development needs. The Agreement contains provisions for the extension of special and differential treatment to developing countries in cases of third market subsidization. In such cases, it has been provided that account should be taken of the trade and development needs of any developing country involved, whether it is responsible for displacing exports, or is the country whose exports might be displaced in the third market.

In the application of subsidies, developing countries retain a large measure of freedom to use both production and export subsidies, within a framework of international surveillance.

The Agreement further visualizes that special and differential treatment could be extended by the Committee of Signatories when authorizing countermeasures against subsidy practices adopted by developing countries. Thus, it provides that if a developing country has undertaken a commitment to reduce or eliminate export subsidies, the Committee of Signatories shall not authorize countermeasures being taken by other signatory countries against such subsidies. Countermeasures against subsidies, other than export subsidies, granted by a developing country cannot be authorized unless nullification or impairment of tariff concessions or other GATT obligations is found to exist as a result of such subsidy, in such a way as to displace or impede imports of like products into the market of the subsidizing country, or unless injury to domestic industry in the importing market occurs.

As regards countervailing duties, the Agreement reaffirms the principle in Article VI of the General Agreement that such duties should be imposed only when it is established that the effect of subsidized imports is such as to cause or threaten to cause injury to an established domestic industry and lays down criterion for determining injury in such cases.

2. Technical Barriers to Trade

The Agreement on Technical Barriers to Trade (the Standards Code) contains a number of provisions which aim to deal with the special problems which the developing countries encounter in this area. Most of these provisions have been incorporated in the Agreement on the basis of the specific proposals made by developing countries.

(i) Information

One of the major difficulties which exporters from developing countries encounter is the problem of knowing the technical regulations which apply in the importing countries to products which they want to export. The Agreement provides for notifications to be made through the GATT secretariat and for each country to establish an enquiry point from which interested traders could get information on standards, technical regulations and the associated test methods, certification systems, etc.

(ii) Special and differential treatment for developing countries

The following are among the provisions in the Chapter of the Agreement on special and differential treatment for developing countries.

The Agreement recognizes that for socio-economic reasons, developing countries adopt in their technical regulations standards aimed at preserving their indigenous technology and production methods. It therefore provides that these countries should not be expected to adopt in their technical regulations international standards, if they consider them not to be appropriate as regarding their development, financial and trade needs.

The Agreement in addition recognizes that special development and trade needs, as well as the stage of their technological development, may pose for certain developing countries difficulties in accepting fully the obligations it imposes. To enable such countries to adhere to the Agreement the Committee on Technical Barriers to Trade which is proposed to be established is authorized to grant, upon request, specified time-limited exceptions in whole or in part from the obligations under the Agreement.

(iii) Technical Assistance and other Related Provisions

The Agreement spells out various areas in which the adherents can extend technical assistance to other countries, particularly the developing countries. Thus, interested developing countries could request from other adherents advice and technical assistance for the preparation of technical regulations and certifications systems, for the establishment of national standardization bodies and for improving the participation of such national bodies in international standardization activities. A developing country which finds difficulties in complying with the technical regulations in other countries could request the regulatory body in the latter country for advice and technical assistance regarding the steps it should take and the method it should adopt to meet the requirements of such regulations. Any adhering

country, including a developing country, could further request countries which participate in the regional certification schemes for advice and assistance for the establishment of the institutions and legal framework which would facilitate their membership of the system.

In addition to these provisions, the Agreement calls on its adherents to take steps that would ensure active and representative participation of all countries in international standardization bodies and certification systems, taking into account the special problems of developing countries. It also provides that adherents should take steps to ensure that international standardization bodies, on request from any developing country, examine the possibility of elaborating international standards for products of special interest to such countries, and if practicable prepare such standards.

3. Customs valuation

Comments in paragraph (i) and (ii) below apply to both versions of the Valuation Agreement. Paragraph (iii) explains briefly the ideas contained in the developing-country amendments which have been included in the second version of the Agreement.

(i) Implication for exports of developing countries

1. The acceptance and implementation of the Valuation Agreement by participants in the Tokyo Round would mean, in some cases, elimination of restrictive practices that affect the trade of exporting countries including that of developing countries. In particular, the practices followed by some countries to determine value on the basis of domestic prices in the exporting country or on the basis of domestic prices in the importing country pose special problems to the trade of developing countries. The practice of levying duty on the basis of current domestic value in the exporting country works particularly to the disadvantage of these countries as, in many cases, there is no direct relationship between the prices prevailing on the domestic

markets and the prices at which developing countries sell their goods on the international markets. Practices of including in the dutiable value customs duties paid on raw materials, components, etc. of which the goods have been relieved by the exporting country, are also particularly disadvantageous to developing countries, as in their case the general level of customs duties is relatively higher than that in the developed countries. The Agreement expressly excludes all these practices. It also excludes the possibility of making valuation adjustments for protective purposes in the case of imports from so-called low-price producers.

(ii) Provisions for developing countries

The Agreement provides for a certain amount of flexibility in its application and implementation where developing countries are concerned. In particular:

(a) developing countries accepting the Agreement may delay application of its provisions for a period of five years from the date of its entry into force;

(b) in addition, they may delay application of the computed value method for a further period of three years.

The Agreement also provides for technical assistance for developing countries to help them to set up new valuation systems based on its provisions. Developed countries shall furnish, on mutually agreed terms, technical assistance to developing countries that so request. Such technical assistance may include, inter alia, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology and advice on the application of the provisions of the Agreement.

(iii) Developing-country amendments incorporated in alternative customs valuation text

The idea underlying these amendments is that Customs administrations in developing countries should preserve their authority to make appropriate adjustments to ensure that the customs value corresponds to what may be considered the actual value under fully competitive conditions and to reject the transaction price when it differs substantially and without reasonable explanation from the prices relating to other transactions in like goods. Thus the Customs may add to the transaction value, as declared by the importer, additional considerations which may influence the price, e.g. advertising costs, or any price reduction which is not freely available to other buyers. The definition of "related persons" under the amendments made by developing countries would include sole agents and sole distributors. The importer will also have no option to choose between the deductive and computed valuation method unless the Customs agree.

The possibility in this text to delay the application of the Agreement for a period of ten years would give developing countries additional time to adapt their present valuation systems to the new Agreement.

These amendments have been proposed by some developing countries in order to provide sufficient safeguards against risks of undervaluation which, in their opinion, might otherwise exist.

4. Government Procurement

The Agreement on Government Procurement contains provisions on special and differential treatment for developing countries which are designed so that parties to the Agreement duly take into account the development, financial and trade needs of developing countries, in particular the least-developed countries, in their need to safeguard their balance-of-payments position, promote the establishment or development of domestic industries, support industrial units so long as they are wholly or substantially dependent on government procurement and encourage their economic development through regional or global arrangements among developing countries presented to the Contracting Parties to GATT and not disapproved by them.

Furthermore, consistently with the provisions of the Agreement, parties to it undertake, in the preparation and application of laws, regulations and procedures affecting government procurement, to facilitate increased imports from developing countries, bearing in mind the special problems of the least-developed countries and those at low stages of economic development.

(i) Coverage of the Agreement

The vast majority of trade now being opened up to international competition under this Agreement consists of purchases by developed-country entities. The Agreement provides that, with a view to ensuring that developing and least-developed countries are able to adhere to the Agreement on terms consistent with their development, financial and trade needs, the objectives for special and differentiated treatment shall be duly taken into account in the course of negotiations with respect to the lists of entities of developing countries to be covered by the provisions of the Agreement. This provision is thus in accordance with the basic GATT "non-reciprocity" concept.

After entry into force of the Agreement, developing or least-developed countries may seek exclusions from their lists of entities in the light of their development, financial and trade needs and their participation in regional or

global arrangements among developing countries. Any action taken in this connexion would be subject to review by the Committee on Government Procurement at the three-yearly reviews provided for to see whether such exclusions should be modified or extended. The Agreement also provides that developed countries shall, in the preparation of their lists of entities to be covered by the provisions of the Agreement, endeavour to include entities purchasing products of export interest to developing countries.[1]

A threshold of SDR 150,000, above which all contracts awarded by the entities listed would be covered by the Agreement, was agreed upon in the light of the administrative burdens that a lower level would put on governments in fulfilling the requirements in respect of large numbers of lower-value contracts. The Committee on Government Procurement, however, is to examine the possibility of covering lower-value contracts by the Agreement, in the light of the practical situation which exists, so that the matter could be taken up as appropriate at the three-year review. Developing countries feel that the inclusion of lower-value contracts would enable them to achieve greater benefits by way of exports from the Agreement.

(ii) Time-limits

An aspect raised by developing countries among others was that of ensuring adequate time-limits for the effective participation of distant suppliers in the various stages of tendering procedures. The Agreement specifies certain minimum time-limits and requires that any prescribed time-limits should be adequate to allow foreign as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. It also states that, consistent with an entity's own reasonable needs, any delivery date should take into account the normal time required for the transport of goods from the different points of supply.

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[1] The lists of entities are shown as Annex 1 to the Agreement.

(iii) Transparency and provision of information

The very considerable emphasis that is put in the Agreement on a high level of transparency of laws, regulations, procedures and practices regarding government procurement relates both to ensuring that prospective suppliers have an equal opportunity for submitting tenders and that the criteria for the choice of the successful tenderer is, and is seen to be, consistent with the principles of national treatment and non-discrimination. The provisions on transparency should be of interest to developing countries, since a major problem stated by these countries was a lack of knowledge and information about such matters as tendering opportunities and precise procedural formalities for submitting bids.

More specifically, developed-country parties to the Agreement are to establish, individually or jointly, information centres to respond to reasonable requests from developing country parties for information relating to, inter alia, laws, regulations, procedures and practices regarding government procurement, notices about proposed purchases which have been published, addresses of the entities covered by the Agreement, and the nature and volume of products purchased or to be purchased, including available information about future tenders. There is also provision to enable the Committee on Government Procurement to set up an information centre.

(iv) Enforcement of obligations

The information requirements, besides being considered as an important factor in themselves in ensuring application of the basic principles of the Agreement and the resolution to the maximum extent possible of any differences between individual suppliers and entities through mutual contacts, were also felt to be an essential basis for the mechanisms of consultation and dispute settlement built into the Agreement. These mechanisms, which include multilateral surveillance and recommendations by the Committee on Government Procurement, and the right of any party to a dispute to the establishment of a panel, are designed to protect the rights of all parties to the Agreement.

(v) Technical assistance

The Agreement requires developed country parties to provide, upon request, to developing country parties all appropriate technical assistance to assist resolve their problems in the field of government procurement. Such technical assistance would be aimed not only at enabling developing countries to participate more fully as suppliers in the trade opportunities opened up by the Agreement, but also, if required, to help them improve the operation of their procurement systems.

(vi) Least-developed countries

In line with paragraph 6 of the Tokyo Declaration on least-developed countries, special treatment shall be granted to least-developed country parties and their suppliers, in the context of any general or specific measures in favour of developing countries, including in the field of technical assistance. Other least-developed countries may be granted the benefits of the Agreement on a unilateral basis.

5. Import Licensing Procedures

The Agreement on Import Licensing Procedures contains provisions specifically relating to developing countries. Although there are inbuilt limitations, because of the nature of the subject, some special and differential treatment is provided for in the Agreement. In the case of provisions applying to automatic import licensing procedures, developing countries are authorized to delay the application of certain of the provisions for two years. Similarly, in the provisions relating to non-automatic import licensing, the developing countries are not expected "to take additional administrative or financial burdens" as regards the provision of import statistics.

From the point of view of developing countries as exporters of goods to the developed and to other developing countries, the measures taken in pursuance of provisions of the Agreement for simplification of licensing procedures and for making them more transparent should lead to a reduction in obstacles which these countries may be faced with at present. In addition, participation in the Committee on Import Licensing would enable developing countries to bring up any practical difficulties resulting from licensing procedures.

E. AGRICULTURE

Two multilateral Arrangements on specific agricultural products were negotiated; one on bovine meat and the other on dairy products.

1. Arrangement Regarding Bovine Meat

A number of developing countries are important producers and exporters of meat; there was thus close developing-country interest in these particular negotiations.

Whenever feasible, special and differential treatment for developing countries is provided for. For example, Article I - Objectives - speaks specifically about securing additional benefits for the developing countries, mentioning some possibilities of how this should be done. Article III, concerning Information and Market Monitoring, relaxes the rule about mandatory information and in that context, developed participants and developing countries in a position to do so, "shall consider sympathetically any request to them for technical assistance".

Apart from the provisions assuring developing countries some measure of special and differential treatment when appropriate, the Arrangement has two major features, which are of importance to all participants, developed and developing alike, but which are likely to be of relatively more importance to the development of meat production and trade in the latter than in the former: namely the provisions concerning information and co-operation.

Having access to all the information that will be provided within the Arrangement will serve as a basis for market analyses, thus assisting participants, including developing countries, in their judgments relating to the development of their production and export marketing of meat and trade in meat.

Of considerable significance in the Arrangement are the provisions dealing with co-operation. Pursuant to evaluation and examination of the international meat situation, the Meat Council established under the Arrangement may find

that some measures are required to redress a market evolution that threatens to disrupt normal conditions. Any rectifying measures the Council agrees to recommend for the consideration of member governments could be of almost any kind as long as they are designed as far as possible to improve the overall situation.

As these measures will not be decided upon by one or several participating countries but by all of them acting collectively, it would seem desirable for developing countries having an interest in meat production and trade to participate in these discussions and consultations so as to ensure that the developing-country situation is fully taken into account; problems specific to one or more participating developing countries could also be discussed or consulted upon in the Meat Council with a view to finding solutions.

Another feature of the Arrangement of potential future importance is the provisions dealing with discussions concerning possible further liberalization of the meat trade. In this field also, developing countries involved in meat production and trade would have a particular interest.

2. Texts on International Dairy Arrangement

For those developing countries having an actual or potential interest in the export of dairy products, the same possibilities as regards access to information and to co-operation that derive from participation in the Meat Arrangement are available to developing countries under the Dairy Arrangement.

Food aid is provided for in the Arrangement. Participating countries agree "to furnish, within the limits of their possibilities, dairy products to developing countries by way of food aid". Moreover, in each of the Protocols attached to the Arrangement (on certain milk powders; milk fat; and certain cheeses) exporting countries agree, in accordance with their institutional possibilities, to supply on a priority basis the normal commercial requirements of developing countries, especially those for food-related development and welfare purposes.

Some developing countries would include provision for maximum prices on products covered by the Protocols on milk powders, milk fats and cheeses included in the Arrangement.

F. INTERNATIONAL FRAMEWORK FOR CONDUCT OF WORLD TRADE

The results for developing countries in this area of the Tokyo Round are set out in Chapter IV of Part II above. The results of the negotiations on the Enabling Clause and on safeguard action for development purposes are of special interest for the developing countries, but it will be noted that the results of negotiations on safeguard action for balance-of-payments purposes and on the question of notification, consultation, dispute settlement and surveillance also contain important points relating to these countries.

* * *

APPENDIX

A. Agreement on Trade in Civil Aircraft

1. Coverage

The Agreement applies to:

(a) all civil aircraft

(b) all civil aircraft engines and their parts and components

(c) all other parts, components, and sub-assemblies of civil aircraft

(d) all ground flight simulators and their parts and components.

2. Removal of obstacles to trade

The Agreement provides, inter alia, for:

(a) elimination, by 1 January 1980, of all customs duties and similar charges on the importation of products listed in an Annex to the Agreement

(b) elimination of all customs duties and similar charges on civil aircraft repairs

(c) application of the Agreement on Technical Barriers to Trade and of the Code on Subsidies and Countervailing Duties to trade in civil aircraft

(d) freedom for purchases of civil aircraft to select suppliers on the basis of commercial and technological factors

(e) non-application of quantitative restrictions or import licensing requirements to restrict civil aircraft imports in a manner inconsistent with the applicable GATT provisions.

There are also provisions relating to regional and local governments; surveillance, review, consultation and dispute settlement; and a number of final provisions concerning acceptance, withdrawal, reservation, entry into force, etc.

B. Anti-Dumping Code

A certain number of countries signatories to the Anti-Dumping Code were of the view that the relevant provisions of the Code should be revised to reflect the provisions of the new Code on Subsidies and Countervailing Duties negotiated in the Tokyo Round. A revised Anti-Dumping Code has been attached to the Procès-Verbal opened by the April 1979 meeting of the Trade Negotiations Committee.

At the request of developing countries, discussions had taken place in the Group "Non-Tariff Measures" on amendments of the Anti-Dumping Code to take into account the particular interests of developing countries with regard to, in the first place, the determination of normal price. These discussions did not lead to a mutually satisfactory solution, and in the absence of agreement, developing countries proposed a paragraph - to be added inter alia to the revised Anti-Dumping Code - on the determination of normal price for products exported by developing countries. This text was also annexed to the Procès-Verbal. It was indicated at the meeting of the Trade Negotiations Committee that efforts to bridge the gap that existed would continue to be made.

ANNEXES

ANNEX A

COUNTRIES PARTICIPATING IN "TOKYO ROUND" TRADE NEGOTIATIONS

*Algeria
Argentina
Australia
Austria
Bangladesh
Benin
*Bolivia
*Botswana
Brazil
*Bulgaria
Burma
Burundi
Cameroon
Canada
Chile
**Colombia
Congo
*Costa Rica
Cuba
Czechoslovakia
Dominican Republic
*Ecuador
Egypt
*El Salvador
*Ethiopia
European Communities
and member States
Belgium
Denmark
France
Germany, Fed. Rep. of
Ireland
Italy
Luxembourg
Netherlands
United Kingdom of
Great Britain and
Northern Ireland
Finland
Gabon
Ghana
Greece
*Guatemala
Haiti
*Honduras
Hungary
Iceland
India
Indonesia
*Iran
*Iraq
Israel
Ivory Coast
Jamaica
Japan
Kenya
Korea, Rep. of
Madagascar
Malawi
Malaysia
*Mali
Malta
Mauritius
*Mexico
New Zealand
Nicaragua
Nigeria
Norway
Pakistan
*Panama
*Papua New Guinea
*Paraguay
Peru
**Philippines
Poland
Portugal
Romania
Senegal
Singapore
*Somalia
South Africa
Spain
Sri Lanka
*Sudan
*Swaziland
Sweden
Switzerland
Tanzania
*Thailand
Togo
*Tonga
Trinidad and Tobago
**Tunisia
Turkey
Uganda
United Kingdom (on behalf
of dependent territories)
United States of America
Uruguay
*Venezuela
*Viet-Nam
*Yemen, Democratic
Yugoslavia
Zaire
*Zambia

TOTAL 99

*Not Contracting Parties to GATT)
**Acceded provisionally to GATT)

ANNEX B

MINISTERIAL MEETING TOKYO, 12-14 SEPTEMBER 1973

Declaration

1. The Ministers, having considered the report of the Preparatory Committee for the Trade Negotiations and having noted that a number of governments have decided to enter into comprehensive multilateral trade negotiations in the framework of GATT and that other governments have indicated their intention to make a decision as soon as possible, declare the negotiations officially open. Those governments which have decided to negotiate have notified the Director-General of GATT to this effect, and the Ministers agree that it will be open to any other government, through a notification to the Director-General, to participate in the negotiations. The Ministers hope that the negotiations will involve the active participation of as many countries as possible. They expect the negotiations to be engaged effectively as rapidly as possible, and that, to that end, the governments concerned will have such authority as may be required.

2. The negotiations shall aim to:

- achieve the expansion and ever-greater liberalization of world trade and improvement in the standard of living and welfare of the people of the world, objectives which can be achieved, inter alia, through the progressive dismantling of obstacles to trade and the improvement of the international framework for the conduct of world trade.

- secure additional benefits for the international trade of developing countries so as to achieve a substantial increase in their foreign exchange earnings, the diversification of their exports, the acceleration of the rate of growth of their trade, taking into account their development needs, an improvement in the possibilities for these countries to participate in the expansion of world trade and a better balance as between developed and developing countries in the sharing of the advantages resulting from this expansion, through, in the largest possible measure, a substantial improvement in the conditions of access for the products of interest to the developing countries and, wherever appropriate, measures designed to attain stable, equitable and remunerative prices for primary products.

To this end, co-ordinated efforts shall be made to solve in an equitable way the trade problems of all participating countries, taking into account the specific trade problems of the developing countries.

3. To this end the negotiations should aim, inter alia, to:

(a) conduct negotiations on tariffs by employment of appropriate formulae of as general application as possible;

(b) reduce or eliminate non-tariff measures or, where this is not appropriate, to reduce or eliminate their trade restricting or distorting effects, and to bring such measures under more effective international discipline;

(c) include an examination of the possibilities for the co-ordinated reduction or elimination of all barriers to trade in selected sectors as a complementary technique;

(d) include an examination of the adequacy of the multilateral safeguard system, considering particularly the modalities of application of Article XIX, with a view to furthering trade liberalization and preserving its results;

(e) include, as regards agriculture, an approach to negotiations which, while in line with the general objectives of the negotiations, should take account of the special characteristics and problems in this sector;

(f) treat tropical products as a special and priority sector.

4. The negotiations shall cover tariffs, non-tariff barriers and other measures which impede or distort international trade in both industrial and agricultural products, including tropical products and raw materials, whether in primary form or at any stage of processing including in particular products of export interest to developing countries and measures affecting their exports.

5. The negotiations shall be conducted on the basis of the principles of mutual advantage, mutual commitment and overall reciprocity, while observing the most-favoured-nation clause, and consistently with the provisions of the General Agreement relating to such negotiations. Participants shall jointly endeavour in the negotiations to achieve, by appropriate methods, an overall balance of advantage at the highest possible level. The developed countries do not expect reciprocity for commitments made by them in the negotiations to

reduce or remove tariff and other barriers to the trade of developing countries, i.e.. the developed countries do not expect the developing countries. in the course of the trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. The Ministers recognize the need for special measures to be taken in the negotiations to assist the developing countries in their efforts to increase their export earnings and promote their economic development and, where appropriate, for priority attention to be given to products or areas of interest to developing countries. They also recognize the importance of maintaining and improving the Generalized System of Preferences. They further recognize the importance of the application of differential measures to developing countries in ways which will provide special and more favourable treatment for them in areas of the negotiation where this is feasible and appropriate.

6. The Ministers recognize that the particular situation and problems of the least developed among the developing countries shall be given special attention, and stress the need to ensure that these countries receive special treatment in the context of any general or specific measures taken in favour of the developing countries during the negotiations.

7. The policy of liberalizing world trade cannot be carried out successfully in the absence of parallel efforts to set up a monetary system which shields the world economy from the shocks and imbalances which have previously occurred. The Ministers will not lose sight of the fact that the efforts which are to be made in the trade field imply continuing efforts to maintain orderly conditions and to establish a durable and equitable monetary system.

The Ministers recognize equally that the new phase in the liberalization of trade which it is their intention to undertake should facilitate the orderly functioning of the monetary system.

The Ministers recognize that they should bear these considerations in mind both at the opening of and throughout the negotiations. Efforts in these two fields will thus be able to contribute effectively to an improvement of international economic relations, taking into account the special characteristics of the economies of the developing countries and their problems.

8. The negotiations shall be considered as one undertaking, the various elements of which shall move forward together.

9. Support is reaffirmed for the principles, rules and disciplines provided for under the General Agreement.[1] Consideration shall be given to improvements in the international framework for the conduct of world trade which might be desirable in the light of progress in the negotiations and, in this endeavour, care shall be taken to ensure that any measures introduced as a result are consistent with the overall objectives and principles of the trade negotiations and particularly of trade liberalization.

10. A Trade Negotiations Committee is established, with authority, taking into account the present Declaration, inter alia:

(a) to elaborate and put into effect detailed trade negotiating plans and to establish appropriate negotiating procedures, including special procedures for the negotiations between developed and developing countries;

(b) to supervise the progress of the negotiations.

The Trade Negotiations Committee shall be open to participating governments.[2] The Trade Negotiations Committee shall hold its opening meeting not later than 1 November 1973.

11. The Ministers intend that the trade negotiations be concluded in 1975.

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[1] This does not necessarily represent the views of representatives of countries not now parties to the General Agreement.

[2] Including the European Communities.

ANNEX C

PROCES-VERBAL

Opened for signature following the meeting of the Trade Negotiations Committee on 11-12 April 1979

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1. Having participated in the Multilateral Trade Negotiations, the representatives of the Governments and the EEC Commission agree that the texts listed below in respect of which they have signed the present Procès-Verbal embody the results of their negotiations. They acknowledge that the texts may be subject to rectifications of a purely formal character that do not affect the substance or meaning of the texts in any way except as otherwise indicated in the text on tariff negotiations.

2. These representatives agree that by signing the present Procès-Verbal they indicate their intention to submit the relevant texts or legal instruments to be formulated on the basis of the said texts for the consideration of their respective authorities with a view to seeking approval of, or other decisions on, the relevant texts or instruments in accordance with appropriate procedures in their respective countries. Representatives may indicate that their signature evidences their intention to seek approval or decision.

3. Representatives may indicate that their signature to the present Procès-Verbal relates only to certain of the texts listed below which they will specify.

4. It is appreciated that some delegations participating in the Multilateral Trade Negotiations may not be in a position to sign the present Procès-Verbal immediately in relation to all or certain of the texts listed below. They are invited to do so at their earliest convenience.

5. It is recognized that representatives of least-developed countries participating in the Multilateral Trade Negotiations may need time to examine the results of the negotiations in the light of paragraph 6 of the Tokyo Declaration before they can sign the Procès-Verbal.

6. The representatives signing the present Procès-Verbal agree that the work on safeguards referred to in paragraph 3(d) of the Tokyo Declaration should be continued within the framework and in terms of that Declaration as a matter of urgency, taking into account the work already done, with the objective of reaching agreement before 15 July 1979.

7. Texts (k) and (l) are the result of negotiations only amongst the representatives of certain governments identified in the documents.

8. The representatives have taken note of the statements made in relation to various texts at the TNC meeting of 11-12 April 1979 as contained in MTN/P/5.

Texts

(a)	Agreement on Technical Barriers to Trade	MTN/NTM/W/192/Rev.5
(b)	Agreement on Government Procurement	MTN/NTM/W/211/Rev.2 and Add.1
(c)	Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade	MTN/NTM/W/236 and Corr.1
(d)	Arrangement on Bovine Meat	Annex to MTN/ME/8
(e)	International Dairy Arrangement	
	(i)	MTN/DP/8, Annexes A and B
	or	
	(ii)	MTN/DP/8, Annex C
(f)	Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade	
	(i)	MTN/NTM/W/229/Rev.1
	or	
	(ii)	MTN/NTM/W/229/Rev.1 as amended by MTN/NTM/W/222/Rev.1
(g)	Agreement on Import Licensing Procedures	MTN/NTM/W/231/Rev.2
(h)	Multilateral Agricultural Framework	MTN/27
(i)	Texts prepared by Group "Framework"	MTN/FR/W/20/Rev.2
(j)	Tariff Negotiations	MTN/26/Rev.2
(k)	Agreement on Trade in Civil Aircraft prepared by a number of delegations	MTN/W/38, Corr.1 and Add.1
(l)	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade prepared by a number of delegations	
	(i)	MTN/NTM/W/232, Add.1/Rev.1 Add.2 and Corr.1
	or	
	(ii)	MTN/NTM/W/232, Add.1/Rev.1 Add.2 and Corr.1 as amended by MTN/NTM/W/241/Rev.1

ANNEX D

Definitions and methods used in the assessment of the tariff results

The purpose of the calculations presented here is to measure the overall depth of tariff reductions agreed by the European Economic Community and nine developed countries up to the date of the signature of the record of tariff concessions offered by these countries in the framework of the negotiations (11 April 1979). The calculations therefore do not incorporate improved concessions that may be negotiated after this date with developing countries nor do they take account of corrections and adjustments which may become necessary as a result of the technical verification procedure of the draft schedules.

1. The measurement

The measurement is based on the comparison of the average level of duties in the reference period before the negotiations were concluded and the concessional rates agreed. Two methods of averaging duty rates had been adopted.

The first tariff average is a simple arithmetic average of duty rates. The second tariff average is a weighted average which gives to each duty the weight of the imports on which such duty was collected. In other words the simple average measures the straightforward level of the tariff whereas the weighted average measures the average duty collection. The two methods can lead to very different results and such difference is easy to explain. In the weighted average the more trade is flowing under the duty, the more importance the duty is given in the calculation. At the same time, logically, the lower the duty the larger, as a rule, is the volume of trade which flows under such duty. Thus the weighted average will tend to give more importance to low duties and, at the other extreme, will ignore duties which are so high as to be prohibitive. For these reasons, the weighted average has a downward bias. On the contrary the simple average gives the same importance to each duty whatever its level. It could thus assign excessive importance to residual tariff items or to duties facing products of no or negligible importance in world trade. Therefore the simple average should in principle give an upward correction of the weighted average bias.

The two types of averages were calculated separately for each tariff and subsequently combined into an overall pre- and post-Tokyo Round average for all ten tariffs taken together. For this purpose the tariff averages for individual markets have been again weighted to take account of the importance of each market in "world m.f.n. trade".

The extent of the reduction of the ten tariffs combined has been measured separately for agricultural products and for industrial products. In the overall assessment the tariff reduction on agricultural products has been measured on items which were negotiated and on which a concession was made. However, some agricultural products are subject to variable levies or variable components in the duty. As it is generally impossible to measure the level of tariff protection on these items, products subject to levies have been systematically excluded from the scope of the assessment.

In all calculations, crude petroleum and petroleum products have been excluded since it is considered that under the present conditions the petroleum trade is not affected by the level of duties.

The calculations of the tariff cuts on products of interest to developing countries, which have been carried out in addition to the overall m.f.n. assessment, refer to products already exported by developing countries to the ten country markets including, in addition, goods included on the request lists notified by developing countries in the framework of negotiations on tropical products and on agriculture. The addition of the latter goods increased only slightly the list of products selected on the basis of past trade since these notifications included only a relatively small number of new products of potential future export interest. On the whole, the products covered in this part of the analysis represent about a half of the tariff lines covered by the overall assessment. This weighting method thus tends to understate the result for developing countries by assigning insufficient weights to tariff cuts on products which developing countries export at present in small quantities only, or which they will only begin to export in the future. Exports of manufactured products from developing countries are diversifying rapidly, and tariff cuts on products not included in the weighting pattern used here help to promote such diversification. It may be noted that a similar understatement occurred in the assessment of the result of the Kennedy Round.

The post-MTN m.f.n. tariff data are based on official offers communicated to the secretariat. The pre-negotiation tariff situation reflects in general the consolidated level of duties as published in the consolidated schedules of the GATT. For unbound items the base rates for negotiations refer to various dates differing from country to country. In general unbound rates refer to tariffs in force in 1976 except for the European Communities and New Zealand where they refer to applied rates as of 1 January 1974 and for Japan where they refer to tariffs prior to the temporary tariff measures law implemented on 22 November 1972. Specific duties were converted to ad valorem percentages using 1976 m.f.n. import unit values or duty collected except for Switzerland where ad valorem equivalents of specific duties were calculated on average m.f.n. import unit values during the years 1974 to 1976.

The preferential tariffs under the Generalized System of Preferences (GSP) refer to the year 1976 in general for the pre-negotiations situation. The post-negotiations GSP tariffs take into account the GSP concessions offered in response to requests made by developing countries in the framework of the negotiations in Agriculture and Tropical Products Groups. Where the GSP preferential rates were expressed as a percentage of m.f.n. rates, the post-MTN GSP tariffs have been reduced proportionately to take account of the offered level of m.f.n. cuts.

The reader must realize that significant imprecisions could not be avoided in compiling these data. Imprecisions occur in assessing GSP preferential imports as well as in assessing the GSP preferential tariff levels. GSP import statistics are generally not separately available in published sources and the effective utilization of the schemes cannot be properly assessed. For instance, to benefit from preferential treatment under the GSP, products have to satisfy the rules of origin, by which the product has to be certified as having been entirely produced or as having had a minimum value added in the beneficiary country. GSP treatment is also in some sensitive industrial sectors limited by quotas, ceilings or maximum country amounts above which m.f.n. treatment is reintroduced. Finally, the uncertainty of preferential treatment or the administrative formalities to be fulfilled may have reduced resort to the scheme especially in the case of products which face only narrow margins of preference. As all the above-mentioned limitations could not be taken into account in the absence of detailed statistics, the amount of trade reported has certainly

been overstated. The GSP tariff levels also could be ascertained only with a degree of imprecision since GSP specific duties were converted to ad valorem proportionately to the ad valorem equivalent of the m.f.n. rate. In these cases the m.f.n. unit value was used where unit value of GSP imports could have been used. The incidence of GSP specific duties will then tend to be too low as in principle unit value of GSP imports would have been lower than the m.f.n. unit value, which would have given a higher incidence of the GSP specific rate.

It must be emphasized that the GSP preferential margin which is implicitly measured here cannot in fact be properly assessed. On the one hand, the m.f.n. tariffs shown represent the legal or bound level of the tariff rather than the effectively applied level while on the other hand the GSP tariffs shown represent the effectively applied GSP tariffs. Furthermore the post-negotiations m.f.n. tariff level reported correspond to the final stage of m.f.n. reductions which should take place over a period of several years while the post-negotiations GSP tariffs are not known at this stage and could only be calculated in relation to the reduced m.f.n. tariffs in the case of GSP positive duties. Therefore the GSP margin which is implicitly measured would tend to be overstated. In addition since the import coverage of the GSP has been, as already mentioned, certainly overstated, the weighted pattern will have a distorting effect on the weighted averages.

In order to measure the actual impact of the various GSP schemes, GSP imports have been, in this analysis, distinguished between imports entitled to GSP preference with or without limitations. The type of limitations to GSP preference and their restrictive effects varies substantially among the preference granting markets considered. For that reason it has been necessary to simplify the definition of imports subject to GSP limitations. In this analysis GSP imports subject to limitation have been taken as combined imports under tariff items subject to quotas or to ceilings under strict surveillance, above which the m.f.n. tariff is in principle automatically reintroduced. GSP items subject to limitations also cover tariff items where maximum country amounts, determined either in percentage or in value terms, have had a restrictive effect on GSP imports since the first implementation of the various GSP schemes.

2. The coverage

The trade considered in the overall tariff assessment of the negotiations is limited to imports originating in countries entitled to most-favoured-nation tariff treatment (hereafter referred to as m.f.n. imports). As the definition of m.f.n. trade varies among the ten markets the country coverage of imports considered will vary with the market. The differences in the country coverage come in general from the fact that m.f.n. treatment is for some markets restricted to the GATT Contracting Parties or from the fact that some imports are admitted under preferential tariffs within free-trade area and other preferential agreements such as the EEC/EFTA or EEC/Mediterranean countries free-trade area; the preferential tariffs benefiting African, Caribbean and Pacific countries on the EC market or to British Commonwealth countries in Canada or New Zealand. Imports from developing countries under the Generalized System of Preferences have been included in m.f.n. trade as generally no separate statistical data are available to measure the volume of trade which actually benefited from preferential treatment.

The import data cover the year 1976 except for New Zealand where they cover the fiscal year 1975/76 (1 July 1975 to 30 June 1976). Import data for the European Communities exclude trade between the nine EC member countries. For all markets imports of gold have been excluded entirely since in many cases monetary transfers cannot be distinguished from commercial transfers. Also excluded is trade in military arms and ammunition. In addition to certain differences among the ten markets in the system of trade and the valuation basis it should be noted that the United States and Canadian import values are reported on an f.o.b. basis instead of c.i.f. basis as for the other markets.

The trade considered in the assessment of the results obtained by developing countries as a group also varies among the ten import markets as it covers the countries mentioned in each national GSP scheme as entitled in principle to preference. However, for consistency, Eastern trading area countries have been excluded for all markets.

The base rate for negotiations is the consolidated level of the rate. It should therefore be noted that the base rate can be higher than the applied or legal rate. Indeed this is often the case; it is not the actual level of the tariff which is measured but the bound level of the tariff. Similarly, the concession made may represent a new level of consolidation which does not necessarily reflect the level of the tariff after the negotiations. On the other hand the GSP preferential rates reported represent the actual rate which is related to the effectively applied m.f.n. rate and not to the bound level of the rate. Therefore the margin of the GSP preference which is measured is not always the effective margin but the maximum possible margin in the case of m.f.n. rates bound at a higher level than the applied m.f.n. rate.

In the m.f.n. tariff assessment vis-à-vis products of interest to developing countries the weighting pattern in calculating tariff averages is based on combined imports from developing countries instead of total m.f.n. imports. Similarly, in the assessment of changes in the Generalized System of Preferences, the weighting pattern for calculating both m.f.n. and GSP tariff averages has been based on combined imports from countries entitled in principle to preference under the GSP.