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FOREWORD

At its Third Session, held in 1972 in Santiago, the United Nations Conference on Trade and Development resolved that technical assistance should be provided to developing countries taking part in the forthcoming Multilateral Trade Negotiations held under the aegis of GATT. This technical assistance project, jointly operated by UNDP and UNCTAD, came into being in 1973. Since then it has been providing trade and trade barrier data, studies and analyses and technical advice to individual developing countries and groupings which request such assistance.

In the course of its work and mainly for purposes of its advisory service the Project has prepared a number of background papers, briefs and technical notes as well as notes on the deliberations in the various negotiating bodies. In response to requests by government officials, members of delegations and experts engaged in similar assistance activities, it has been the practice of the Project to have these papers collated and issued in manual form; these manuals have also been used, inter alia, as the basis for discussion in regional seminars on MTN which are held from time to time in collaboration with the Regional Economic Commissions of the United Nations.

Up to now the following volumes have been so issued:

Introductory Manual	November 1974
Introductory Manual, Supplement 1	April 1975
Introductory Manual, Supplement 2	September 1975
Reference Manual	December 1975
Reference Manual, Supplement 1	December 1976

The present Supplement 2 to the Reference Manual includes papers emanating from the Project in 1977 up to the end of July. Its issue is timed to meet the needs of the regional seminars scheduled for the latter part of the year.

As usual it should be stressed that the notes on meetings contained therein have been prepared for reference purposes only and do not have any official status. The entire contents of this volume are of a confidential nature and should not be made avilable other than to government officials, including seminar participants, who normally have access to the MTN meetings and documents.

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I. INTRODUCTION

In the Introduction to the previous Supplement a brief account was given of developments in the Multilateral Trade Negotiations in 1976. The present Supplement being intended to contain material relating to all aspects of the negotiations in the first seven months of 1977, it may be useful likewise to summarize here the main features and advances seen during this period.

During the first half of 1977, there continued to be held meetings of various negotiating groups and sub-groups, mostly in a routine fashion. While discussions in some areas advanced to the point where the positions of participants on main issues therein had become sufficiently clear to permit the examination of concrete textual proposals no tangible progress was made in others. No meetings at all were held on tariffs, on the sector approach or in the three agriculture sub-groups on meat, dairy products and grains. Up till mid-year there had been no discernible signs of revitalization of the negotiations or indeed any prospects of meaningful progress in the near future. Until late in the spring the United States continued to be hampered by the absence of a responsible negotiating official, there being inordinate delays in the appointment of the Special Trade Representative. EEC remained in a state of suspended animation - in regard to the negotiations - while awaiting clarification of new United States administration's policies, especially in regard to agriculture.

The intolerable lull was broken, somewhat unexpectedly and dramatically, in July. Following proposals by the United States, supported by EEC, the Agriculture and Non-Tariff Measures Groups adopted new work programmes which gave immediate impetus to a revival of activities and gave promise to the making of some progress in the negotiations in the coming months.

Continuation of Group meetings

In regard to the tropical products negotiations most developed countries had put their offers into effect by 1 January 1977 and all except the United States had done so by 1 July 1977. The United States was understood to be awaiting contributions from developing countries for the implementation of its offers. Developed countries generally considered the negotiations in the Tropical Products Group to have been concluded, their offers representing a maximum effort in this context; any further consideration of outstanding or unfulfilled requests would have to be undertaken in other areas of the MTN. In the only meeting of the Group held in 1977, developing countries expressed grave disappointment with the outcome of the negotiations in this "special and priority" sector, and took the position that the concessions and contributions put into effect by developed countries represented no more than a "first instalment" and that the Group should remain in active existence to review the overall situation and to explore possibilities of further improvements of offers.

The non-tariff measures sub-groups had several meetings during the half year, with uneven results. In the further examination of the draft Code for Preventing Technical Barriers to Trade attention was finally focussed on the question of differentiated and more favourable treatment for developing countries, which took much of the sub-group's time, apart from the "definitions" to be used in the Code. Parallel to this, a first examination of the applicability of the Code to agricultural products was undertaken in the Agriculture Group. In the area of subsidies and countervailing duties, a draft negotiating proposal was presented by Canada and

extensively commented upon. Reservations to its contents were entered by both developed and developing countries and there was a general disinclination to adopt the draft as a basis for negotiation. Further exchange of views on this proposal could take place, however, in informal consultations between interested delegations. on government procurement, there was a detailed exchange of views on the main issues to be dealt with in a multilateral solution and the stage seems to have been reached for the presentation of draft negotiating proposals. Little progress was made in respect of customs matters and quantitative restrictions, there being substantial divergencies of views on both subjects. There were some discussions at the technical level of import licensing procedures aimed at improving the existing draft texts. The GATT secretariat was asked to prepare revised consolidated texts for use as a basis for further discussions.

The Group on Safeguards continued its consideration of a United States proposal and undertook a detailed discussion of the main elements of a revised multilateral safeguards system, including that of special and differentiated treatment for developing countries. As a result, the general positions of participants on the most important issues have been sufficiently spelt out and the way seems to be clear for the pursuit of discussions on the basis of precise proposals which might take the form of a draft code on safeguards.

The Group on Institutional Framework, set up in November 1976 to seek to negotiate improvements in the international framework for the conduct of world trade, particularly with respect to trade between developed and developing countries, began consideration of the five points on its work programme. Discussions in February and June-July were centred on detailed proposals presented by Brazil, which deal with four of the five points (legal framework for differential treatment; balance of payments and economic development safeguards; consultation, dispute-settlement and surveillance procedures; and reciprocity and developing country participation in an improved trade framework). Proposals were also put forward by the United States and some other countries. Developing countries generally supported the Brazilian proposals, essentially aimed at making GATT better attuned to the particular needs of developing countries and thereby enabling them to participate more actively and fully in GATT. Developed countries were in general opposed to making any significant changes in the basic principles of GATT, even though some of them were not totally averse to considering improvements in its rules. Discussions have so far remained at a general level but it is expected, at least by the developing countries, that the Group will soon progress to more specific and concrete discussions.

New negotiating programmes

Thus, while limited progress was being made on the isolated fronts of some non-tariff measures, work simply stagnated in the main areas of the negotiations. Meetings on some subjects dragged on, with neither substance nor conviction, or were simply not held. This atmosphere, which was first seen in the latter part of 1976, persisted until mid-summer this year, when the two laggard groups suddenly found themselves awakened by new procedural proposals which set forth target dates or deadlines for the completion of different stages of their respective work. Following proposals by the United States, supported by the EEC, the Groups on Agriculture and Non-Tariff Measures decided in July 1977 to adopt work programmes providing for item-by-item negotiations in respect of tariffs and non-tariff measures on agriculture products and on non-tariff measures affecting industrial products, on the basis of a request/offer procedure. Similar target dates for the tabling of requests (1 November 1977) and the submission of offers (15 January 1978) were set for both Groups.

The new procedures are intended chiefly for products and measures for which multilateral solutions are not contemplated and participants are urged to avoid as far as possible tabling requests on such products or measures.

Within this general framework, special procedures are provided for negotiations between developed and developing countries, under which the latter are permitted to submit requests individually or jointly, and with more flexible time limits. Outstanding and unfulfilled requests from the tropical products negotiations will be considered as resubmitted, if so notified by a developing country. Arrangements will be made for plurilateral consultations and negotiations between developed and developing countries and developed countries will give special and priority attention to requests from developing countries in the presentation of offers, especially in cases where developing countries, individually or jointly, are principal or substantial suppliers. Developing countries in a position to do so will indicate, on a provisional basis at an appropriate date, their contributions to the negotiations, the final scope of such contributions to be determined in the light of the overall benefits accruing to them from the negotiations.

At the same time, efforts will be made to accelerate the work on multilateral solutions in the three agricultural Sub-Groups (Meat, Dairy Products and Grains) and in the NTM Sub-Groups. The objective is to have available as advanced texts as possible in such areas as subsidies and countervailing duties, government procurement, standards and customs valuation by the end of 1977 as a basis for subsequent detailed negotiations.

Background to the acceleration proposals

This sudden turn of events in the MTN may have come as a surprise to some but in fact there were several indications in recent months of a forthcoming initiative for relaunching the negotiations. There has been a growing concern on both sides of the Atlantic that the rising tide of protectionism could lead to a total breakdown of the negotiations. This sentiment was reflected in the declaration issued at the economic summit conference in London in early May, where the political leaders of the major developed countries declared that:

> "the Tokyo Round of multilateral trade negotiations must be pursued vigorously. The continuing economic difficulties make it even more essential to achieve the objectives of the Tokyo Declaration and to negotiate a comprehensive set of agreements to the maximum benefit of all. Toward this end, we will seek this year to achieve substantive progress in such key areas as:
>
> (i) a tariff reduction plan of broadest possible application designed to achieve a substantial cut and harmonization and in certain cases the elimination of tariffs;
>
> (ii) codes, agreements and other measures that will facilitate a significant reduction of non-tariff barriers to trade and the avoidance of new barriers in the future and that will take into account the structural changes which have taken place in the world economy;
>
> (iii) a mutually acceptable approach to agriculture that will achieve increased expansion and stabilization of trade, and greater assurance of world food supplies."

As a follow-up to this declaration of intent, the United States' newly appointed Special Representative for Trade Negotiations, Mr. Robert Strauss, met with officials of the Commission of the European Communities in early July. This meeting resulted in an agreement of principle for the re-launching of the MTN on the basis of a four-phase timetable for immediate work leading towards the final stage of the negotiations next year. In a press conference held after the meeting the United States Trade Representative referred to this as "the most significant day in the Tokyo Round" and declared that the agreement reflected a complete political commitment of the United States and EEC. The agreed timetable was outlined as follows:

- A general tariff plan, to include: agreement on a tariff-cutting formula, specific instructions on the treatment of agriculture in the MTN, specific statements on the treatment of developing countries, and agreement on how to deal with countries not subscribing to the tariff cut formula (first phase);

- The tabling by MTN participants of three kinds of requests: for agricultural goods' tariff cuts, for all non-tariff measures not subject to codes agreed in the MTN, and for tariff cuts by countries not subscribing to the tariff-cut formula (second phase);

- The tabling of texts for all MTN non-tariff barrier codes. Among areas which may be covered by new codes are government procurement, standards, export subsidies and countervailing duties (third phase);

- The tabling by all MTN participants of offers to their trade partners. These offers should include industrial tariffs with tariff schedules. With respect to agricultural items, these should be item-by-item offers (fourth phase).

These four phases should be concluded by 15 January 1978 so that the final and definitive negotiations might be initiated immediately afterwards. There was no mentioning of any firm date for the conclusion of the final negotiating phase but the estimation of the United States Trade Representative was that "90 days, give or take, could do it".

The agreement reached in Brussels reflects a meeting of minds on the two sides of the Atlantic concerning the treatment of agriculture in the MTN, which paved the way for the subsequent decisions in the Agriculture and NTM Groups mentioned above. Thus the United States, while still firmly attached to achieving a substantial trade liberalization in the agriculture field, no longer insists that agriculture and industrial products should be treated in the same way in the MTN. United States officials have in recent statements also made it clear that it does not intend to question the basic principles of EEC's Common Agricultural Policy (CAP). There is, however, a consensus that negotiations on agricultural and industrial products shall continue in parallel in order to form part of the same package.

Future prospects

While reactions to this United States/EEC initiative has been generally positive, many countries, including the developing countries, have serious doubts as to whether the target dates set can realistically be met, if only because of the common

reluctance to make comprehensive offers before there is a clear picture of the overall results and the balance of the negotiations. These concerns have been countered by assurances that the target dates would not be regarded as cut-off deadlines, maximum efforts to meet them being all that is required.

Whether the principal objectives of trade liberalization and institutional improvement, set forth in the Tokyo Declaration, can really be achieved may become clearer with the passage of time, but quite clearly, considerable ground will have to be covered in a number of areas if a comprehensive negotiating basis is to be established by the end of this year. Apart from the vital question of reaching agreement on a tariff negotiating plan, draft texts which may be acceptable as a basis for negotiations remains to be worked out in the areas of safeguards, subsidies and countervailing duties, government procurement and customs valuation. The precise nature and scope of measures to ensure special and differentiated treatment for developing countries in the various areas also remains to be settled and substantive exploration of the possibilities is yet to begin; developing countries have made their acceptance of the work programme adopted in July conditional upon satisfactory agreements in this regard. Whether the general political will to get on with the negotiations that has been demonstrated also reflects a genuine readiness to grant meaningful concessions, in particular in favour of developing countries, is less than certain. It is no secret that some countries entertain serious doubts as to the benefits of pursuing further trade liberalization under present economic conditions, and about the feasibility of granting and implementing meaningful trade concessions in present circumstances of high unemployment. Though these arguments have been rejected in the EEC at the Commission level, there is growing talk at the instigation of some of its members of the need to practice "intelligent" or "organized" liberalism which is taken by many to be a euphemistic or sophisticated advocacy of more direct and immediate reliance on safeguard - or protective - measures. Indications are also that some European countries believe the negotiations can be and should be brought to a close as soon as possible even if with none too spectacular results. A recent Commission memorandum on Community commercial policy mentions an average tariff cut of 20 per cent or less as a reasonable aim in the negotiations.

The optimistic expectation formulated in Brussels in July regarding an expeditious conclusion of the negotiations next year has since been significantly discounted. One of the members of EEC stated recently at a Council meeting that "there is no question of the EEC being tied in Geneva to a restrictive timetable; there is no question of reaching partial agreements as the EEC can only decide on the basis of a global result". This attitude appears to be shared by the EEC Commission, and it has been elucidated that the establishment of a rigorous negotiating timetable has been abandoned even by the United States; what remains is merely the objective of reaching, by mid-January 1978, an overall view of the offers, demands and positions of all the participants in the negotiations with a view to embarking immediately afterwards on the final phase.

Lowering one's sight is the easiest way of accomplishing the task; to aim at a limited package will make possible early "completion" of the negotiations. Official pronouncements, however, still indicate a firm determination on the part of many participants to reach out for a comprehensive agreement which, while falling somewhat below the majestic height of the Tokyo Declaration, would at least partially

justify the enormous efforts and resources that have gone into the exercise and would to a respectable extent meet the essential trading interests of a large cross-section of the participating nations. One can therefore legitimately doubt that the Tokyo Round can be, successfully or otherwise, concluded even by the end of 1978, let alone much earlier in the year.

NON-TARIFF MEASURES

Note on the meeting of the Group in January 1977

1. At its meeting on 13 January 1977 the Group on Non-Tariff Measures resumed discussion on the following matters: establishment of a second list of non-tariff measures; procedures for negotiations on measures not dealt with multilaterally; and the establishment of a comprehensive data base for item-related non-tariff measures. This note summarizes the main elements of the discussion.

Second list of non-tariff measures

2. Australia and the United States restated their position that a sub-group to deal with variable levies, minimum import prices or non-tariff charges on imports should be established as soon as possible. The EEC reaffirmed its view that these measures ought to be discussed in the Agriculture Group. India suggested that the GATT secretariat should initiate a study of products of export interest to developing countries which were subject to variable levies or other non-tariff charges in order to identify the problems facing the developing countries. Other delegations considered, however, that such information was already available in existing documentation and that a new study was not needed.

3. The Group noted that the basic positions of participants on the question of a new sub-group remained unchanged and agreed that it would revert to the proposal at its next meeting.

4. The Group resumed discussion of the proposal to establish a sub-group on anti-dumping. The meeting was informed by the Chairman of the Anti-Dumping Committee of its recent decision to invite non-adherents to the Anti-Dumping Code to discuss with the Committee any problems they faced in this field. The Anti-Dumping Committee would welcome written material from any interested countries in this regard.[1/]

5. A number of developing countries[2/] expressed reservation with regard to the idea of discussing their particular problems in the Anti-Dumping Committee. It was recalled that a similar proposal put forward by the United States at the last meeting of the Group had been rejected by the developing countries on the ground that it would amount to nothing more than a revival of previous procedures aimed at

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1/ This invitation had previously been conveyed at the GATT Council meeting in November 1976 (see GATT document C/M/117, paragraph 2).

2/ Including Egypt, India, Argentine, Pakistan, Israel, Mexico, Romania, Turkey, Malaysia, Yugoslavia and Ecuador (for the Andean Group).

securing adherence by developing countries to the Anti-Dumping Code,[1] and that such attempts had been unsuccessful in spite of discussions over a number of years. Some developing countries pointed out that discussions in the Anti-Dumping Committee would be futile as that body was not empowered to modify the existing Code. An adequate solution to the special problems of developing countries could be found only in the MTN in pursuance of provisions of the Tokyo Declaration. A sub-group should therefore be established without delay so that these problems could receive sufficient attention before the conclusion of the negotiations.

6. The United States stated that it remained unconvinced that work on anti-dumping could be better handled in a separate sub-group than in the Anti-Dumping Committee. This Committee had worked for years and had developed considerable expertise in anti-dumping matters. Furthermore, the current review of the operation of the Anti-Dumping Code in the Committee provided a framework more conducive to a meaningful discussion of the problems of developing countries than in the past.

7. The EEC and Japan stated that they would need time for further reflection on the position taken by developing countries. The Group agreed that it would revert to this matter at its next meeting.

Negotiations on measures not dealt with multilaterally

8. The Group considered a proposal on procedures for negotiations on non-tariff measures not dealt with multilaterally which had been developed through informal consultations among delegations, and agreed to adopt the proposal with some minor drafting modifications. These procedures, which were similar to those agreed by the Agriculture Group in December 1975,[2] provided for a process of information, examination and dialogue with respect to non-tariff measures not dealt with multilaterally. Under these procedures, countries would notify to the GATT secretariat any such non-tariff measures which they considered to affect their trade. These notifications would be circulated to all participants and would form the basis of subsequent bilateral or plurilateral consultations. The procedures also provided that summary notes on the consultations held would be prepared and circulated. At a later stage the Group on Non-Tariff Measures would review the results of the consultations with a view to determining the next step to be taken, including seeking multilateral solutions if appropriate. Priority attention would be given in the consultations and negotiations to non-tariff measures affecting the interests of developing countries.

Establishment of a comprehensive data base for item-related non-tariff measures

9. The Group noted the conclusions reached at the last meeting of the Agriculture Group with regard to supplementing the Tariff Rate Information File[3] and agreed to request the GATT secretariat to include in the File available information on non-tariff barriers for all products. To this end the secretariat should endeavour to include all item-related non-tariff measures which were already identified at the

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1/ cf. Reference Manual, UNCTAD/MTN/40/Supp.1, p.23, para.5

2/ cf. GATT document MTN/AG/4.

3/ cf. GATT document MTN/AG/5, paragraph II and note on December 1976 meeting reproduced in Reference Manual, UNCTAD/MTN/40/Supp.1, pp.86-87

BTN 4-digit level, and those for which the product description was sufficiently precise to enable reliable identification at that level of classification. The secretariat should also attempt, where possible, to include non-tariff measures at the tariff-line level.

10. Australia and EEC considered that the search for additional information on item-related non-tariff measures should continue in the future and that the tables to be prepared by the secretariat should be kept up to date. It was agreed to revert at the next meeting to the question of further elaboration of the Tariff Rate Information File.

Other business

11. The United States reiterated its concern over the effects of various tax practices on international trade and drew attention to the conclusions contained in the recently published reports of the GATT panels set up to investigate certain tax practices in the United States and certain EEC member States. The United States Administration was at present studying ways and means of adequately dealing with these problems.

Future work programme

12. The Group agreed on the following timetable for future meetings:

Customs Matters	Week of 21 February
Subsidies and Countervailing Duties	28 February - 2 March
Government Procurement	3 - 4 March
Licensing Procedures (meeting at technical level)	7 - 8 March
Quantitative Restrictions	9 - 11 March
Technical Barriers to Trade	Week of 21 March
Group on Non-Tariff Measures	Week of 18 April

13. In regard to Technical Barriers to Trade the Group was informed that the Agriculture Group intended to meet during the week beginning 28 March to review the applicability of the Standards Code to agricultural products.

Note on the meeting of the Group in April 1977

1. The Group on Non-Tariff Measures met on 20 April 1977. Discussion focussed largely on outstanding proposals for establishment of new sub-groups. This note summarizes the main elements of the discussion.

Second list of non-tariff measures

2. The brief discussion of the longstanding proposal to establish a sub-group on variable levies, minimum import prices and non-tariff charges on imports showed that the basic positions of participants remained unchanged (the United States and Australia being in favour of a sub-group, and EEC maintaining its view that these measures should be discussed in the Agriculture Group). India emphasized the need to reach agreement as to where these measures should be discussed in order to make it possible to deal effectively with them within the timeframe of the negotiations. The Sub-Group agreed to revert to the proposal at its next meeting.

3. The Group reverted to the proposal to set up a sub-group to deal with anti-dumping. Egypt and India, supported by a number of other developing countries, reiterated their arguments for establishing a sub-group.1/ In particular, they stressed the importance of dealing with the special problems confronting the developing countries in this area in the context of MTN and not within the Anti-Dumping Committee, which was not a negotiating body.

4. Most developed countries 2/ remained opposed to the proposal. Canada, which had originally put forward the proposal for a sub-group, explained that its changed attitude was due to the fact that the various problems related to the Anti-Dumping Code, which it had considered pertinent to discuss in MTN, were now being addressed in the review of the Code undertaken by the Anti-Dumping Committee. As non-adherents to the Code could participate in that work, Canada did not see any useful purpose in establishing a separate sub-group. Furthermore, a number of the issues that would be relevant to any revision of the Anti-Dumping Code (such as that of further elaborating the concept of material injury) were at present dealt with in the Sub-Group on Subsidies and Countervailing Duties.

5. Canada did in general not find the concerns expressed by developing countries to be convincing. With regard to the question of special and differentiated treatment, Canada argued that it and a number of other adherents to the Anti-Dumping Code already provided a substantial measure of such treatment by applying the provisions of the Code on an MFN basis. This view was supported by EEC. Referring to developing countries' criticism of the definition of "normal value" in the Code, Canada

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1/ See the Project's note from the previous meeting of the Group (page 7 paragraphs 4-5).

2/ Including the United States, Canada, EEC and Japan (the Nordic countries could, however, accept to set up a sub-group "at an appropriate time").

pointed out that nothing in the Code prevented an importing country from imposing a smaller anti-dumping duty than the established dumping margin. A tightening of the provisions of the Code that would obstruct anti-dumping actions against imports from developing countries would in its view be economically and politically "unfeasible" and could in fact lead to recourse to other and more restrictive trade measures. Canada doubted, however, that developing countries were faced with many concrete problems in this field, but would be prepared to listen to any examples they might provide.

6. The United States and a number of other developed countries supported Canada's view that it was necessary to base any further discussion of this matter on concrete problems. The United States suggested that developing countries should be requested to submit lists of actual or potential anti-dumping actions taken by developed countries against their exports.

7. Ecuador (for the Andean Group), Mexico and some other developing countries objected to the view that special and differentiated treatment was already provided by the adherents to the Code. Such treatment should be negotiated on a contractual basis and not depend upon unilateral decisions by the importing countries. A number of developing countries stated that they would be prepared to discuss concrete problems once a sub-group had been established, but cautioned against undue concentration on past experience with anti-dumping actions as mere threats of such actions could represent a serious deterrent to export expansion.

8. Although no agreement could be reached to establish a sub-group, it was agreed to continue the discussion of problems facing developing countries in the field of anti-dumping under a separate agenda item at the next meeting of the Group. This discussion would be without prejudice to any decision that might subsequently be taken to establish a sub-group.

Matters relating to negotiations on measures not dealt with multilaterally

9. The Group took note of a document describing the working arrangements adopted by the GATT secretariat in respect of notifications submitted for this category of non-tariff measures.1/ Referring to a number of notifications by the United States, which all related to agricultural products,2/ EEC argued that these should have been submitted to the Agriculture Group in accordance with the working arrangements recently adopted by that Group. The United States maintained, however, that the procedures agreed to by the NTM Group at its last meeting were of general application and not restricted to industrial products.

Establishment of a comprehensive data base for item-related non-tariff measures

10. The Chairman informed the Group that the GATT secretariat had not found it possible to carry out the tasks entrusted to it at the last meeting, i.e. to supplement the tariff rate information file with all identified or identifiable item-related non-tariff measures. This was due to a number of reasons, such as the lack of agreement among countries as to the type of measures to be included, technical difficulties in identifying the tariff headings from available product descriptions, particularly in the case of countries not applying the CCCN nomenclature, and difficulties in obtaining necessary additional and more detailed information. Australia

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1/ MTN/NTM/W/82

2/ MTN/NTM/W/82/Add.1.

and EEC expressed their disappointment that the secretariat had found it impossible to embark on the agreed exercise and would be prepared to continue discussion of possible ways of overcoming the difficulties that had been encountered if others so wished. The Group took note of the secretariat statement and agreed to revert to the matter at its next meeting.

Other business

11. The Group noted a suggestion by India, that in order to focus future discussions in the various sub-groups on the main issues, "checklists" should be prepared by the secretariat in areas where this had not already been done, such as in the Quantitative Restrictions Sub-Group.

Future work programme

12. The Group agreed on the following timetable for future meetings:

Licensing Procedures (meeting at technical level)	Week of 23 May
Government Procurement	Week of 13 June
Technical Barriers to Trade	Week of 27 June (tentative date)
Quantitative Restrictions	Week of 4 July
Subsidies and Countervailing Duties, Customs Matters (alternating meetings)	Week of 11 July
Group on Non-Tariff Measures	Week of 18 July

Note on the meeting of the Group in July 1977

1. The Group on Non-Tariff Measures met on 21 and 28 July 1977, and agreed on the adoption of a new negotiating programme for non-tariff measures, which was along the same lines as the one adopted by the Agriculture Group. There was also a brief discussion of the problems encountered by developing countries in the field of anti-dumping. The following paragraphs summarize the main elements of the discussion.

2. The new programme was based on a United States proposal which dealt with non-tariff measures affecting industrial products which, similar to its proposal discussed in the Agriculture Group, embodied a request/offer procedure with specific target dates;1/ this provided that requests should be tabled by 1 November 1977 and offers by 15 January 1978. The United States considered that work in the various NTM Sub-Groups should be accelerated so that advanced texts could be available by 15 December 1977 and expressed the hope that participants would exercise restraints in submitting requests on measures covered by multilateral solutions.

3. Most developed countries2/ welcomed the United States' proposal, which they found broadly acceptable, generally supporting the setting of target dates for the submission of requests and offers even though there were doubts as to whether the suggested dates were realistic. It was generally recognized that while initial requests should be limited to measures not covered by the multilateral codes under discussion, it should be permissible for additional requests to be submitted in the light of the outcome of those discussions. Thus the date for submission of offers could be valid only if by then work on the various codes had been sufficiently advanced and the overall balance of the negotiations could be evaluated. Australia recalled its previous proposal on synchronizing the negotiations on tariffs and non-tariff measures and emphasized the need for simultaneous progress in these areas so as to enable a general evaluation.

4. Developing countries3/, while supporting the general thrust of the United States proposal, pointed out that the negotiating programme must include special negotiating procedures and provisions for special and differentiated treatment, as was the case with the Agricultural negotiating programme. They also considered that the request procedure should be open-ended. Hong Kong expressed concern that the request procedure might prejudice the work on multilateral solutions, for instance, in the Sub-Group on Quantitative Restrictions; it therefore proposed that the procedure should be applied only to measures falling outside the scope of the Sub-Groups.

1/ MTN/NTM/W/108.

2/ Including EEC, Canada, the Nordic countries, Switzerland, Austria, Japan, Australia and New Zealand.

3/ Including Argentina, Brazil, Ecuador (for the Andean Group), Hong Kong, India, Israel, Jamaica, Korea, Nigeria, Philippines (for ASEAN), Sri Lanka and Zaire.

5. The United States indicated that it had no objection to the inclusion of a special section in the programme to take account of the developing countries' concerns. While the proposal was mainly designed to deal with measures not covered by the Sub-Groups, there was no intention to preclude requests on other measures. The United States, for its part, would continue to press for the adoption of the proposal it had earlier made in the Sub-Group on Quantitative Restrictions which included certain multilateral elements, and at the same time, might also submit requests on specific restrictions under the new procedure.

Conclusions

6. After informal consultations the Group agreed on a decision[1/] which, similar to the one taken by Group Agriculture, contains two parts, one setting out general negotiating procedures and the other special procedures for negotiations between developed and developing countries.

7. According to the general procedures, participants will submit request lists indicating the non-tariff measures and, if possible, the products affected, by 1 November 1977. Additional or modified lists may be submitted as the negotiations proceed. The request lists will be circulated to all participants. Participants should exercise restraint in making requests on measures for which multilateral solutions are being elaborated in the Sub-Groups. Participants should make a maximum effort to submit their offers by 15 January 1978. The Sub-Groups will meet at the earliest possible date after the beginning of September, and the objective will be to set out by the end of the year the key issues which need further negotiations.

8. The negotiating procedures for the developing countries, similar to the general ones, involve the use of requests and offers. Developing countries may submit request lists either individually or jointly, in respect of all non-tariff measures, including those for which multilateral solutions are being considered. The target date 1 November 1977 for the submission of requests is qualified by the words "if possible" in the case of developing countries. Outstanding requests on tropical products may be resubmitted under the new procedures, their special and priority character remaining unimpaired. Arrangements will be made for bilateral and plurilateral consultations and negotiations between requesting countries and countries to which the requests are addressed. Developed countries will give special and priority attention to requests submitted by developing countries, especially if developing countries are, jointly or individually, principal or substantial suppliers.

9. It is recognized that developed countries may submit indicative lists showing non-tariff measures affecting their export interests in the markets of developing countries. This language was adopted, as in the Agriculture Group, instead of a proposed form which would have brought export control measures within the purview of the negotiations. EEC and Japan maintained that requests in respect of export control measures should be permitted whereas developing countries generally opposed this disposition. The developing countries reserved their right to reject any requests relating to export measures maintained by them. Canada reaffirmed its position that offers concerning export restrictions could be made only in the context of sector negotiations.

1/ c.f. annex to MTN/NTM/35.

10. Concerning contributions from developing countries, it is stated that, after offers have been presented by developed countries, developing countries in a position to do so will indicate on a provisional basis their contributions to the negotiations. The final scope of such contributions will be determined in the light of the additional benefits developing countries receive from the MTN as a whole.

11. The Group will revert at its next meeting to the question of differential measures for securing special and more favourable treatment for developing countries in the non-tariff negotiations, on the basis of proposals by interested participants. The Sub-Groups should, in elaborating multilateral solutions, aim at identifying specific ways of providing for differential and more favourable treatment, where feasible and appropriate, before the end of the year.

12. Developing countries have stressed that their acceptance of the programme of work was conditional upon satisfactory agreements being reached on special procedures and special and differential measures applicable to them and, in particular, to the least developed countries.

Second list of non-tariff measures

13. In view of the decisions taken by the Agriculture and NTM Groups, those countries which had proposed the establishment of a sub-group to deal with variable levies, minimum import prices or non-tariff charges on imports (notably Australia and the United States) announced that their intention was not to press for this for the time being.

Anti-dumping

14. The Group had a brief exchange of views concerning the problems encountered by developing countries in this field. Egypt pointed out that, contrary to what the developed seemed to believe, developing countries did indeed face a number of concrete problems in anti-dumping. In fact, a number of anti-dumping actions had been taken in recent years by developed countries against exports of developing countries. The mere initiation of an anti-dumping procedure acted as a trade barrier as it often inhibited continued importation from the particular source. In Egypt's view there was clearly room for improvements in the Anti-Dumping Code. Apart from the developing countries' proposal for a modification of the Code's definition of "normal value", there should be a clearer definition of the concept of "material injury". The definition or definitions of the injury concept which might be agreed in the contexts of safeguards and subsidies and countervailing duties could have a significant bearing on the definition in the Anti-Dumping Code. Due allowance should be made in the determination of "normal value" for indirect taxes, including taxes on raw materials inputs. Products subject to "voluntary" export restraints should be immune from anti-dumping actions. There was also room for improved notification and consultations procedures, in particular, where developing countries' interests were affected.

15. Mexico noted that it had also been affected by a number of anti-dumping actions in recent years, notably by the United States. It pointed out that even though, in most of these, the initial action had not lead to the imposition of anti-dumping duties, the investigations as such had involved high administrative costs and caused uncertainty and undermined future export prospects. The frequent threat of anti-dumping actions in one of its major export markets acted as an

effective deterrent to its efforts to diversify and expand exports. Mexico would support the establishment of a sub-group on anti-dumping to carry out an in-depth analysis of the provisions of the Anti-Dumping Code in relation to the special situation of developing countries, especially the provisions relating to normal value, material injury and actions on behalf of third countries.

16. India and Brazil supported the proposals for a renegotiation of the Anti-Dumping Code in the MTN, but were prepared to postpone further discussion of this matter until the next meeting.

17. The United States stated that it was prepared to take part in a discussion of this subject at a later date, but remained unconvinced that developing countries were faced with any problems which were different from those facing other countries. It maintained the view that a country should be free to impose anti-dumping duties against dumped imports, regardless of its source, if such imports were causing injury. The Group agreed to revert to this matter at its next meeting.

(i) SUBSIDIES AND COUNTERVAILING DUTIES

Note on the meeting of the Sub-Group in February 1977

1. At its meeting on 28 February 1977, the Sub-Group had a preliminary exchange of views on a draft text prepared by Canada containing elements of an agreement on subsidies and countervailing duties.1/ Delegations who intervened in the discussion expressed their appreciation for the Canadian initiative but were generally not in a position to express firm views on the proposal at this stage. Some preliminary comments were, however, made and clarifications were sought on a number of points. The following paragraphs summarize the main elements of the discussion.

2. In introducing the paper, Canada explained that the draft text was not meant to represent the Canadian position on subsidies and countervailing duties; in fact, Canada might itself propose some radical changes to the text, were it to be accepted as a basis for negotiations. In preparing the text it had been guided by previous statements made in the Sub-Group2/ and the positions of various countries on some of the major issues being divergent, it had not been possible to present a single draft for all the provisions, which explained why the text contained certain alternative proposals. Informal consultations with some countries had clearly demonstrated the complexity of the issues and in Canada's view the most efficient way to pursue the discussion would be to initiate extensive bilateral and plurilateral consultations.

3. The United States stated that it would be prepared to proceed with informal consultations but indicated that it had major difficulties with a number of provisions in the Canadian text. A key problem area concerned the proposal for prior multilateral approval of countervailing measures. Such an obligation would be unprecedented in GATT and would be extremely difficult if not impossible for the United States to accept. The suggested approach to differentiate obligations in relation to specific products or product groups was also a matter of serious concern. As regards special and differentiated treatment for developing countries, the United States would favour the adoption of less complicated ways of extending such treatment than the approach suggested by Canada. A number of other issues were, in the United States' view, inadequately dealt with in the draft text and required much further consideration. These included the treatment of domestic subsidies and subsidies with import substitution effects, dispute settlement procedures, subsidization resulting from state trading practices and the treatment of subsidies in effect prior to the entry into force of a multilateral agreement.

4. In addition, the United States would need clarifications on the following points of the text: whether the provisions of Article 4C(b) would require initiation

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1/ MTN/NTM/W/80.

2/ See MTN/NTM/W/52/Rev.1.

of new procedures for the reintroduction of a countervailing measure against a subsidy which had only temporarily ceased to be granted; the possibilities for a signatory to expedite procedures in emergency cases; the reason for limiting Article 9E to cases of injury to domestic industries and excluding problems related to subsidization in third country markets; and the implications of the terms "underwriting of total capital cost" in paragraph 1B, alternative I and "non-governmental persons" in Article 5B.

5. Japan considered certain provisions in the draft text to be "intriguing", for example, those relating to subsidies on primary products and those on special and differentiated treatment for developing countries, but was seriously concerned about other aspects of it, such as the linking of provisions on subsidies and countervailing duties, the possibility of countervailing actions without proof of injury, the product differentiation approach and the suggested definition of countervailing measures which would allow the use of other measures (such as quantitative restrictions and withdrawal of tariff concessions) for the countervailing of subsidies.

6. EEC and Austria expressed serious doubts about the approach outlined by Canada, the Community referring to it as "utopian" and noting that in some important respects it went substantially beyond the existing GATT provisions. Like Japan they considered subsidies and countervailing duties to be separate issues. EEC stressed the importance of subsidies as an instrument for the pursuit of national policy goals and questioned the appropriateness of using any normative approach to negotiations in this area. Both EEC and Austria concluded that the draft text represented only one possible negotiating approach among others and that all other previous proposals (including two submissions by EEC) should remain on the table for future discussions.

7. Australia and New Zealand thought that the draft text was useful in advancing the discussion but had, like other countries, reservations on various points therein. Australia was particularly concerned over the suggestion that subsidies on agricultural products should be subjected to a lesser degree of discipline than on non-primary products. Although there might be justification for a certain degree of freedom of action, for instance when subsidies were used for neutralizing commodity price fluctuations, there should, in Australia's view, be no blanket exception from the rules on subsidies for primary products.

8. As regards countervailing measures, Australia pointed out that the suggested right to use countervailing duties against subsidies having import substitution effects and the idea of prior multilateral approval of countervailing actions would go far beyond existing GATT obligations. Article VI of the GATT left decisions on countervailing actions to the discretion of the importing country and in Australia's view, a case for radically changing this practice had not been made.

9. New Zealand emphasized that any new rules on subsidies would have to be consistent with the provisions of appropriate commodity agreements. It welcomed the recognition given in the draft to problems related to subsidization in third country markets but questioned whether the suggested remedies against such subsidization would be sufficient. New Zealand furthermore expressed reservations with regard to the procedural provisions of the text which appeared too cumbersome and time-consuming.

10. Hungary and Czechoslovakia considered it unacceptable to elaborate special provisions with regard to subsidization by non-market economy countries which appeared to be the intention behind article 8 of the draft text. In their view all rules should be of general application and deal with subsidy practices regardless of the type of economy of the exporting country. The establishment of different rules for different countries would be contrary to the basic provisions of GATT and the Tokyo Declaration.

11. Developing countries which spoke at the meeting1/ generally reiterated their basic position with regard to special and differentiated treatment in this field. Referring to their unsatisfactory experience with Part IV of GATT and the Anti-Dumping Code they emphasized that provisions for special and differentiated treatment should be attached to every relevant provision of a multilateral agreement and not, as in the draft text, only be dealt with in a single paragraph. Several developing countries pointed out that the proposal to draw up a list of products for which specific developing countries would be allowed to grant export subsidies, came substantially short of meeting the objective of developing countries to reinforce their existing right to grant any form of subsidy.

12. As regards countervailing duties, India pointed out that the draft text would abridge developing countries' rights under Article XXXVII:3(c) of GATT, under which developed countries had undertaken not to have recourse to measures such as countervailing duties against exports from developing countries except as a last resort in exceptional cases. This obligation should be further reinforced and not weakened. Countervailing actions against exports from developing countries should be permitted only if it were demonstrated that the subsidizing was the direct cause of material injury to a domestic industry in the importing country. The impact of a countervailing action on the economy of the exporting developing country should be fully taken into account.

13. Mexico noted that the draft text would permit the use of countervailing measures against export subsidies as well as domestic subsidies applied by developing countries. In its view the aim should be to draw up a separate code on countervailing duties based on the doctrine that exports from developing countries should be immune from countervailing action.

14. Canada did not wish to respond in detail to the various comments made during the meeting, merely noting that there appeared to be a certain confusion about the intention behind some of the suggested provisions. This further reinforced its view that extensive informal consultations were necessary. Canada could envisage various ways of pursuing the consideration of the draft text, one of which could be to divide the text into two parts in order to deal with subsidies and countervailing duties separately as had been suggested by some delegations.

15. The Sub-Group endorsed the Canadian suggestion to proceed with bilateral or plurilateral consultations. Such consultations could be initiated among interested delegations and would aim at exploring what further consideration might be given to the draft text in the Sub-Group. It was agreed that in these consultations all previous proposals made in the Sub-Group should be taken into account and that the results of the consultations should be communicated to the Sub-Group.

16. The Sub-Group agreed to hold its next meeting in May, the exact date to be fixed by the Group on Non-Tariff Measures at its meeting in April.

1/ Egypt, Ecuador (for the Andean Group), India, Isreal and Brazil.

(ii) TECHNICAL BARRIERS TO TRADE

Note on the meeting of the Sub-Group of March 1977

1. The Sub-Group on Technical Barriers to Trade met from 21 to 25 March 1977, and gave consideration to (a) proposals for additions and amendments to the draft Code on Preventing Technical Barriers to Trade 1/ and (b) the definitions. The following paragraphs contain a summary of the main points raised in the discussion.

Text of the draft Code

2. Discussion relating to the text of the draft Code itself focussed largely on the question of how to effectively incorporate provisions for differentiated and more favourable treatment for developing countries into the obligations of the Code in a meaningful way. As at earlier meetings of the Sub-Group, developed countries opposed the insertion of a phrase such as "particularly for developing countries" in individual paragraphs throughout the Code (an approach they termed "sprinkling"). They considered that in certain cases the phrase could detract from the "absolute" character of key obligations of the Code while in other instances, it did not seem relevant or to have any practical effect. Developed countries proposed that the question of differentiated and more favourable treatment should be dealt with in a separate section of the Code. The United States had proposed a text in this respect.2/

3. Developing countries 3/ put forward several criticisms of the text proposed by the United States, including that the obligations contained therein were too weak; if such a provision were to be included, it should be brought up to the first level of obligation. They also considered that the two paragraphs did not deal with certain key aspects of technical barriers to trade as they related to developing countries. Brazil considered that the Code, through a general paragraph or through multiple insertions in the text or both, should provide differentiated and more favourable treatment in respect of four main elements, namely:

(i) recognition that the developing countries would require a certain degree of flexibility in assuming the obligations of the Code;

(ii) recognition of the aim of increasing developing countries' share in world trade through, in the present content, a commitment to provide for a general transfer of technology and the establishment of an institutional mechanism

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1/ The text of draft Code before the Sub-Group was contained in MTN/NTM/W/71, the proposals in MTN/NTM/W/72, the changes agreed to during the meeting in MTN/NTM/W/93.

2/ MTN/NTM/W/72, pages 23,24.

3/ Including Egypt, India, Brazil, Mexico, Nigeria, Malaysia.

to enable developing countries to meet the technical regulations and standards applied by developed countries;

(iii) a fuller participation of the developing countries in the activities of international standards bodies, to be achieved through the provisions of technical assistance, the systematic transmittal of information, etc.; and

(iv) recognition of the right of developing countries to deviate from international standards, and in appropriate circumstances, to use trade restrictive measures to protect indigenous technology (as translated into standards) in order to avoid becoming dependent on more expensive imported technology.

4. A number of developing countries endorsed the approach advocated by Brazil. India suggested in addition that developing countries should not be compelled to adopt standards or related procedures going beyond their technological or economic capabilities.

5. The United States stated that the text it had suggested was intended to meet both the political and economic facets of the concerns expressed by developing countries and would serve to obviate the need for repeated references to the special problems of developing countries in the text, except where an additional reference would have real substance. The subsequent comments by developing countries showed that it was not clear in which areas additions would have real substance and in which they would not. Nigeria recalled that developing countries were, from their experience with Part IV of GATT, wary of the use of an isolated set of provisions to deal with their problems and considered that at any rate the general paragraph should not preclude the insertion of additional provisions wherever the problem appeared not to have been suitably or adequately covered under the general provision. Mexico stated that, while admittedly, for constitutional or institutional reasons, all obligations could not be absolute, those linked to development needs, including those listed by Brazil, should be given the first level of commitment.

6. Although the Sub-Group did not have time to address itself to all the points before it,1/ discussion did take place in respect to certain proposals. One of the points discussed related to the suggestions by Argentina, Australia and the Nordic countries dealing with the representation and participation of developing countries in the activities of international standards bodies.2/ Mexico, supported by the Andean Group (Ecuador) proposed a compromise text, which, together with the three existing texts in the relevant document, were retained and it was suggested their proponents should try to reach an agreement through informal consultation. In reply to a question in this context, the expert from the ISO informed the Sub-Group that a large proportion of ISO meetings were held outside Geneva, at the invitation (and expense) of the national standards institutions. While there had been an increasing number of meetings held in developing countries in recent years, in absolute terms there were still very few. More significantly, however, developing countries were not participating actively in the most essential work of ISO, i.e. the correspondence, including voting, carried out between meetings.

1/ i.e. those included in MTN/NTM/W/72.

2/ MTN/NTM/W/72.

7. The proposal by Israel that adherents should notify GATT when they decide to adopt a technical regulation substantially based upon an international standard was opposed by certain developed countries,1/ on the grounds that it could not only cause an overwhelming burden on the GATT secretariat but would remove an important incentive for countries to use international standards as a basis for their technical regulations.2/ A number of developing countries, however, considered that such notification would constitute an important element in the mechanism for automatic transmittal of information that they expected to be built into the framework of the Code. The Sub-Group was informed that the GATT secretariat did not envisage that such a requirement would entail an inordinate amount of work on its part. In response to points made by certain other delegations, as to the possibility that the ISO could furnish such information to GATT, the expert from the ISO stated that, although member bodies were requested to notify the ISO whether ISO standards were adopted as national standards, very little information of this nature actually reached the ISO secretariat, although some did so indirectly, e.g. when the relevant information was published in the Official Journal of the European Communities. However, he did not rule out the possibility of the ISO taking some initiative in this regard.

Definitions

8. The Sub-Group was able to agree to incorporate the list of definitions, as revised by Mr. Bergholm (Finland) in consultation with delegations, into the text of the Code.3/ It was agreed that solutions to the substantive points 4/ raised in the context of the definitions could be sought in other areas of the Code. It was noted that this did not prejudice the right of any delegation to raise point relating to the definitions at future meetings as could be done in respect of any other part of the text.

Next meeting

9. It was agreed that the date of the next meeting should be decided by the Group on Non-Tariff Measures at its April meeting.

1/ Including United States, EEC, Nordics, Canada, Japan.

2/ Canada pointed out that such information would be furnished by the "enquiry point" provided for in Section 16 of the Code.

3/ The agreed definitions are included in MTN/NTM/W/93.

4/ i.e. the proposals by the United States, Canada, EEC and Japan on page 2 of MTN/NTM/W/72.

(iii) CUSTOMS MATTERS

Note on the meeting of the Sub-Group in February 1977

1. The Sub-Group on Customs Matters held a brief meeting on 21 February 1977 which was chiefly devoted to a preliminary discussion of certain proposals concerning customs valuation rules. The following paragraphs summarize the main points of the discussion.

Customs valuation

2. EEC and the Nordic countries recalled the importance they attached to achieving concrete results in the area of customs valuation in the MTN. In their view, a main objective in the negotiations should be to further broaden the acceptance of the Brussels Definition of Value, which had been adopted by the vast majority of trading nations as the basis of their customs valuation legislation, although there was admittedly room for improvement in the definition. They found it encouraging that the United States seemed to envisage certain changes in its present valuation system and they would continue bilateral discussions with the United States and other non-adherents to the BDV with a view to exploring the possibilities of reaching agreement on a multilateral solution on customs valuation. Should these informal discussions point to the possibility of a solution, the EEC, for one, would be prepared to take appropriate steps in the Sub-Group for the initiation of substantive negotiations.

3. Canada stated that, notwithstanding its continued participation in the bilateral discussions, it remained unconvinced that Canadian interests would best be served by a common valuation system. The objective of the negotiations should be to identify those elements of valuation systems which had unduly restrictive effects on trade rather than to try to install a new multilateral system. The present Canadian valuation system, based on the "fair market value" (FMV) concept, was specifically designed to deal with non-arm's length transactions which were common notably between United States and Canadian firms; a valuation system based on actual transaction prices could therefore cause substantial problems for Canada. The Canadian government, however, would not claim it impossible to reconcile systems based on the FMV concept and those based on actual transaction prices, and was prepared to discuss possible improvements in its own system.

4. The United States, while welcoming an early tabling of "appropriate ideas" regarding valuation concepts, maintained that the existence of different valuation systems did not in itself constitute a trade barrier and that for the United States to change its present valuation system in the context of the MTN would require adequate compensation.

5. The Sub-Group then proceeded with a preliminary exchange of views on the proposals and suggestions which had been presented by certain participants[1] concerning issues to be dealt with in the elaboration of rules on customs valuation.

1/ Including EEC, Australia, Nigeria, see MTN/NTM/W/65 and Addenda 1-3.

In the discussion, EEC explained that its main objective in presenting the suggestions in MTN/NTM/W/65 was to ascertain what other delegations considered to be the main issues to be dealt with in the elaboration of new international rules on customs valuation and how detailed such rules should be. Canada stated that it might propose certain additions to the EEC list at some future stage but saw no point in doing so at present in the absence of any compromise as to the basic objectives of the negotiations on customs valuation. The United States considered the points listed by EEC to be interesting and meriting further discussion, but saw difficulties in reaching conclusions regarding individual items on account of the intricate interrelationship between the various concepts.

6. Among the points relating to "price", the United States considered the concept of "transaction price" to be particularly interesting. The "transaction price" normally would be identical to the invoiced price under open market conditions and would, in the United States' view, have many advantages as a valuation standard, particularly as it would facilitate calculation of the amount of duty to be paid.

7. Commenting on the various concepts relating to "quantity", Australia pointed out that a valuation system accepting prices related to the quantity of the goods actually imported might be prejudicial to exporters not capable of making large volume sales, but expressed doubts as to whether it would be possible to set up a system which was entirely neutral in this regard. In the United States' view the "normal value" concept of the BDV seemed to imply the use of some "normal" standard also with regard to quantity, which might be determined arbitrarily.

8. Japan considered that any new international rules on customs valuation should be based on simple and practicable criteria. From this point of view it seemed acceptable to use both the price and the quantity of the goods actually imported as a basis for valuation.

9. In presenting its suggestions in MTN/NTM/W/65/Add.1, Australia explained that the one on "valuation gap" related to certain problems which Australia had encountered in connexion with some cases of dumping after its adoption of the BDV. The definition of "normal value" under the BDV could, according to Australia's experience, lead to the acceptance of dumping prices as a basis for valuation, which could undermine the purpose of protective tariffs. Australia would present specific examples to illustrate this problem at a later stage. The suggested item "warranty" concerned the question whether the value of a warranty on a product should be included in the dutiable value, a question which should be dealt with in any new rules on customs valuation.

10. Israel proposed the inclusion of an item on "import of stocks", to deal with problems involved in the valuation of old or "end-of-run" products sold cheaply by producers when new models were introduced. Such sales, for instance, of out-of-fashion textiles, might have injurious effects on competing industries in developing countries as consumer taste in these countries normally did not change as rapidly as in developed countries.

11. It was agreed that all these proposals should be retained for future discussion and that delegations could submit additional proposals before the next meeting of the Sub-Group.

Import documentation, consular formalities and customs procedures

12. The Sub-Group decided to adopt the United States proposal set forth in MTN/NTM/W/64, on the notification of and consultations on various customs matters subject to the modification that such consultations were to be voluntary. This amendment was intended to meet the objection of certain developing countries to compulsory consultations, notably on consular formalities. Some of these countries, while accepting the notification and consultation procedure, reiterated their view that consular formalities did not constitute barriers to trade and hence were not negotiable.

13. The United States informed the Sub-Group of the steps the Government had taken to simplify the United States customs invoice (form 555.15). The new invoice had been aligned to international lay-outs and had reduced the amount of information to be supplied by exporters. The new form would be transmitted to the GATT secretariat shortly.

14. The Sub-Group decided to hold its next meeting in July, the precise date to be fixed by the Group on Non-Tariff Measures when it met in April.

(iv) QUANTITATIVE RESTRICTIONS

Note on the meeting of the Sub-Group held in March 1977

1. The Sub-Group on Quantitative Restrictions met on 7-10 March 1977. There was a discussion on import licensing procedures at the technical level, followed by a resumption of discussion on quantitative restrictions. The following paragraphs summarize the main points at the meeting.

I. LICENSING PROCEDURES

2. The discussion on import licensing procedures was based on a document prepared by the GATT secretariat 1/ which combined the original CTIP texts with various subsequent proposals and comments. In addition, the United States introduced a proposal containing a revised text on import licensing to administer import restrictions.2/ The intended purpose of the "technical level" discussion was to work out an improved text on licensing procedures for negotiation.

3. A number of points were raised concerning the general purpose and scope of application of the proposed instrument. Mexico and Ecuador (for the Andean Group) considered that the objective should be to draw up a self-contained instrument on licensing procedures of general applicability irrespective of GATT membership and that consequently no references should be made in the text to the provisions of GATT. The instrument should provide for special and differentiated treatment for developing countries 3/ and adequately reflect the needs of these countries to use import licensing as a tool for promoting economic development.

4. EEC considered that the question of applicability to non-GATT countries, while important, was of relevance also to many other subjects and would arise in relation to all multilateral instruments resulting from the negotiations; the question, as such, should therefore be dealt with in a wider context, at a later stage of the negotiations. The Community and certain other countries 4/ indicated that they could not accept the view that special and differentiated treatment was appropriate in the area of import licensing. On the contrary, they expected that developing countries would be making contributions to the MTN by simplifying import licensing and other documentary requirements.

5. A number of countries emphasized the need for a clear definition of "licensing requirements" for purposes of the proposed instrument and of its product coverage.

1/ MTN/NTM/W/73

2/ MTN/NTM/W/88

3/ cf., for example, the proposed amendments by Mexico to paragraph 2 of the text on "Automatic import licensing" and to paragraph 15 on "licensing to administer import restrictions".

4/ Including the Nordic countries and New Zealand.

EEC stated that it would not assume that the instrument would automatically apply to agricultural products, whereas the United States and Australia stated that they would pursue the work on the assumption that it would be applicable to all products.

A. Automatic Import Licensing (Annex I in MTN/NTM/W/73)

Definitions; basic objective of the text (paragraphs 1 and 2)

6. Several countries considered that the term "automatic licensing" required further clarification. EEC and Canada, while supporting the present definition which had been carefully elaborated during the preparatory work under CTIP, said that they would be receptive to concrete proposals for improvement. In the view of EEC, there might be no need to retain the "negative" part of the definition, i.e. the enumeration of import licensing requirements that were not to be considered as "automatic". A drafting suggestion by Yugoslavia 1/ received preliminary support by some countries.

7. The majority of developed countries and a number of developing countries considered that automatic licensing served certain legitimate purposes and therefore favoured alternative I of paragraph 2. In their view, automatic licensing, as a "pre-safeguard" measure, by enabling the government to anticipate the development of imports in the near future, might in fact help to obviate the need for restrictive measures. Israel maintained that automatic licensing was a necessary instrument in developing countries which needed to anticipate their foreign currency exchange requirements for import payments, etc. The United States reaffirmed its support for alternative II but conceded that the use of automatic licensing for safeguard purposes might be a relevant subject for consideration in the Safeguards Group.

8. Switzerland and EEC suggested that further consideration might be given to the question whether export licensing should be covered by the proposed instrument. Canada and Australia replied that they could not agree to discussing export licensing questions in this Sub-Group.

9. A number of countries questioned the rationale behind the Canadian proposal for amending paragraph 2, whereby the obligations of the instrument would apply to bound items only. Such a distinction was, in their view, not relevant in an instrument designed to ensure sufficient transparency in licensing procedures and having nothing to do with import restrictions.

Publication requirements (paragraph 3)

10. Some countries proposed additional drafting amendments, while EEC considered the whole paragraph to be superfluous, as it amounted to nothing more than a repetition of the provisions of Article X of GATT. In particular, EEC, like some other countries, questioned the utility of an obligation to submit yearly notifications to GATT, as had been suggested by Canada.

Non-discrimination (paragraph 4)

11. A number of countries 2/ favoured deletion of this paragraph. In their view there might be perfectly valid reasons for applying automatic licensing only to imports

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1/ The suggestion was to the effect that: Automatic licensing is an administrative procedure under which licenses are issued on request, freely and expeditiously, in a simplified procedure and in a manner not to discourage imports.

2/ Including EEC, the Nordic countries, Austria and Spain.

from certain countries and in as much as such licensing involved no restriction of trade there was no reason to object to its selective application.

12. Other countries (including the United States, Japan, New Zealand, Yugoslavia and Hong Kong) stressed, however, that the principle of non-discrimination was basic to GATT and supported the retention of the paragraph. They also pointed out that a licensing requirement as such acted as a disincentive to trade and that there were many examples that automatic licensing subsequently led to the imposition of quantitative restrictions.

Documentary requirements (paragraph 6)

13. Some countries considered that it should be incumbent upon each country to determine what documents should accompany a licence application. In some cases it might, for instance, be necessary to require presentation of an export licence, such as in cases of imports of drugs.

Procedural provisions (paragraphs 7-10)

14. A number of countries interpreted the provision of paragraph 7 to mean that the importer should have to apply to only one administrative organ to obtain a licence, which could, however, be different bodies depending on the product concerned. It was suggested that this should be made more explicit in the text.

15. Many countries (notably developing countries) favoured the deletion of the reference to a specific time-limit for the granting of licences in paragraph 10. Several delegations expressed doubts about the Canadian proposal for a separate consultation clause in view of the existing provisions for consultations in Articles VIII, XXII and XXIII of the GATT.

B. Licensing to administer import restrictions

16. In introducing its proposal in MTN/NTM/W/88, the United States pointed out that a detailed technical examination of the original CTIP text had brought to light a number of inadequacies and imprecise wordings which it had attempted to improve upon in its revised text. The text was intended to apply to licensing in connexion with legitimate quantitative restrictions. Discretionary licensing would for instance not be covered by the text as such licensing, in the United States' view, was inconsistent with the GATT and should be abolished.

17. Most delegations were not in a position to comment on the United States proposal at this meeting. Some countries pointed out that even though the proposal appeared to contain some useful suggestions, they would prefer not to reopen an extensive debate on the original CTIP text. Other countries expressed doubts about limiting the application of the text to licensing related to "legitimate" restrictions as this might leave a substantial number of licensing requirements outside the purview of the instrument.

Non-discrimination (MTN/NTM/W/73/Annex II, paragraph 1)

18. The discussion of this point reflected basically the same divergence of views as in the context of automatic import licensing. Those who favoured the deletion of the paragraph considered that the question of non-discrimination should be discussed in the context of quantitative restrictions and safeguards.

Publication requirements (paragraphs 3-5)

19. With regard to paragraph 3, Mexico pointed out that countries should not be required to make advance announcement of licensing action on particular products as this could lead to speculative buying and importation. Japan suggested certain drafting amendments to paragraph 4 aimed at easing possible difficulties in providing detailed information on licence distribution among supplying countries. As regards paragraph 5, the United States supported mandatory provisions for publication of the overall amount of quotas, regardless of whether they were based on "fixed" values or not.

Other provisions

20. Mexico favoured the deletion of paragraph 14 in view of the difficulty of determining what would constitute an "uneconomical" distribution of licences. Yugoslavia and certain other countries agreed that the paragraph was vaguely worded but supported its basic purpose as in their view a fragmentary distribution of licences could effectively hinder importation.

21. The United States thought it advisable in future to focus discussion on more concrete licensing problems and suggested that the GATT secretariat might be requested to prepare a background note describing the various types of licensing systems that would be covered by the proposed instrument.

Conclusions

22. It was agreed that the GATT secretariat should revise and update document MTN/NTM/W/73 taking into account the oral and written comments made at the meeting and any further comments that might be submitted. Delegations were invited to submit such comments before the end of April. It was also agreed that the secretariat, in consultations with delegations, should examine the feasibility of preparing an information note describing the types of licensing requirements that would be covered by the draft texts and that it should endeavour to circulate such a note before the next meeting.

II. QUANTITATIVE RESTRICTIONS

23. The discussion on quantitative restrictions focussed on the question of formulating additional procedures for bilateral and/or multilateral negotiations and that of differentiated treatment and special procedures for developing countries. As in previous meetings the Sub-Group took note of a summary report on the status of consultations held under existing procedures 1/ and heard certain additional oral comments and corrections. A number of countries indicated that they would initiate further consultations under the same procedures. The United States stated that it would submit a number of new and refined notifications based on additional and more up-to-date information obtained in the consultations. A suggestion by India for circulation of all notifications to the members of the Sub-Group met with opposition by EEC on the ground that a number of notifications had proved to be erroneous and would therefore not give a correct picture of the existing situation.

24. Australia did not consider that any substantial progress had been made under the existing procedures and urged the Sub-Group to give serious consideration to working out multilateral procedures for the negotiations on quantitative restrictions. Australia suggested that a "realistic plan" for the removal of quantitative restrictions on a programme basis should be established. The liberalization programme

1/ MTN/NTM/W/54/Rev.2

should cover all quantitative restrictions including those covered by the "existing legislation" clause of the Protocol od Provisional Application and the protocols of accession and those covered by waivers. All "illegal" restrictions should be subject to a stand-still provision pending final elimination. The programme would provide for a time-frame for the phasing out of quantitative restrictions, which would permit a slower pace of liberalization in particularly sensitive sectors. Australia recognized that the possibilities of achieving an overall liberalization of quantitative restrictions would largely depend upon the progress that could be made in the area of safeguards but would not rule out the possibility of providing for a separate safeguard mechanism in the context of the proposed liberalization plan.

25. The United States supported in principle a multilateral approach to negotiations on quantitative restrictions and recalled that the proposal it had presented at the last meeting of the Sub-Group contained specific suggestions in this regard.1/ For the time being, however, it was prepared to proceed with bilateral and plurilateral consultations in order to complete the factual information on particular restrictions.

26. EEC and Switzerland sought further clarification on the multilateral approach suggested by Australia, for instance, with regard to the intended product coverage, the time-frame for liberalization and whether the programme would apply to both import and export restrictions. Australia replied that it would endeavour to put forward a more concrete proposal at a future meeting, and that its reaction to any proposals to include export restrictions in the negotiations would largely depend on the willingness of other countries to liberalize imports.

27. EEC generally considered a multilateral approach to be premature and pointed out that tabling of offers at this stage would be unfruitful as no substantial progress had been made in other related areas such as tariffs and safeguards. It maintained its general attitude to the United States proposal and reiterated its concern over various aspects of the suggested multilateral approach, notably the selective exclusion of restrictions from the procedures, the process of justification and confrontation and the possibility of recourse to retaliatory measures. The Nordic countries had similar reservations on the multilateral elements of the proposal.

28. Japan considered that discriminatory quantitative restrictions should be eliminated on a priority basis and generally favoured a multilateral approach to the negotiations but did not consider an overall elimination of quantitative restrictions to be a realistic objective. Japan could for instance foresee extreme difficulties in liberalizing its remaining restrictions which affected "hard core" items. Like other countries it had doubts about certain aspects of the United States proposal, in particular the justification/confrontation process and the possibility of retaliatory measures.

29. Hong Kong and Yugoslavia found the United States proposal broadly acceptable but suggested that a specific time-frame should be set for the bilateral phase, and that specific reporting to GATT should be provided for, in which reference should be made to the GATT provision justifying the restrictions in question. Hong Kong pointed out that instead of recourse to retaliation, which was not an adequate counter-measure for small countries, the procedures should provide for multilateral surveillance for dealing with cases in which a request for the elimination of a restriction had been ignored by the importing country.

1/ cf. document MTN/NTM/W/66

30. Brazil, India and Mexico generally welcomed the multilateral approaches suggested by Australia and United States which they thought could complement their own previous proposals in some respects. Brazil emphasized that a decision on special procedures and differentiated treatment for developing countries should be taken prior to or at least at the same time as an agreement on a negotiating procedure of general application. Ecuador considered that quantitative restrictions on tropical products should be examined in the Tropical Products Group at an appropriate time.

31. India recalled the main elements of its previous proposal which included provisions for standstill and liberalization of quantitative restrictions maintained on products of export interest to developing countries. India considered that the stage had been reached to draw up a comprehensive list of such products (including textiles and agricultural products). Such a list could be prepared by the GATT secretariat on the basis of available information and would provide a useful basis for further consultations and negotiations.

32. EEC reiterated its support for some of the elements of the Mexican proposal[1/] but other developed countries did not comment on the proposals by developing countries at this meeting.

III. FUTURE WORK

33. The Sub-Group agreed to resume discussion of these agenda items at its next meeting. In the meantime, consultations under the existing procedures should continue and participating countries should endeavour to submit summary reports of the consultations to the secretariat. The Sub-Group agreed to hold its next meeting before the end of June, the precise date to be fixed by the Group on Non-Tariff Measures at its forthcoming meeting. The Group on Non-Tariff Measures would also decide on the need for any further meetings at technical level on import licensing procedures.

1/ cf. also the MTN Project's note on the last meeting of the Sub-Group (Reference Manual, UNCTAD/MTN/40/Supp.1, pp.64-65, para.14)

IMPORT LICENSING

Note on the meeting of the Sub-Group on Quantitative Restrictions in May 1977

1. At its meeting on 24-25 May 1977 the Sub-Group on Quantitative Restrictions continued its discussion at technical level on import licensing procedures.1/ The following paragraphs summarize the main elements of the discussion.

2. The Sub-Group examined a revised version of a working document2/ which contained the original CTIP texts on licensing procedures and various subsequent proposals for amendments and additions including those made at the last meeting of the Sub-Group. In addition, the Sub-Group had before it an informational note prepared by the GATT secretariat giving examples of the types of licensing procedures that would be covered by the two draft texts.3/ It had been envisaged by the Sub-Group that the discussions at "technical level" would lead to an improved text on licensing procedures for negotiation. However, as in the previous meeting, the discussion was confined to seeking further clarifications on proposed additions and amendments and no attempt was made to work out a consolidated draft text.

3. The discussion brought out a number of general points concerning the purpose and scope of application of the texts, most of which had been touched upon in the previous meeting. There was widespread recognition of the need for clear definitions of the licensing procedures that would fall under each text. Some countries pointed out that, while they would have no particular difficulties with the definitions contained in the CTIP texts, strictly normative provisions would involve a risk of leaving certain licensing procedures in the "grey area" which would limit the value of the instrument.

4. Some developing countries4/ reiterated their view that the instrument should include provisions for special and differentiated treatment. Developing countries, for instance, should be allowed greater flexibility in the administration of their licensing systems. In this regard Mexico maintained that the instrument should adequately reflect the importance of import licensing for developing countries as an instrument of economic policy. Many developing countries found it necessary to place all imports under licence as a matter of general control or surveillance; such general policy should not be called into question in the present discussion concerning procedural amelioration. One criterion for distinguishing between "automatic" and other licensing might be whether or not the issue of a licence required specific, discretionary approval. The United States and Australia expressed some interest in this suggestion while some other countries doubted that such a distinction could really be made as all licence applications had to go through some form of administrative approval.

1/ The first "technical level" meeting was held in March 1977 (see pages 77-31).

2/ MTN/NTM/W/73/Rev.1.

3/ MTN/NTM/W/98.

4/ Including Mexico, India and Nigeria.

5. EEC conceded that there might exist certain possibilities for special and differentiated treatment for developing countries in this domain, but maintained that this was an area in which developing countries should be able to make substantial contributions, that is, by simplifying their own import procedures.

6. India disagreed with this contention, on the ground that in most cases such simplification as was feasible had already been effected. The progress that had already been made, for instance by India, should be taken into account in the negotiations as their contributions made in advance.

7. As regards the question of the product coverage, Japan, Australia and the United States considered that the instrument should apply to agricultural as well as industrial products. EEC and the Nordic countries maintained that the applicability of the instrument to agricultural products would be a matter for the Agriculture Group to consider.

8. The basic positions of participants on the question of non-discrimination remained unchanged in this discussion; some countries continued to support non-discriminatory treatment and others were for selective application. India considered that, as a matter of special and differentiated treatment, developing countries might be allowed to apply discriminatory import licensing, notably in respect of imports purchased under tied aid and imports covered by preferential arrangements among developing countries.

9. Australia and Canada drew attention to a recent submission by Switzerland,[1/] which in their view attempted to "smuggle" the issue of export restrictions into the discussions. Export restrictions were a distinct subject clearly outside the terms of reference of this Sub-Group and in fact outside the purview of the negotiations unless and until the TNC decided otherwise. This view was supported by India, Brazil, Mexico and the Nordic countries. Switzerland replied that its proposal was only intended to deal with the technical aspects of export licensing and had nothing to do with the restrictions themselves. It recalled that the CTIP texts contained a reference to GATT Article VIII which clearly covered formalities in respect of both imports and exports. EEC shared the view that it would be useful for the Sub-Group to discuss the technical aspects of export licensing, even though a decision was yet to be taken on including export restrictions as such in the negotiations.

10. The Nordic countries considered that the legal status of the instrument and its relationship to the existing GATT provisions were questions that should be left until a later stage. They suggested that for the time being all references to GATT articles should be left out so as to facilitate the participation of non-GATT countries in the discussion.

Automatic import licensing

11. The majority of countries reaffirmed their support for alternative I of paragraph 2 of the draft text which would allow maintenance of automatic licensing systems. The United States maintained its long-standing position that automatic licensing should be eliminated but indicated a willingness to consider it on the basis of legitimate needs. The only obvious justification for such licensing

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1/ MTN/NTM/W/73/Rev.1/Add.1

would be in the context of safeguards, as a mechanism to facilitate the control of imports. Therefore, further consideration of this matter might take place in the Safeguards Group.

12. Australia agreed with the United States on this point and considered that automatic licensing applied for other purposes should be phased out or eliminated. EEC, though not objecting to pursuing discussion of automatic licensing in the Safeguards Group, doubted whether this would really be fruitful.

13. Australia explained that its proposed amendment to paragraph 9, which would set a time deadline for the submission of licence applications, was based on the assumption that automatic licensing was to meet safeguard needs, for which the authorities in the importing country would need the earliest possible indication of the likely flow of imports. The Australian amendment was supported by Brazil and Mexico while the United States and Japan expressed reservations to it on the ground that an inordinately lengthy interval between application and issue of licence, if prescribed, would create an additional uncertainty burdensome for traders.

14. As regards paragraph 10, some countries proposed the deletion of the reference to a specific time period for the issue of licences while other favoured its retention. There was a similar division of views concerning the need for a separate consultation clause as had been suggested by Canada.

Licensing to administer import restrictions

15. Spain pointed out that the wording of paragraph 2 would cause problems for countries which required licences for all products and suggested a drafting amendment aimed at taking account of this situation.

16. Mexico reiterated its concern that the requirement in paragraph 3 to make advance announcement of licensing actions might lead to speculative importation and proposed the substitution of "as far in advance as possible..." for "in due course". The United States emphasized the importance of providing importers and exporters with advance information concerning licence formalities and could therefore not support the Mexican amendment which might in fact imply that the relevant information would be supplied after the introduction of the restrictions.

17. A number of countries questioned the rationale for the amendment to paragraph 9 proposed by the United States according to which authorities issuing licences should give priority to licence applications for replacement parts. The United States explained that this amendment was aimed at taking account of certain practical problems which United States exporters had encountered in some countries in obtaining licences for spare parts for previously imported equipment. Some countries thought that this was a matter of import restriction rather than a question of licensing procedure.

18. As regards paragraph 10, some countries considered that appeals against refusal of application should be addressed to and considered by the licensing authority itself while other countries considered it reasonable to permit appeal to a higher organ. The prevailing view, however, seemed to be that the question of appeal might best be settled at the national level.

19. Austria considered that the wording of paragraph 14 could create problems for countries with small domestic markets. India, while willing to accept the original CTIP text, pointed out that the practice in many developing countries was to allocate imports to a limited number of importers, including state-trading enterprises; this point might be taken up in the context of special and differentiated treatment.

20. Some countries suggested the deletion of paragraphs 18 and 19. India supported the retention of the original CTIP texts whose main thrust was to ensure that licence formalities in connexion with import restrictions could be handled as much as possible by the exporting country, e.g. through the administration of "export restraints".

21. The Nordic countries, Brazil and India supported the additional paragraph proposed by the United States that licensed imports should not be refused for minor variations in the value, quantity or weight from the amount designated on the licence due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practice.

Future work

22. The United States and some other countries expressed disappointment over the lack of progress in these "technical level" discussions and saw little value in having similar meetings in the future. The United States thought that the GATT secretariat, instead of merely issuing a further revision of document MTN/NTM/W/73, might usefully attempt a consolidated draft text based on the CTIP texts, incorporating proposals on which there was broad consensus or regarding which divergent texts required reconciliation or selection.

23. Many countries supported this proposal. EEC doubted, however, whether such an attempt was possible in view of the absence of a consensus on most of the points. On the other hand, there might be use for a document describing the relationship between the draft texts and the existing provisions of GATT; future discussions might be facilitated by the availability of such a paper identifying the parallelisms and repetitions between the two instruments.

Conclusions

24. It was agreed that the GATT secretariat should examine the feasibility of preparing a consolidated text of rules on licensing procedures along the lines suggested by the United States and that the results thereof should be reported, by way of some examples, to the Sub-Group at its next meeting in July. The secretariat should prepare a document describing the relationship between the existing GATT rules and the provisions of the draft texts, also for the next meeting. The Chairman would give an oral report to the Sub-Group on the views of governments on the treatment of the question of licensing related to export restrictions.

Note on the meeting of the Sub-Group in July 1977

1. At its meeting 5 July 1977 the Sub-Group continued its discussion on quantitative restrictions, focussing on the question of establishing additional negotiating procedures or formulae and that of differential treatment for developing countries. There was also a discussion of the future work to be undertaken on import licensing procedures. The following paragraphs summarize the main elements of the discussion.

I. QUANTITATIVE RESTRICTIONS

2. As had been announced at the last meeting of the Sub-Group, Australia presented a proposal containing elements of a multilateral programme for removal of quantitative import restrictions not justified under the GATT provisions.1/ In introducing its proposal, Australia recalled that it had always been in favour of a multilateral approach to the negotiations on quantitative restrictions. Failure to deal adequately with "illegal" quantitative restrictions in MTN would in Australia's view call into question the meaning of negotiating new obligations in other areas, such as safeguards. The proposal envisaged a joint liberalization action by all participants in the negotiations and contained the following elements: a general undertaking not to introduce new quantitative restrictions or to increase the restrictiveness of existing ones, unless such actions could be justified under the exception or suspension clauses of GATT; a general undertaking to phase out all "illegal" quantitative import restrictions by a specified date, with priority to quantitative restrictions affecting exports of developing countries; an exception procedure for those quantiative restrictions which participants could not agree to remove by the date provided for in the general undertaking, based on consultations among countries with a substantial trade interest, and aimed at drawing up a phasing-out programme with priority to restrictions affecting exports of developing countries; suspension of contracting parties' right to retaliate against quantitative restrictions covered by the phase-out programme: binding of the phase-out programme in appropriate GATT schedules; cataloguing, publication and regular reporting in respect of quantitative restrictions; and establishment of agreed rules for the administration of quantitative restrictions.

3. Australia considered that the existing data on quantitative restrictions, for instance those contained in the inventory drawn up by the Joint Working Group,2/ supplemented by information obtained in the current bilateral consultations, could

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1/ MTN/NTM/W/106. See also note by the Interregional Project on the March 1977 meeting of the Sub-Group (pp.29-31, paras. 23-32).

2/ The latest revision of this inventory is contained in GATT document L/4455

be taken as a starting point for the suggested liberalization plan. Countries maintaining quantitative restrictions would then be invited to state their views concerning the GATT justification of the restrictions. If no justification was offered, the restriction in question would be included in the phase-out programme. This justification procedure was not meant to imply any definite ruling as to whether or not a country was in breach of its GATT obligations, which could only be made by the Contracting Parties of GATT.

4. Most countries were not in a position to comment in detail on the Australian proposal, which had been circulated just before the meeting. Some preliminary observations were, however, made and further clarifications were sought on certain points.

5. A number of countries welcomed the Australian initiative. It was noted that the proposal contained many similarities with previous proposals, including that of the United States and some of those put forward by developing countries.

6. The United States could associate itself with many of the points in the Australian proposal. Like Australia, it considered it particularly important to link a liberalization programme to the existing GATT obligations. Nevertheless the United States continued to believe that a combined bilateral/multilateral approach, such as that outlined in its own previous proposal, would be the most appropriate for the negotiations in this area. At present it was concentrating its efforts on bilateral consultations and had recently submitted a number of refined notifications based on the results of a first round of consultations with a number of countries and would submit additional refined notifications as the consultations proceeded.

7. The United States sought clarification regarding the "exception and suspension clauses" mentioned in point 2 of the proposal and how the exception procedure in point 3 was to be designed in practice. The suggestion in point 4 to waive the right of contracting parties to have recourse to retaliatory measures could in the United States' view constitute a significant concession on the part of injured countries, in particular in the case of a long phase-out period.

8. Canada pointed out that the thrust of the Australian proposal was similar to the second phase of the United States proposal. While it would have no particular difficulties with this kind of approach, it remained sceptical whether it would really be the most appropriate one. Canada continued to favour a negotiating procedure based on specific requests and offers along the lines it had previously proposed. It had to date held a number of useful bilateral consultations which had further reinforced its view that this kind of approach would be the most promising one.

9. Japan emphasized the need to reach a solution on quantitative restrictions in MTN, but was sceptical about the general negotiating formula proposed by Australia which in its view tended to ignore the social and economic motives behind the restrictions and would entail long and unfruitful discussions concerning the GATT legality of individual restrictions. Japan considered it more "realistic" to base a solution on the current consultations and examine the possibilities for elimination or relaxation of restrictions on a case-by-case basis. However, in Japan's view it would be premature to draw up procedures for actual negotiations on quantitative restrictions until further progress had been made in other related areas of MTN.

10. EEC pointed out that, in order to make progress in the negotiations on quantitative restrictions, it was indispensable to have a clearer idea about the outcome of the negotiations in other areas, for instance whether or not a solution on safeguards would enable application of selective measures. Simultaneous progress was needed in all related areas of MTN. The Community could not accept to isolate the area of quantitative restrictions in the negotiations. In general, EEC favoured bilateral negotiations in this area and reiterated its opposition to an approach based on legal considerations. The approaches suggested by the United States and Australia would for instance leave most of the restrictions of negotiating interest to the Community maintained by its trading partners outside the negotiations by being formally justified under GATT.

11. New Zealand shared the scepticism of other countries about the utility of a multilateral approach and would find major difficulties in applying the phase-out programme proposed by Australia to its own restrictions.

12. Developing countries[1/] reiterated their support for a multilateral approach providing for special and differentiated treatment and special negotiating procedures for developing countries. Some countries welcomed the reference in the Australian proposal to priority to elimination of quantitative restrictions affecting the exports of developing countries, but expressed doubts about its implications for developing countries' own restrictions. The proposal seemed to imply equal commitments for all countries. Ecuador, India and Senegal emphasized that it was necessary to consider the developing countries' problems both from the export and the import side. While developing countries would seek elimination of restrictions affecting their exports in developed countries, they needed to retain the possibility of protecting their own markets by quantitative restrictions for balance of payments and economic development reasons.

13. Romania put particular emphasis on the liberalization of discriminatory restrictions and suggested that any new rules for the administration of quantitative restrictions should include objective criteria for determination of serious injury.

14. Hong Kong could support many of the elements of the Australian proposal but has certain doubts as to whether a phasing out of quantitative restrictions would be the most suitable solution. In its view, restrictions without GATT justification should be eliminated promptly by a set date. Moreover, it feared that the exception procedures in point 3 of the proposal might in fact leave a substantial number of restrictions outside the liberalization programme.

15. Commenting on some of the interventions made, Australia pointed out that, while it certainly would favour an early date for the removal of quantitative restrictions, it was necessary to adopt a realistic approach and allow for a gradual elimination of the restrictions. In respect of restrictions that would fall under the suggested exception procedures, Australia could envisage the establishment of a phasing-out programme drawn out over a longer period than in the case of restrictions covered by the general programme. With regard to the "exception and suspension clauses" mentioned in the proposal, Australia had notably Articles XI:2, XII and XVIII:9 of GATT in mind, but mentioned also Articles XIX, XX, XXI, XXIII, XXV, XXXIII and XXXV.

1/ Including Brazil, Ecuador (for the Andean Group), Hong Kong, India, Mexico and Senegal.

Australia did not agree with the contention that its proposal would imply equal commitments for developing countries as these countries enjoyed considerable freedom to impose restrictions under the present GATT rules.

Status of bilateral consultations on quantitative restrictions

16. Mexico stressed the need for an evaluation of the information emanating from the current consultations. Any discussion of a liberalization programme would be unfruitful without a comprehensive and correct data base on quantitative restrictions. Referring to its own previous proposal 1/ Mexico suggested that the GATT secretariat should prepare a table based on the reports of consultations held and including information, in respect of each country maintaining restrictions, concerning: tariff item number, description of the product concerned; type of restriction; and total imports and distribution of trade among supplying countries, including the notifying countries. Such a list could in Mexico's view serve as a useful basis for the initiation of plurilateral consultations between developing and developed countries.

17. Many countries shared Mexico's concern about the lack of reliable and complete factual information on quantitative restrictions and were willing to give further consideration to its proposal. India considered that the table should be limited to cover information on quantitative restrictions maintained by developed countries and that it should include references to those cases where countries had refused requests for consultations. A number of developed countries 2/ pointed out that there was a risk of presenting a biased picture were the table to be based on available reports on consultations. Most countries had for instance only requested consultations in respect of selected quantitative restrictions; a number of requested consultations were yet to be initiated; and, moreover, the reports on the consultations held differed considerably with regard to the amount of detailed information supplied. These countries stressed the importance of providing comparable information in respect of all countries. It was suggested that further informal consultations should be held between delegations and the GATT secretariat in order to determine the feasibility of drawing up the proposed table.

Conclusions

18. The Sub-Group agreed to revert at its next meeting to the Australian proposal and other proposals relating to negotiating procedures or formulae, including proposals for special and differentiated treatment for developing countries. The GATT secretariat was requested to examine, in consultation with delegations, the feasibility of drawing up the list of quantitative restrictions proposed by Mexico. It was agreed that bilateral and plurilateral consultations under existing procedures should continue and that countries should endeavour to submit written reports to the GATT secretariat.

1/ MTN/NTM/W/29

2/ Including EEC, the United States, Australia, Switzerland and the Nordic countries.

II. IMPORT LICENSING PROCEDURES

19. The Sub-Group had before it two working documents prepared by the GATT secretariat at the request of the Group at its meeting at technical level in May 1977.1/

20. Many countries considered document MTN/NTM/W/103 useful as a basis for further negotiations. It was agreed that the GATT secretariat should draw up a similar text with respect to automatic import licensing. The United States, while in principle favouring abolishment of automatic import licensing, reiterated its view that further discussion of this matter might best be pursued in the Safeguards Group. Some other countries agreed that the question of automatic licensing was closely related to the safeguard issue, but were nevertheless not prepared to discontinue the work on such licensing procedures in the Sub-Group.

21. On the proposal of India and Romania it was agreed that the GATT secretariat should prepare a revised version of document MTN/NTM/W/104 in which the original CTIP texts would be substituted for the new draft consolidated texts drawn up by the secretariat.

22. India reiterated its proposal put forward at the last meeting of the Group on Non-Tariff Measures that the GATT secretariat should prepare a "checklist" of positions on the main issues on quantitative restrictions. It recalled that such checklists had been prepared in all other Sub-Groups and would indeed also be useful for the further work in this Group.

23. A number of developed countries expressed doubts about the utility of the suggested checklist and were not in a position to accept the proposal at the present stage. The Sub-Group agreed to revert to the proposal at its next meeting.

24. The Chairman informed the Sub-Group about the diverging views which had emerged in the last meeting at technical level in the discussion of a proposal by Switzerland concerning the treatment of licensing related to export restrictions.2/

25. Switzerland restated that its proposal 3/ was only intended to deal with the technical aspects of export licensing and had nothing to do with the restrictions themselves. It was in Switzerland's view necessary to establish symmetrical disciplines with regard to both import and export licensing in view of the fact that Articles VIII, X and XI of GATT explicitly referred to both imports and exports.

1/ MTN/NTM/W/103, containing a draft consolidated text on Licensing to Administer Import Restrictions and MTN/NTM/W/104 which describes the relationship between the original CTIP texts on import licensing procedures and the relevant provisions of GATT. (cf. the Interregional Project's note on the May meeting, page 35, paragraphs 22-23).

2/ See the Interregional Project's note on the May 1977 meeting (page 37 paragraph 9).

3/ MTN/NTM/W/73/Rev.1/Add.1

26. The Swiss proposal was supported by Austria, the United States and EEC. The United States and EEC could, however, agree to postpone further discussion of export licensing for the time being. Canada and Australia, supported by India and Mexico, reiterated their position that the question of export licensing was outside the terms of reference of the Sub-Group. In view of the diverging positions no agreement could be reached on this matter. Switzerland indicated that it would raise the matter again at the forthcoming meeting of the Non-Tariff Measures Group.

Date of next meeting

27. It was agreed that the date of the next meeting of the Sub-Group and of any further meeting at technical level on import licensing procedures should be determined by the Group on Non-Tariff Measures at its forthcoming meeting in July.

(v) GOVERNMENT PROCUREMENT

Note on the meeting of the Sub-Group in March 1977

1. At the meeting held on 3-4 March 1977, the Sub-Group began its examination of possible elements for a multilateral instrument on government procurement. In the discussion a number of general observations were made as well as comments on specific elements on the basis of a list prepared by GATT secretariat.1/ The Sub-Group also had before it the OECD draft instrument on government purchasing policies, procedures and practices.2/ The following paragraphs summarize the main points of the discussion.

2. Most delegations recognized the need to establish international rules on government procurement in view of the restrictive effects of present practices and the importance of the matter in view of the magnitude of trade and trade potentialities involved. There was a large measure of agreement that the main objective of the negotiations in this area should be to eliminate existing discriminatory regulations and practices which favoured domestic supplies and to render government procurement more open to international competition. Developed countries in general emphasized that the attainment of this objective would require reciprocal commitments among the industrialized countries.

3. Austria, the Nordic countries and Switzerland referred to their positive experience with the rules on government procurement in the EFTA agreement, which were based on the principle of non-discrimination and included provisions for transparency in procurement operations. The smooth and effective operation of these provisions over a long period of time had in their view clearly demonstrated the viability of international commitments in this field.

4. Japan pointed out that its hesitation to agree to the establishment of a sub-group on government procurement had merely been dictated by fears of overloading the work programme in the MTN. It was fully aware of the importance of the problems to be solved and would support the activities in the sub-group wholeheartedly.

5. EEC stated that while it was prepared to participate in any effort to liberalize government procurement policies it had no illusions that rapid results could be achieved. The Community had an open mind as to the form of a multilateral agreement in this field and did not attach major importance to the OECD draft instrument as a basis for negotiation.

1/ MTN/NTM/W/74 ("List of elements that might be taken up for examination by the Sub-Group").

2/ Reproduced in Reference Manual, UNCTAD/MTN/40/Supp.1, pp. 66-67

6. The United States and Canada considered that existing GATT and OECD documentation provided an adequate basis for expeditious and substantive negotiations. Referring to its proposal for a sector agreement on copper Canada pointed out that the value of a liberalization in government procurement would to a large extent depend on what could be achieved in regard to other trade barriers. The sector approach was particularly suitable in dealing with this matter in view of the effect of such action not only on imports and production, but also exports. Some countries consistently used government procurement as a means of subsidizing exports, i.e. by purchasing from domestic producers at generous prices that engendered higher than normal profits which could be used to underpin export sales at lower prices.

7. Canada suggested that a multilateral agreement on government procurement should include four broad sets of provisions relating to: (a) principles and objectives, which might be based on Articles I, III and XVII of GATT; (b) the nature and content of the trade to the liberalized, which would include the determination of a threshold value and establishment of a list of procurement entities; (c) provisions for transparency to ensure observance of the non-discrimination principle, which could be based on the OECD draft instrument and Articles VIII-X of the GATT; and (d) provisions for surveillance and dispute settlement. As regards the last mentioned subject Canada referred to its proposals in the Sub-Group on Technical Barriers to Trade and in the proposed sector agreement on copper and the proposal made by the United States in the Safeguard Group.

8. Most developed countries (notably the United States and EEC) expressed their willingness to consider possible ways of extending special and differentiated treatment to developing countries in this area but generally took the position that this question could be more fruitfully discussed at a later stage when there was a clearer idea of the outline of a general solution. The EEC expected, however, that certain contributions would be made by the developing countries, consistent with paragraph 5 of the Tokyo Declaration and expressed the hope that as a result of the negotiations developing countries would liberalize their own procurement policies particularly so as to allow participation by other developing countries.

9. Developing countries[1/] generally supported the view that the area of government procurement was particularly well suited for special and differentiated treatment. The main thrust of such treatment should be to enable the widest possible participation by suppliers from developing countries in developed countries' procurement operations, and to allow sufficient freedom of action for developing countries to use government procurement as an instrument for promoting economic and social development and for the expansion of trade among themselves. It was emphasized that the question of special and differentiated treatment should be considered in the drafting of every relevant provision of an agreement and not be dealt with only as a kind of supplementary provision or afterthought.

10. The developing countries generally regretted the lack of concrete suggestions in the documentation before the Sub-Group on how special and differentiated treatment might be accomplished. In particular they were reluctant to proceed on the basis of the OECD draft instrument which in their view only reflected the interests of developed countries and whose underlying reasoning and considerations were unfamiliar to the developing countries.

1/ Including Mexico, Ecuador (for the Andean Group), India, Egypt, Brazil, Singapore (for ASEAN), Nigeria and Jamaica.

11. In the preliminary exchange of views on the various elements listed in GATT document MTN/NTM/W/74 the following points emerged.

Objectives and principles

12. As noted above there was a wide convergence of view, notably among developed countries, that the basic objective of a multilateral agreement should be to ensure non-discriminatory treatment between domestic and foreign suppliers in procurement operations.

13. A number of developing countries pointed out that although a general non-discrimination rule would meet their interests as exporters to some extent, it would be necessary to provide for certain derogations from this rule in order to ensure additional benefits in terms of access to developed countries markets and to enable developing countries to discriminate in favour of their domestic suppliers in order to stimulate domestic production. India made the additional suggestion that developing countries should be allowed to deviate from the non-discrimination principle in cases of procurement from other developing countries with a view to expanding their mutual trade. India and Malaysia pointed out that in drafting a rule on non-discrimination due account should be taken of the fact that a large part of developing countries' imports was made under development aid programmes, which often required purchases to be made in the donor countries.

Definitions

14. A number of delegations suggested the use of the wording of Article III:8(a) of GATT as a starting point for the formulation of a definition of "government procurement". The Nordic countries and India emphasized that any further definitions should be as simple and clear as possible. The EEC thought that the definition in Article III:8(a) might need further elaboration as it might not always be possible to foresee the final destination of a product at the time of the procurement.

Procurement entities and value threshold

15. The United States and India considered that a multilateral agreement on government procurement should apply to the widest possible range of entities. The United States stressed that, constitutional differences between countries notwithstanding, it would have major difficulties in accepting an agreement which excluded large sectors of procurement entities from its obligations. One remedy would be to examine lists of entities with a view to obtaining balanced commitments. Japan, EEC and the Nordic countries stressed the need to ensure reciprocal commitments in any selection of entities to be covered by a multilateral agreement, although this was admitted a complicated task in view of the considerable differences between the constitutional, administrative and economic organization in different countries. Japan considered that only procurement entities under direct government control should be listed. In the Nordic countries' view purchasing entities not coming under direct government control should be subject to a "best endeavours" commitment.

16. The United States considered that in order to ensure the largest possible trade coverage of the proposed agreement, a very low threshold value, for example US$50,000, should be set whereas the EEC, the Nordic countries and Austria in principle favoured a relatively high threshold value. EEC pointed out, however,

that the threshold value had significance only in relation to the obligations which it would "trigger"; it could, for instance determine the application of the whole agreement or only of certain provisions. The Community could also envisage the establishing of different threshold values for different provisions. Japan had no firm view as to the level of any threshold value, but considered that in any case it should not have the effect of limiting the applicability of the non-discrimination principle which should be valid for all procurement operations.

17. India supported in principle a low threshold value but suggested that this might be one area in which special and differentiated treatment for developing countries could be provided, for instance, by applying a lower threshold value to their exports.

Tendering techniques

18. The United States pointed out that a main objective of a multilateral agreement should be to limit the use of single tender techniques to the maximum extent possible. Such tenders should be allowed only in emergency cases, and there was no reason to allow recourse to single tenders simply in order to meet standards requirements. Steps should be taken to ensure adequate opportunities for foreign suppliers to participate in selective tendering.

19. Japan considered that single tenders should be allowed in certain cases, such as when the product to be purchased was available only from one supplier; when, under emergency circumstances, supplies could not be obtained in time through open or selective tenders, when the products concerned formed part of a research and development project or when open or selective tenders failed to identify a successful bidder.

20. India emphasized that government procurement should be effected through open tendering to the maximum extent possible. In its view it was of particular importance to limit the use of single tenders, which in some countries were applied in as much as 85 per cent of all government purchases.

Ex ante - ex post information and publicity, timing and conditions of participation

21. Most delegations recognized the importance of providing an adequate degree of transparency in government procurement operations in order to ensure observance of the non-discrimination principle.

22. The United States and Canada considered that provisions should be made for detailed and widely circulated information on invitations to tender (ex ante publicity) as well as for ex post publication of winning awards. Tender invitations should include all necessary information pertaining to the procurement, including the criteria to be applied in the evaluation of bids. A sufficient time interval between the invitation to tender and the closing date for placing bids should also be provided for, particularly in order to enable participation by distant suppliers. The United States emphasized that no undue participation conditions should be imposed upon foreign suppliers. It might for instance be necessary to establish certain guidelines with regard to standards in order to prevent discrimination through technical requirements. The United States attached particular importance to provisions for ex post publicity on awarded contracts as a means of preventing circumvention of the non-discrimination principle. The concern of some countries that such publicity might lead to price collusion among suppliers was not well founded.

23. EEC was in favour of extensive and precise ex ante information and the allowing of adequate time for the submission of bids, the length of which should be determined in such a way as to take account of both the interests of distant suppliers and the needs of the procurement entities to obtain quick deliveries. The Community saw no need for a general obligation for ex post publicity, but for its part would be prepared to submit relevant periodical information which might be required by the surveillance body as well as background information needed for the settlement of disputes.

24. Japan considered that any procedural provisions should be as flexible as possible and should be consonant with existing national provisions. Japan's present procurement procedures, for instance, did provide for a sufficient degree of transparency.

25. Australia made the general point that an agreement should aim at ensuring non-discriminatory treatment not only between domestic and foreign suppliers but also among third country suppliers. This would, for instance, call for the fixing of time-limits for the preparation and submission of bids which were sufficient to enable participation by distant foreign suppliers.

26. Israel and India stressed that particular attention should be paid to developing countries' special problems in the elaboration of the procedural provisions of an agreement. The constraints of rigid procurement procedures were particularly serious for developing countries owing to a number of factors such as language barriers, distant location from the industrialized regions, inadequate transportation facilities, etc. Special conditions of participation, in procurement, such as requirements for representation in the importing country or proscription of special technical characteristics generally worked to the disadvantage of developing countries. It was therefore important that the procedures be such as to reduce or eliminate such obstacles; there should be adequate time-limits for the submission of bids and for shipment, no technical requirements obstructing participation by developing countries and provision for technical assistance facilities.

Exceptions, derogations, escape clause

27. The United States was against the inclusion of waiver provisions or escape clauses, which in its view, would inevitably undermine the purpose of a multilateral agreement. The only exceptions should be those relating to defence or national security.

28. EEC considered that there should be as few waiver or exception provisions as possible and these should cover only measures of a temporary nature, subject to international supervision. Permanent exceptions for national security purposes should be strictly defined.

29. The Nordic countries supported the inclusion of an exception clause on national security and a general safeguard clause.

30. India considered that certain exceptions might be required, for instance to take account of development constraints.

Publication of governmental procurement regulations

31. There was a large measure of support for giving wide publicity to national government procurement regulations. Developing countries pointed out that lack of adequate information on importing countries' national regulations, coupled with inadequate experience, constituted a major obstacle to the developing countries' participation in procurement activities. Some thought that this was an area in which technical assistance should be provided to developing countries, and that to remedy the inadequacy of information some form of enquiry points, similar to those contemplated in the Standards Code, should be opened up.

Reporting, review and complaint procedures

32. The United States and Canada attached great importance to establishing effective procedures for surveillance and dispute settlement. Nigeria pointed out that expeditious dispute settlement procedures were particularly important to developing countries, as they could not afford to be tied up in lengthy and costly procedures. In the United States' view the functions of a surveillance body might include: dissemination of information on national regulations, providing guidance as regards publication at national levels and possibly proposing formulating proposals on amending the multilateral agreement in the light of experience of its operation.

33. EEC expressed the hope that procedures would be elaborated which would prevent disputes from reaching the international level. In so far as this was unavoidable, it should be the rôle of the surveillance body to determine the rights and obligations of the parties concerned. The Nordic countries favoured an ad hoc dispute settlement body instead of a standing committee.

Expansion of the information base

34. The Sub-Group resumed its discussion of the proposal put forward at the previous meeting of the Sub-Group to request information on the procurement regulations and procedures of non-OECD member countries.

35. A large number of developed countries[1] reiterated their view that it would be essential for the future work of the Sub-Group to have adequate information on the procurement regulations of all participating countries. Reference was made to the information contained in the OECD "green book"[2] and it was suggested that similar information should be provided by non-members of the OECD.

36. Developing countries[3] were in general reluctant to agree to this suggestion as they had no clear idea of what kind of information they were supposed to submit. Although the OECD information was available to the general public it did not form part of the MTN negotiating documentation and developing countries had in general limited acquaintance with its content. It was therefore proposed that the OECD

1/ EEC, the United States, Japan, Canada, the Nordic countries and Switzerland.

2/ "Government purchasing regulations and procedures of OECD member countries", OECD 1976.

3/ Including India, Singapore, Ecuador (for the Andean Group), Israel and Jamaica.

publication should be made available to the Sub-Group. Some developing countries pointed out that for various reasons they would have difficulties in providing the same kind of detailed information as that of developed countries which it had taken OECD several years to assemble.

Conclusions

37. The Sub-Group agreed to request the GATT secretariat to prepare a checklist summarizing the various points made in the discussion. Delegations were invited to submit any additional comments to the secretariat, including specific proposals relating to special and differentiated treatment for developing countries. The document to be prepared by the secretariat would, together with existing documentation, provide the basis for discussion at the next meeting. It was suggested that the discussion at that meeting might focus on the main elements proposed by Canada, i.e. non-discrimination, transparency, purchasing entities, value threshold and surveillance and dispute settlement. The question of special and differentiated treatment would be discussed in relation to each of these items. As regards the question of expanding the information base it was agreed that the secretariat should request the OECD secretariat to make the "green book" formally available to the Sub-Group and that the OECD member countries should as necessary up-date the information contained in this publication. The GATT secretariat would in addition consult with delegations of non-OECD member countries as to the type of information they might provide. The Sub-Group agreed to hold its next meeting within the next three months, the exact date to be determined by the Group on Non-Tariff Measures when it met in April.

Note on the meeting of the Sub-Group held in June 1977

1. The Sub-Group on Government Procurement met on 14-15 June 1977. It undertook an examination of major issues and approaches to negotiations on the subject which had been identified at earlier meetings.1/ The question of differentiated and more favourable treatment for developing countries was considered in relation to each of these points. The following paragraphs summarize the main elements of the discussion.

Non-discrimination

2. There was general recognition that the principle of non-discrimination was the key issue to be dealt with. The United States stated that it considered that the essence of previous discussions, both in the MTN and the OECD,2/ were aimed at making the principle of non-discrimination effective. The United States maintained an overt system of formal discrimination which it was prepared to negotiate on the basis of reciprocity in return for access to the public markets of other countries, the size of the trade involved gave the United States a strong interest in these negotiations. Special and differential treatment for developing countries should be considered only after there was a full understanding of the basic principles at which time it would be possible to determine which forms of special and differentiated treatment were acceptable. Canada noted that the objective in GATT terms was to effectively suppress the exceptions in Articles III:8 and XVII:2 so that government procurement practices would come within the scope of Article I (MFN) and Article III (national treatment).

3. The EEC and Nordic delegations considered that while they were prepared to accept binding obligations aimed at ensuring that the principle of non-discrimination was followed in this area, this did not mean that their internal arrangements, i.e. within the context of customs unions and free trade areas, would have to be extended to all adherents to a Code.3/ Japan, however, maintained the view that regional agreements should not discriminate against non-regional suppliers.

1/ See notes prepared by the Interregional Project: UNCTAD/MTN/40/Supp.1, pages 66-67 and 114-129 and pp.42-48 of this document.

2/ The points made at previous Sub-Group meetings were summarized in MTN/NTM/W/96 while the draft instrument prepared by the OECD was produced under MTN/NTM/W/81.

3/ The Nordic countries proposed that the GATT secretariat conduct an examination between a Code on Government Procurement and the GATT Articles, especially in relation to those provisions on non-discrimination. The EEC considered such a study to be "premature".

4. Developing countries reiterated the view that the area of government procurement was one where special and differentiated treatment in their favour could be applied in a meaningful way to advance their economic development. Jamaica considered that while the main objective of the Code should be to ensure application of the principle of non-discrimination, differential and more favourable treatment for developing countries was feasible within this system; these countries should be allowed to deviate from this rule so as to favour (a) their domestic industries in order to stimulate economic development and (b) suppliers in other developing countries to further economic co-operation among them. In addition, developed countries should give preferential treatment to developing countries in this area. Mexico also stressed that while no one would oppose the general principle of non-discrimination as the basis for a Code in this area, any solution would have to take into account the special problems of developing countries, in particular their need to use public purchases as (i) a fundamental instrument in promoting industrialization and (ii) to rationalize foreign exchange. Mexico could not agree with the approach advocated by the United States, considering that special and differentiated treatment was not inconsistent with the principle of non-discrimination but rather a necessary corollary to it in light of the reality of inequality in development. India agreed with Jamaica and Mexico, pointing out that one possible technique of applying special and differentiated treatment would be to exclude import duties from bids made by developing countries - this would certainly be feasible as import duties were also items on the government account. Developed countries stated that they would give serious consideration to these proposals.

Transparency

5. There was general agreement that transparency was essential to the protection of the integrity of any agreement to eliminate discrimination in government procurement, and particularly that maximum publicity should be given to invitations to tender (ex ante), but there were differing views as to the appropriate degree of transparency to be given to the stage where bids had been submitted and awards made (i.e. ex post). The United States and Canada favoured extensive publication both ex ante and ex post with the notification of the winning bid being made public, this being, in fact, the practice in these two countries.1/ On the other hand, the EEC Switzerland, the Nordic countries and Australia considered that detailed publicity of winning bids could have "anti-competitive" results leading to collusion among suppliers in subsequent tenders. In the view of the EEC, ex post transparency should extend to an extent sufficient to permit adequate surveillance of the obligations of a Code, or to permit disputes to be resolved effectively. Japan considered that adequate ex post transparency would be achieved by having all parties present at the opening of the bids.2/ In the view of Australia, governments could be required to explain why a bid was not accepted, but not why an award was made.

1/ Such information was published on a daily basis in the United States, on a weekly basis in Canada. The delegate of Canada stated that his Government was not aware that its practices in regard to ex post publicity had led to any collusion among suppliers.

2/ Nigeria asked about the treatment of suppliers located far away from the "bidding centre".

6. Developing countries emphasized the importance of their receiving adequate information on government tenders in developed countries and of being given sufficient time to submit bids. Mexico considered the supply of information on the public market in developed countries to be the most essential element in the whole exercise. Nigeria suggested that an international "information bureau" should be set up, perhaps in conjunction with the International Trade Centre, serving as a clearing house for tender information. India was of the view that transparency could be improved if open tendering was established as the general rule with selective tenders being limited to prescribed categories, e.g. national security, urgent requirements for supplies, etc. In the case of procurements that were effected on a recurring basis there appeared to be little justification for exceptions to open tendering. Bids should be opened publicly, at which time their main elements should be announced.

Surveillance and dispute settlement

7. Canada stressed the importance of effective mechanisms for surveillance, to ensure that rights were not impaired, and for dispute resolution, to reduce risks of impairment. Procedures open to parties wishing to resolve a dispute should involve three steps: (a) bilateral consultations, (b) recourse to a Committee on Government Procurement, and, if necessary, (c) submission of the issue to an impartial Panel of Experts which would have the power to make recommendations aimed at restoring the balance of rights and obligations at the highest level possible. The members of the Panel would be drawn from a "permanent slate" of qualified individuals which would also be available for dispute settlement purposes in respect of other agreements, e.g. on various non-tariff measures and on sector agreements. In this context Nigeria considered that a "monitoring body", linked with the clearing house idea it had suggested earlier, would be more suitable to the particular nature of government procurement. In the view of India such "monitoring" would involve the conduct of periodic examinations to evaluate the extent to which the objectives of liberalization had been achieved. Several developed countries supported the Nigerian approach, the EEC considering that serious efforts should be exerted to avoid disputes being taken to the multilateral level and pointing out that the first step should be recourse to national courts or tribunals. There should also be the possibility of two governments seeking voluntary arbitration before submitting their dispute to the formal multilateral mechanism. The Panel system as proposed by Canada seemed "too generalist". The Nordic delegations supported this view, considering that government procurement possessed "special features" which rendered unsuitable the automatic application of mechanisms developed in respect of the other non-tariff measures. Jamaica pointed out that among the aspects to be considered were (a) the possibility of appealing domestic court decisions to a multilateral body and (b) payment of damages.

Purchasing entities

8. Although there was general consensus that there should be the widest possible coverage of purchasing entities, differing views were expressed as to the approach that should be taken to establishing which entities would be covered. Certain delegations 1/ subscribed to the idea that all purchasing entities coming under

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1/ Including EEC, Canada

direct government control would be included and that this list would be supplemented by a "supplementary" or "negotiated" list of other entities. The Nordic delegations considered this approach to be the only way of reaching an equitable solution given the great difference in constitutional structures between countries. Switzerland, on the other hand, emphasized the difficulties in negotiating such a supplementary list and thought that such an approach ran the risk of seriously limiting the scope of any agreement. India suggested that differentiated and more favourable treatment could be provided in this area by limiting the obligations of developing countries to the extent that only those of their purchasing entities whose supply requirements had to be met from foreign sources would be covered by the Code.

Thresholds

9. There was general recognition that the setting of thresholds should aim at as wide a coverage as practical. There were different views, however, as to the absolute level of the threshold, with the United States favouring as low as $50,000, while others, notably Australia, would set a higher figure. The EEC stressed that the thresholds should be established in such a way as would permit each adherent to derive advantages from the proposed Code. Nigeria suggested that low thresholds should be reserved in favour of countries at lower stages of development. Japan and Switzerland stressed that the threshold should apply only to the procedural and surveillance aspects of an instrument, the basic principle of non-discrimination should govern all government purchases, including those below the threshold.

Statistics

10. The United States reiterated the need for more complete and comparable statistics on government purchases. Such data were necessary, firstly to enable countries to ascertain the balance of advantages they would derive from accepting new obligations in this area and, secondly, on a continuing basis to ensure the transparency of the system. India agreed with the second point, considering that such statistics would be necessary to ensure that the more liberal procedures negotiated were actually implemented. A number of delegations,1/ however, felt that the collection of statistics would be difficult and doubted whether detailed statistics were relevant to the functioning of the Code.

Future work

11. There appeared to be general agreement that the negotiations on government procurement should be directed toward the establishment of a detailed and binding Code. Certain delegations 2/ maintained that the draft instrument drawn up in the OECD,3/which was the only such document existing, should be used in the Sub-Group as a working paper, though not as a negotiating draft. The United States, Canada and others expressed the view that the time had come for delegations to put forward

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1/ Including Japan, Nordics, EEC. The Chairman informed the Sub-Group that the GATT secretariat had encountered some difficulty in finding comparable data on government procurement.

2/ Including Japan, EEC, Nordics

3/ MTN/NTM/W/81

negotiating proposals rather than asking the GATT secretariat to produce further drafts, although it was agreed that the "Checklist" 1/ should be further updated. The Chairman urged delegations to respond to the request for further information on the procurement practices of their governments by the agreed deadline of 15 July 1977.

Next meeting

12. It was agreed that the next meeting would be held in the autumn with the date being set in consultation with delegations.

1/ MTN/NTM/W/96

(b) SAFEGUARDS

Note on the meeting of the Group in February 1977

1. The Group on Safeguards met on 14-15 February 1977, at which it continued its discussion of the proposals which had been submitted, focussing mainly on (a) proposals by developing countries for special and differentiated treatment in this area and (b) the proposal by the United States and written comments submitted in respect of that proposal.1/

Special and differentiated treatment

2. Several developing countries2/ reiterated their position on the various elements of the safeguard issue where they considered special and differentiated treatment to be feasible and appropriate. They urged that serious consideration be given to their proposals which had been awaiting attention for a long time and several developed countries responded sympathetically to this proposition. Developing countries pointed out that although these proposals had been put forward separately by individual developing countries they enjoyed the general support of all developing countries.

3. In the discussion of these proposals the EEC stated that it had "grave doubts" regarding the appropriateness and was unsure of the feasibility of special and differentiated treatment in the area of safeguards. In general, the developed countries seemed able to support few, if any of the proposals for special and differentiated treatment mostly because they did not consider such treatment feasible or appropriate. They stated their opposition to the principle that developing countries should be exempted from safeguard action, maintaining that each country should be free to resort to temporary relief from injurious imports regardless of their source. They could not accept the idea of stricter injury criteria for imports from developing countries, on the ground that safeguards were at any rate to be applied only in "exceptional and compelling" circumstances of serious injury. Canada referred to the danger that an attempt to apply stricter criteria to developing countries might result in a loosening of the criteria applicable to developed countries, with no effective change in the treatment accorded developing countries.

4. The EEC noted that under the selective approach it had proposed developing countries would be exempt from a safeguards measure unless they were the source of the injurious imports, which however was sometimes the case given the rapid growth

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1/ MTN/3D/5 Annexes 3-5 (Brazil, Nigeria, Pakistan) MTN/SG/W/10 (Mexico), MTN/SG/W/11 and 14 (United States) MTN/SG/W/16 (Japan) MTN/SG/W/17 (Canada) MTN/SG/W/18 (EEC)

2/ Including Mexico, Andean Group

of imports from certain developing countries in certain product sectors. The United States referred to the aspect of its proposal which implied special and differentiated treatment by way of making a distinction in favour of developing countries which were small suppliers or new entrants to the market. Canada and Japan stated they could not support any departure from MFN principle. Switzerland, while supporting this position, did not rule out an examination of the possibilities for excepting developing countries in certain cases.

5. With regard to prior consultation, developed countries stressed the need for a general tightening of the existing provisions of Article XIX of GATT in this respect. They could not, however, accept the Mexican suggestion that safeguards would not be applied to developing countries' exports until consultations had taken place, on the ground that prior consultations might not be possible in urgent cases. Although favouring more effective multilateral surveillance they could not agree that authorization by a multilateral surveillance body be made a prerequisite for the imposition of safeguards against developing countries, or that special and differentiated treatment be provided with regard to the time limits for the use of safeguards measures. The EEC pointed out that the time limits depended on the product rather than the source.

6. Nor would the developed countries accept the concept of no roll-back on imports from developing countries; in their view import levels were less relevant if effective time limits were set. Canada stated, however, that the time limits should be shorter than those provided in the United States Trade Act and should be so set as to take into account the needs of developing countries.

7. No developed country accepted the concept of mandatory adjustment assistance or supported the concept of mandatory compensation for developing countries. The United States recalled that its proposal provided that there should be efforts by the domestic industry to adjust and expressed the view that compensation worked against the advantages of time limits and degressivity.

8. The United States also considered that the question of safeguards applied by developing countries was more appropriate for discussion in the Framework Group.

9. Japan, Switzerland and the Nordic countries stated that they had not yet "thought through" all the aspects of their position on special and differentiated treatment.

10. Developing countries[1/] said that they considered these comments to be useful if not encouraging and hoped that they represented only an initial position. Most of the interventions by developing countries were addressed to EEC comments regarding growth rates of imports from developing countries in the context of injury criteria; they stressed that the base was more important than the rate of growth and that developing countries, which mostly were starting from a very low share of the market, would be penalized if growth rate were the sole criterion.

11. Mexico, in particular, stated that it could not accept the conclusion that seemed to have been drawn by developed countries that special and differentiated treatment was neither feasible nor appropriate in the application of safeguards.

1/ Including Egypt, Jamaica, Argentina, Nigeria, Mexico, India.

The Mexican proposal demonstrated a number of possibilities and gave the example of the measures adopted by LAFTA in the Montevideo Treaty; it also recalled the relevant obligations of Article XXXVII:3(c) and the Tokyo Declaration.

United States proposal

12. A detailed exchange of views took place, touching upon the various elements of the United States proposal and of the comments which had been submitted by certain developed countries. In general, no delegation went much beyond the position that it had taken at the past meetings.1/

13. The Group agreed to proposals by the United States and Switzerland that the best way to proceed would be to "cluster" the various issues into groups so that discussion could be given a sharper focus. It was agreed that related issues would be arranged into the following groups, each to be discussed separately and in detail:

(1) Criteria, conditions, retaliation, compensation, adjustment assistance;

(2) Types of measures and modalities of application;

(3) Domestic procedures;

(4) Short term, seasonal, and cyclical problems;

(5) Notification, consultation, surveillance, dispute settlement;

(6) Other topics.

14. Delegations were invited to provide written submissions in respect of these topics before the next meeting of the Group, scheduled for the week of 2 May 1977.

1/ See Reference Manual, UNCTAD/MTN/40, Supp.1, pp.72-85

Note on the meeting of the Group in May 1977

1. The Group on Safeguards met on 3-4 May 1977 at which it addressed itself to the "groupings" of related issues which had been identified at its February meeting.1/ Of the six groupings the first two - groupings A and B - were discussed in some detail. The United States introduced grouping C, drawing from the note it had circulated on the subject 2/ but detailed consideration of this was put off until the next meeting of the Group, scheduled for 27 June. In spite of a general intention to confine comments to points that were new, there was inevitably considerable repetition at this discussion of earlier positions and arguments.3/ This note, however, concentrates on those ideas that were put forward for the first time.

General comments

2. Brazil recalled its earlier comments to the effect that the elements of the Code proposed by the United States should be complemented by the detailed proposals for differentiated and more favourable treatment put forward by Brazil and those of several other developing countries.4/ In regard to the new rules for safeguard actions by developed countries, it was not Brazil's intention that all the elements contained in its proposal would involve differentiation in favour of developing countries. Provided developing countries enjoyed the benefits, some of them could just as well be adopted on a general basis. Only where developed countries could not agree to accept an element for safeguards in their mutual trade would it be necessary for that element to be retained on a differential basis, valid for imports from developing countries. The question of differential measures therefore must be discussed along with all other basic elements of a revised multilateral safeguard system. The question of differential measures in the application of safeguards by developing countries would have to be deferred until it was known "what to differentiate from".

1/ (A) Criteria, conditions, retaliation, compensation and adjustment assistance;
(B) Types of measures and modalities of application;
(C) Domestic procedures;
(D) Short-term seasonal and cyclical problems;
(E) Notification, consultation, surveillance, dispute settlement;
(F) Other topics.

2/ MTN/SG/W/28.

3/ Reference can be made in this context to this Project's note on the more recent meetings of the Group, see pages 54-56, as well as UNCTAD/MTN/40/Suppl. No.1, pages 72-85.

4/ MTN/3D/5 Annexes 3-5 (Brazil, Nigeria, Pakistan), MTN/SG/W/10 (Mexico).

Criteria

3. Japan maintained its position that work should centre on reaching agreement upon a list of elements that would have to be taken into account in determining the existence of a situation of serious injury, and suggested the following "elements": (i) output, (ii) turnover, (iii) inventories, (iv) market share, (v) profits, (vi) prices, (vii) export performance, (viii) employment, (ix) imports, (x) utilization of capacity of domestic industry, (xi) productivity. Japan also noted that other "factors" would have to be considered, such as competition between domestic producers, contraction in demand due to substitutes, and changes in consumer tastes. The Nordic countries thought that additional factors such as the composition of domestic production and imports, and the special case of small countries with a high degree of import penetration, would also have to be considered. Canada noted that there would eventually have to be a discussion of what constituted "serious" injury as opposed to "material" injury which was something involving less "pain". Quantitative indications of minima should be avoided as they could well end up constituting automatic "trigger points" for the application of safeguard measures. On the other hand, if adjectives such as "meaningful" were to be used, there would first have to be a clear idea of what such terms meant to each country, and an examination of existing practices and legislation, especially those of the United States, would be useful in this regard. Another consideration was that the adoption of too strict criteria for "serious" injury might lead countries to rely on the "threat" concept which was more difficult to define. The EEC pointed out that criteria would also have to cover the causality factors contained in Article XIX, i.e. that the injury should result from "unforeseen developments" and be the result of obligations incurred under GATT.

4. Nigeria could not agree with a comment made by Japan that the indices would have to be applied in an equal manner to all sources, pointing out that developed countries should expect to receive more imports from those developing countries which were attempting to industrialize, especially when industrialization was based upon the further processing of the natural resources of these countries.1/ Mexico stressed that indices should also be developed to determine the effect of safeguard action on the economy of the exporting developing country, so that the impact on both the importing and exporting country could be examined. It was precisely those export industries in developing countries which were most competitive and most likely to precipitate safeguard action which were usually of greatest importance to the economy as a whole.

5. Certain delegations pointed out that while some of the elements on the list proposed by Japan were identical to certain criteria contained in the Anti-Dumping Code and the MFA, it should be borne in mind that the criteria used in these two instruments were developed for a narrower concept of injury than that being discussed in the context of a Code on Safeguards. India considered that the term "industry" would have to be more precisely defined. Hong Kong noted that while "price" was an important factor in the dumping context it was not necessarily so in safeguards.

Conditions

6. Brazil described how its approach to the negotiation of differential measures could be applied in the area of "conditions". For example, with regard to the question of time limits, Brazil had proposed a one-year period for any action

1/ Canada suggested that this consideration applies to all resource exporting countries.

against developing countries (which could be extended after consultation), while the United States seemed to foresee a longer period. This would only become a differential measure if the developed countries could not agree on a one-year period among themselves in which case the one-year limit would apply only to imports from developing countries. The same approach would apply in relation to minimum import levels which the United States would base on a "recent representative period", while Brazil's position was that there should be no reduction in the level of import existing at the time the safeguard action was applied. A number of developing countries1/ supported the Brazilian position on time limits and import levels. Most developed countries, however, considered that the time levels should be linked to the existence of the situation of serious injury. Canada considered that in some cases one year could be too long, and that fixed time limits might end up being minima.

Retaliation and compensation

7. Canada observed that as Article XIX reads at present, or as the United States conceived it, where a safeguard action clearly met all the criteria, it would definitely entail no compensation, nor could affected countries withdraw concessions or suspend obligations.2/ In cases where the criteria were clearly not met and the country imposing the safeguard measures was clearly in breach of its obligations, Article XXIII, not Article XIX would become the applicable GATT provision with any "retaliatory" action being taken in that context with the authorization of the CONTRACTING PARTIES. The GATT did not permit a contracting party to break the law with impunity by "paying off" the affected countries. Canada considered, however, that in the majority of cases it was not clear whether the criteria had been met, thus necessitating more precise criteria and multilateral surveillance. The EEC and the Nordic delegations reiterated their positions on this question which were along the Canadian lines.

8. The United States considered that a system which stressed the temporary nature of safeguard actions limited the potential for compensation, and, especially in the case of developing countries, the possibilities of compensation were also limited. The United States emphasized that it was not advocating a "two-track" approach, as seemed to be implied by Canada; countries which accepted to be bound by the new contractual agreement would be subject to retaliation if they departed from its rules.

9. Several other developed and developing countries adopted an opposing view, to the effect that the right to compensation (and of retaliation) should be retained in principle. Japan considered that the possibility of retaliatory action provided a certain deterrent to arbitrary safeguard action, while Switzerland stressed the value of the compensation/retaliation principle in resisting domestic protectionist pressures. Brazil stressed the importance of the principle that developed countries should provide compensation to developing countries affected by their safeguard actions. Safeguard actions in respect of a major export item for a developing country, particularly when taken by the developed country which constituted its major export market, could place the economy of the developing country in a state of disarray, regardless of whether or not the action met the agreed criteria.

1/ Including India, Jamaica, Ecuador (Andean Group), Mexico, Nigeria.

2/ Canada considered the term "retaliation" to be inappropriate in this context.

Compensation should be provided to the affected developing country in cases where it could be demonstrated that safeguard action had had serious effects on its exports and its economy. Where such effects existed and compensation was not provided, and this situation was verified by the multilateral surveillance body, the developing country concerned would be permitted to take retaliatory action. Brazil emphasized, however, that its objective was to shift the emphasis to compensation. A number of developing country delegations supported the Brazilian approach.

Adjustment assistance

10. Brazil recalled its proposal that the application of safeguards by developed countries against imports from developing countries should always be accompanied by a commitment to promptly implement adjustment assistance measures. Nigeria pointed out that the extension of safeguard action beyond one year demonstrated the existence of an "unhealthy" situation warranting adjustment assistance. As mentioned above, developed countries should assume that they would receive increased imports from developing countries, and thus, should make adjustments accordingly. Mexico recalled its position that developed countries should initiate studies aimed at foreseeing the likelihood of an emergency situation in some sectors, with a view to taking the necessary adjustment measures to restructure the industry in question so as to avoid the possible application of safeguards. Other developing countries1/ supported these positions.

11. Developed countries2/ stated that they could not accept an obligation to provide adjustment assistance, although they admitted that adjustment measures, either private or governmental, would be useful in many cases. In short-term cases, especially those relating to seasonal factors, adjustment assistance was not relevant. Canada voiced the concern that an obligation to accompany safeguard measures with the provision of adjustment assistance might lead powerful industries to press for the application of safeguards "in order to obtain access to money".

Types of measur :

12. Discussion on this item concentrated on the status of "voluntary" export restraints (VERs) under a new safeguard system. The United States considered that such measures were a "fact of life" and would have to be covered by the disciplines of an improved safeguard system if such a system was to be effective.3/ On the other hand, the United States proposal would commit countries accepting the Code to discourage agreements between industries to restrict exports. The United States had suggested that Article XVII provided the basis for such an obligation. Japan, on the other hand, recalled its position that an improved multilateral safeguard system should be such as to lead to the elimination of VERs.

1/ Including Ecuador (Andean Group), India.

2/ EEC, United States, Switzerland, Nordics, Australia, Canada, New Zealand.

3/ The United States considered that to date its actions to negotiate VERs on footwear had "followed Article XIX to the letter".

Modalities of application

13. The clear division which had been evident at earlier meetings of the Group between the majority of developed countries on the question of possible departures from the most-favoured-nation principle was maintained. Those delegations supporting the "selective" approach 1/ continued to argue that its application would minimize the trade effects of safeguard action by dealing only with those imports which were causing injury. The EEC again stressed that a selective approach would only be reflective of established practice, which largely consisted of VERs, and even those safeguard measures nominally applied on an MFN basis showed certain discriminatory features when examined in depth. Moreover, Article XIX did not appear to prohibit the selective approach.

14. Other developed country delegations firmly opposed any departure from the MFN principle.2/ Czechoslovakia considered that the fact that in several cases Czechoslovak exports which had not caused injury had been subjected to safeguards applied on an MFN basis was a "small price to pay" for the maintenance of the MFN principle. Canada considered that safeguard measures could be applied on a non-discriminatory basis but in such a manner as would effectively restrict only injurious imports (e.g. through surcharges based on import prices) and warned against "letting loose the tiger of discrimination" which would seriously affect the interests of all but the largest trading powers. Australia viewed any adoption of a selective approach as being a "trap" for those small countries which might believe themselves immune at the beginning but would be most affected in the end. The legalization of such discrimination could spell the beginning of the end of GATT as an institution governing international trade relations. Australia's experience was that discrimination tended to extend beyond the area of trade and affect basic relations between countries.

15. The United States considered that non-discrimination in the application of Article XIX was a matter of interpretation relating to an interpretative note in the Havana Charter which had later been confirmed in the GATT.3/ In the view of the United States the interpretation was still unclear.

16. Brazil drew the attention of the Group to the distinction between the issues of "selectivity" and of differential and more favourable treatment for developing countries. Differentiated treatment would be applied under a set of rules to be accepted by all countries permitting departures from the MFN rule to exempt developing countries from safeguard actions. This was not "selectivity" but an agreed non-applicability of MFN. Brazil had not yet made up its mind on the issue of selectivity although it tended to view it favourably. Mexico supported the distinction made by Brazil but considered that safeguards should be applied on a non-discriminatory basis with an exemption for developing countries.

1/ Including EEC, Nordics, Austria.

2/ Including Japan, Canada, Australia, New Zealand, Czechoslovakia, Hungary and Switzerland.

3/ Havana Charter, Interpretative Note ad Article 40.

Note on the meeting of June 1977

1. The Group "Safeguards" met on 27-28 June 1977 to continue its discussion of the "groupings" of related issues it had undertaken at its May meeting. 1/ The remaining subjects were (i) domestic procedures, (ii) short-term, seasonal and cyclical problems, (iii) other business. To a large extent interventions took the form of earlier comments made in relation to the proposal submitted by the United States (in July 1976) for an international Code on Safeguards. 2/ The following paragraphs summarize the main elements of the discussion.

Domestic procedures

2. Referring to its statement at the May meeting, 3/ the United States reiterated its position that any improved multilateral safeguards system should contain certain guidelines in respect of domestic procedures, including, at least, (i) the examination by a specified body of each request for import relief, pursuant to established procedures, (ii) adequate notice of the intention of such an examination and the opportunity, including through public hearings, for all interested parties to present views and relevant evidence, (iii) a published report of the determination in each case, including the factors considered and the rationale used in arriving at the decision. The objective would be to guarantee that the criteria and procedures accepted in an international code would be reflected in each adherent country's domestic procedures. Australia generally supported the United States' approach, pointing out that the elements suggested had been long-standing practice in Australia.

3. Other developed countries, however, questioned whether the open procedures proposed by the United States would not, in fact, have effects contrary to their intended purpose. Japan and EEC noted that experience had demonstrated that open domestic procedures could result in increased domestic pressures for the imposition of safeguard measures, and to "trade harassment", causing uncertainty in business

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1/ See the Interregional Project's note on the May meeting of the Group (pp. 57-61). The groupings discussed in May were (i) criteria, conditions, retaliation, compensation and adjustment assistance (ii) types of measures and modalities of application.

2/ MTN/SG/W/11

3/ MTN/SG/W/33

transactions with consequent restrictive effects.[1] These delegations again stressed that differences in legislation, practices, and traditions made it difficult to adopt uniform procedures. They noted, however, that the United States seemed no longer to be seeking the adoption of identical procedures. The EEC stressed that detailed guidelines governing domestic procedures would only be relevant if clear international criteria existed, and if so, might not even be necessary.

4. Among developing countries, Brazil and Mexico generally agreed with the comments made by Japan and other developed country delegations, pointing out that the difficulties identified by these delegations in adopting uniform procedures were even more significant for developing countries, and in any case, commitments in this area could only be taken when it was clear what special and differentiated treatment would be accorded in the area of safeguards. India commented that experience with the open procedures which existed in India confirmed both the United States and Japanese points of view, i.e. that while such procedures resulted in increased opportunity for exporters' views to be heard, there was also a greater propensity for domestic pressures for the imposition of safeguards to be building up to a point where they were difficult to resist. It was more important that all decisions should be subject to effective multilateral surveillance.

5. In response to these comments the United States emphasized that its position should not be interpreted as requesting other countries to adopt the elaborate procedures in force in the United States.

Short-term, seasonal and cyclical problems

6. Canada recalled its previous comments[2] in respect to this problem, in particular with respect to trade in certain horticultural products, and reiterated its position that reactions to this problem should be incorporated into the general multilateral safeguard system. Canada presented the Group with a report prepared by the Canadian Tariff Board on "Imports of Certain Fruits and Vegetables at Very Low or Depressed Prices", which was being considered by the Canadian Government.[3] The United States, noting that it was the country most frequently affected by such measures, expressed concern that the recommendations of the Canadian study could lead to a situation where actions, which had in the past been taken on a case-by-case basis, would be given an automatic character. New Zealand questioned how differentiation could be made between what Canada termed "unusual climatic factors" and those legitimate trade opportunities arising from seasonal variations. Yugoslavia suggested that this problem be examined along with automatic mechanisms such as variable levies and minimum import prices. Mexico did not consider that low prices or cyclical problems in themselves could justify safeguard action.

1/ Japan recalled its recent experience with United States domestic procedures in regard to its exports of television sets; i.e. the "Zenith" case.

2/ MTN/SG/W/17

3/ MTN/SG/W/34, Canada noted that this issue was not related to the general question of seasonal tariff rates.

Notification, consultation, surveillance and dispute settlement

7. Canada stressed that it was clear from the provisions of Article XIX that dispute settlement be carried out within the context of that Article. Improved surveillance should guarantee equitable treatment among parties of different economic strengths and could be carried out by means of a Committee whose responsibilities would include (i) receiving prior notifications, (ii) providing a forum for negotiations, (iii) deciding whether suspension of substantially equivalent obligations was justified, (iv) conducting an annual review of safeguard actions in force to determine whether the action was still required and applied in conformity with the provisions of the Code. Dispute settlement could involve reference to a panel of experts drawn from the "slate of experts" which Canada had proposed in the context of solutions being considered by other Groups and Sub-Groups. Switzerland considered that the Group would have to examine a number of questions before devising more detailed notification and consultation procedures, such as at what stage in time and to what body would the notifications be made, what parties would take part in the consultations, etc. The spokesman for Hong Kong drew attention to the provisions of the United States' proposal regarding prior notification and consultation, noting that, while the proposal would "widen" the obligations to include affected exporting countries which were not, however, substantial suppliers, it would at the same time weaken the criteria for exceptions to the prior notification and consultation requirement in GATT Article XIX. Hong Kong could not imagine any case where prior notification would not be possible and considered that problems might arise should the provisions of the proposed Code depart too far from Article XIX.

8. Several developing country delegations[1/] commented on this item. Brazil reiterated its position that prior notification and consultation should be mandatory in all cases of safeguard action taken against developing countries. The purpose of such consultations should be inter alia to assess whether the relevant criteria had been met, to examine possible alternative solutions and to determine adequate compensation for the affected developing country. If agreement were not arrived at in bilateral consultations, the matter would be taken to a multilateral body which would be empowered to examine whether alternative measures (i.e. adjustment assistance) had been taken, approve the safeguard action, and decide upon compensation. Brazil again stressed that while these elements should apply, in all cases, in respect of action taken against developing countries, they would only constitute "differential measures" should developed countries not be prepared to accept that safeguard actions taken against each other would be governed by these disciplines. Mexico, referring to the detailed proposal it had submitted earlier, considered that the multilateral surveillance body should ensure that the special problems and interests of developing countries would be taken into account, and considered that the mechanisms Mexico had proposed regarding surveillance and dispute-settlement in the context of the draft Code for Preventing Technical Barriers to Trade, (which was an extension of a proposal by Canada) could also be applied within a safeguards Code.[2/]

1/ Including Brazil, Nigeria, Mexico, Pakistan, Romania.

2/ MTN/NTM/W/95, pages 14-16, 19-20.

9. Consistent with its long-standing position Australia considered that the main objective in this particular grouping of issues should be to bring all safeguard actions, including both those taken under Articles other than Article XIX or outside of GATT altogether, within the scope of effective multilateral surveillance and dispute settlement procedures. In the view of the United States the comments by other delegations demonstrated that the major problems for which remedy should be sought in this area remained (i) the reluctance of governments to rely on existing GATT procedures, and (ii) the lack of the degree of specificity in these procedures necessary to adequately protect both the interests of both importing and exporting countries. It intended to build upon, not detract from, Article XIX.

Other topics - Automatic import licensing

10. The United States recalled that while its position in Sub-Group "Quantitative Restrictions" had continually been that automatic import licensing systems should be eliminated, certain other delegations had stated that such measures were maintained in certain cases for safeguard (or "pre-safeguard") purposes. Therefore, it would seem appropriate to bring such practices within the disciplines envisaged for safeguard measures. Automatic licensing systems applied for safeguard purposes should be made subject to requirements for publication, non-discrimination, automaticity and unconditionality. It was agreed to examine the appropriateness of including this subject within the work of Group "Safeguards" at a later meeting.

Further comments on items discussed in May

11. Certain delegations elaborated upon the positions they had expressed at the May 1977 meeting of the Group. With regard to criteria, the Nordic countries reiterated that while they supported the approach that had been outlined by Japan at that meeting, they sought the inclusion of certain additional factors, notably (i) the "composition of domestic production and imports" so as to determine whether in fact imports were competitive with or complementary to domestic goods and (ii) "small markets and import penetration", on the basis that incremental increases in imports would have a greater effect on small markets where imports already had a large percentage of the market than in countries where import penetration was low.

12. On types of measures, Hong Kong re-emphasized the danger of "sanctifying" so-called voluntary export restraints (VERs) by bringing them within the system, considering exporting countries to be better off if VERs were not included. The United States, with support from Canada and New Zealand stressed the necessity of subjecting such measures to the disciplines of the multilateral system, noting inter alia the effect of such measures on the trade interests of third countries.

Other business

13. Canada explained the rationale of its proposal to negotiate more stringent safeguard agreements within the context of sector agreements on non-ferrous metals and forest products. The main reason was the necessity of providing the trading environment which would justify the large capital investment and the time needed to bring operations in these sectors into production. Such sectoral safeguard

agreements should include provisions for prior approval of any action as well as multilateral consideration 1/ of adjustment plans. In the view of Canada those countries concerned with security of supply should recognize that any interference with normal market forces would inevitably have an effect on the price and availability of these materials.

Future work

14. It was agreed to meet in the autumn with the same items on the agenda. It was hoped, however, that delegations would be prepared to put forward precise proposals which could form the basis for a first draft of a Code on Safeguards.

1/ i.e. by a Committee which would consist of signatories to the sector agreement.

(c) AGRICULTURE

Note on the meeting of March 1977

1. The Group on Agriculture met on 29-30 March 1977, primarily to examine the applicability to agricultural products of the draft Code for Preventing Technical Barriers to Trade (i.e. the "Standards Code") prepared in the NTM Sub-Group on Technical Barriers to Trade. The following paragraphs summarize the main elements of the discussion.

General statements

2. Although no country maintained that the Code should not be applied to agricultural products, certain delegations emphasized that there were certain important considerations and problems involved in such application. Japan pointed out that a number of essential differences existed between the nature and objectives of standards/technical regulations in the area of agriculture and those applied in respect of industrial products. Agricultural standards generally dealt with characteristics such as shape, density, colour and suitability for processing rather than performance, safety and classification. In many cases they applied in respect of products in their unprocessed form or items which did not enter into international trade. Standards in the agricultural field varied greatly as a function of dietary habits and health and sanitary levels prevailing in individual countries with widely differing living conditions. In particular, quarantine systems reflected the unique situations of individual countries and it seemed doubtful whether such systems could meaningfully be brought under the discipline of an international Code. In addition, the nature of intergovernmental activity, and the obligations accepted, differed from those in the industrial sector. For example, the Codex Alimentarius permitted varying degrees of acceptance of its standards, and a number of other international agreements dealing with specific areas, such as the International Plant Protection Convention, already provided an information exchange system. Thus, there was a very real danger of duplication.

3. New Zealand, arguing along similar lines, stressed that, as was recognized in GATT Article XX, every country should retain the right to take appropriate measures, discriminatory if necessary, to protect health and animal and plant life. Unlike those for industrial products, agricultural standards were ever changing and in certain cases some barrier effects on trade were inevitable. In examining the applicability of the obligations of the Code there was a need to distinguish among standards relating to food manufacture, to animal and plant health, and to the processing of agricultural products. In addition, testing fulfilled a somewhat different role in this area, especially with regard to perishable foodstuffs where testing in the importing country was often indispensable. Due to the diversity of domestic conditions, international standards on agricultural products did not play the same role as industrial standards, and, in particular could not act as a point

of reference for dispute-settlement to the same degree. The scope for legitimate differences, based on opposing scientific agreements was extensive. Australia supported the points made by New Zealand and emphasized the difficulties that would be encountered in attempting to apply the Code to quarantine systems. Australia also noted that, for the Code to be effective to deal with technical barriers to agricultural trade, standards and regulations relating to processes and production methods would have to be brought within its scope.

4. Other delegations which took part in the discussion[1/] recognized the possible problems involved but placed less emphasis upon them. The United States stated its view that the Code dealt adequately with any problems that might be unique to agriculture, although this would have to be verified in a section-by-section examination of the Code. Argentina stressed that there had never been any idea of excluding agriculture from the obligations of the Code; the objective of the present exercise should be to identify any additional provisions that would be necessary to make the Code more effective in preventing barriers to agricultural trade. It should be borne in mind that the exceptions provided in GATT Article XX relating to health were subject to the important qualification in that any such measures should not involve unjustifiable discrimination or constitute a disguised restriction on international trade. The Nordic delegations considered that the main problem to be overcome related to the differences in respect of international governmental activities in the agricultural area.

Processes and production methods

5. Pursuing the point made by Australia, the United States recalled that it had withdrawn its proposal to amend the definition of the term "technical specification" to include processes and production methods in order to facilitate agreement on the definitions which had been reached at the last meeting of NTM Sub-Group on Technical Barriers to Trade (held during the preceding week). This proposal had been withdrawn, however, on the understanding that the question would be brought up in the context of the operative provisions.[2/] It should be noted that in many cases, particularly, but not exclusively, in respect of agricultural products, judgment as to whether the characteristics of an imported product were such as to meet health standards could not be determined by tests at the port-of-entry, but was directly related to the conditions or methods under which the product had been processed (the example given related to sanitary conditions in slaughterhouses). In the view of the United States processes and production methods should be covered by the Code only to the extent that they had a direct relationship to the characteristics of products. A number of delegations [3/] subscribed to this view, pointing out that the exclusion of processes and production methods would greatly lessen the benefits of the Code to be derived by agricultural exporters. Other delegations [4/] considered that the question of the extent to which processes and production methods would fall within the scope of the Code would involve careful study.

Operative provisions

6. Most of the discussion relating to the operative provisions focussed on the basic obligations of Section 2. Canada made a number of observations, noting that

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1/ United States, Israel, Romania, Argentina, Nordics, EEC, India, Brazil.

2/ See MTN/NTM/W/72, page 2, the changes to the text of the Code, including the definitions agreed upon at the March meeting of Sub-Group "Technical Barriers to Trade"

3/ Including Australia, New Zealand, Argentina, Egypt, Mexico.

4/ Including Canada, EEC, Nordics.

standards in the agricultural field were usually of a mandatory nature (i.e. constituted "technical regulations") and thus would fall within the scope of this section. In Canada'a view, an examination of the obligations of Section 2 demonstrated that the problems of the application of the Code to agricultural products mentioned by the other delegations at this meeting were not insurmountable. For example, while there was certainly validity to the argument by certain delegations that, it was necessary for each country to retain the right to protect human, animal and plant life or health, as provided for in GATT Article XX(b), it should be recalled that measures could be taken under that provision only to the extent "necessary", a notion which was brought out in Section 2(a) of the Code. Countries imposing such measures were in any case bound both under the GATT and the Code (for industrial or agricultural products) to demonstrate the necessity of their actions. In respect of 2(b), it did not seem that the Codex Alimentarius system seriously conflicted with the objectives of this paragraph. If countries did not adopt a Codex standard either fully, or on a "target" basis, presumably it was because they considered the Codex standard, or parts of it, to be "inappropriate" and thus, would be under the onus of demonstrating, if challenged, why the international standard was not appropriate in whole or in part. The representative of Canada also questioned whether quarantine standards, to which several delegations had alluded, would cause any serious problem in respect of the Code. So long as there was no general recognition of a need to work towards international standards in this area, it did not seem that quarantine systems would conflict with Sections 2(b) and (c) of the Code. With respect to the obligations of 2(e), it did not seem that there could be much duplication with FAO, as that Section covered only technical regulations not based upon international standards. 1/ With regard to 2(g) Canada pointed out that the obligation to publish technical regulations had already been accepted under GATT Article X without distinction between industrial and agricultural products.

7. Other delegations addressed their comments to individual paragraphs of Section 2. The Nordic delegations and the EEC considered that the relation between the notification obligations of Section 2(e) and those of the Codex Alimentarius were more complex than Canada appeared to believe and would need to be analyzed in greater detail. Australia pointed out that all cases relating to quarantine would be subject to these requirements as international standards did not exist in that area. Ecuador, speaking on behalf of the Andean Group, recalled that the Sub-Group on Technical Barriers to Trade was considering a general text to deal with the provision of differential and more favourable treatment to the exports of developing countries, which might be inserted in Section 2. The Andean countries recognized the necessity of health and sanitary standards, but were opposed to their abusive application. It was against such abusive application that the Code should be directed.

8. Certain general comments were made on the provisions of the Code regarding conformity with standards/technical regulations and certification systems. The EEC observed that certain existing international agreements, notably the International Plant Protection Convention, contained strict obligations in respect of certification systems, which would have to be taken into account. The Nordic delegations noted that the concept of "similar domestic products", referred to in Section 6 and 9, might need further interpretation so far as agricultural products were concerned. For example, the Nordic countries did not test certain domestic products for the presence of pesticides which were prohibited domestically, nor similar products imported from countries where such pesticides were likewise prohibited. However, obviously tests were necessary on imports from third countries.

1/ The proposal by Israel for a wider coverage for negotiations was recalled in this context. (MTN/NTM/W/72, page 5).

9. Australia proposed that, as a consequence of the discussion in regard to Section 2(e), the GATT secretariat should conduct a review of the notification, consultation and dispute settlement provisions of international bodies active in standards problems relating to agricultural products. Argentina suggested that this analysis should be supplemented by a study of the scope of international standards in the agricultural area. Although certain delegations questioned the utility of such an exercise, it was agreed that the GATT secretariat would prepare a note containing both studies.

Future work

10. Australia stressed the need for the Group to give some attention to its future work programme before the summer recess, pointing out that 15 months had elapsed since the notification and consultation procedure had been agreed upon 1/ and as yet no reports as to the outcome of these consultations had been received. It was agreed that the Group would meet before the summer, with the date and work programme to be drawn up by the Chairman in consultation with delegations.

1/ i.e. that set out in MTN/AG/4.

Note on the meeting of the Group in July 1977

1. At this meeting of the Group, held on 19-20 and 27 July 1977, the United States presented a proposal[1/] which called for the establishment of a negotiating programme in respect of tariffs and non-tariff measures on agricultural products based on a request/offer procedure. After extensive discussions and informal consultations the Group decided to adopt a work programme largely based on this proposal, supplemented by special negotiating procedures for developing countries. Other matters on the agenda, such as the continuation of the review of the applicability of the standards code to agricultural products, were postponed to a later meeting.

2. The United States proposal emphasized the importance of achieving a meaningful liberalization and expansion of agricultural trade in the MTN and noted that the time had now come to proceed to the negotiating phase by the adoption of a work programme comprising both bilateral and multilateral elements. In line with four-phase schedule for the conduct of the MTN recently agreed upon by the United States and EEC this programme provided for product-by-product negotiations based on requests and offers covering both tariff and non-tariff measures. The requests should be submitted by 1 November 1977 and the offers, by 15 January 1978. The United States continued to attach importance to the work on multilateral solutions in the three Sub-Groups on Meat, Dairy Products and Grains and urged interested countries to submit proposals for the future work of these sub-groups so that substantive negotiations could begin after the summer.

3. The United States would follow up this initiative with a similar proposal in respect of non-tariff measures affecting industrial products in the Group on Non-Tariff Measures. These procedures, together with an agreed tariff negotiating plan, and supplemented by work in the Agriculture Sub-Groups and NTM Sub-Groups, would form a new integrated approach to the MTN.

4. Many developed countries welcomed the United States proposal as an important and useful impetus to the negotiations and most of them considered the request/offer procedure to be an appropriate approach. Some of them doubted, however, whether the suggested deadlines were realistic and Canada in particular pointed out that the preparation offers would involve long and complicated negotiation with domestic organizations. Some sought further clarifications on particular aspects of the proposal.

5. Canada, referring to the need to define the product coverage of the request/offer procedure, suggested that the practice of the Kennedy Round might be followed; each country would supply a list enumerating the products which it considered to be agricultural. Canada also would emphasize the link between this new procedure and the work on a tariff negotiating plan. While not opposed to setting 1 November 1977 as a target date for the submission of requests, it would consider the date relevant only if prior agreement was reached on a tariff negotiating plan. In any case, the request procedure should remain open up to the very end of the negotiations.

6. Australia reiterated its view on the position of a country such as Australia heavily dependent on agricultural exports, for which it was of primordial importance that comparable benefits should accrue for agricultural and industrial producers. The recent agreement between EEC and United States officials presaged, and the

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1/ MTN/AG/W/26

present meeting confirmed, the use of item-by-item negotiations in the agricultural sector, which were at variance with Australian thinking. In a spirit of co-operation Australia would accept the new procedure and would not press for consideration of its own proposal in MTN/AG/W/14. Be that as it may, the primary objective remained of course the achievement of a major trade liberalization in the agriculture field.

7. Australia also considered it necessary to define the product coverage of the proposed procedure and how this procedure would operate in relation to measures which were the common objective of the Agriculture and NTM Sub-Groups. Specifically, the question was whether European countries would continue to insist on confining discussion of all trade measures affecting agriculture products in the Agriculture Group and Sub-Groups. Similar to many other countries Australia had serious doubts about the feasibility of the suggested deadlines, in particular that for the submission of offers. Comprehensive offers could be presented only if the negotiation had advanced sufficiently for an evaluation to be made of the overall results, and of the balance between different areas of the negotiations, which was highly unlikely by January 1978, which, incidentally, fell in the middle of summer in Southern hemisphere countries, where summer vacation was as sacred an institution as in Northern countries. The proposed date of 15 January 1978 should be considered no more than a "best endeavours" target date and not a firm deadline.

8. New Zealand shared most of the views expressed by Australia. It considered that the political will to get on forthwith with substantive negotiations was timely and highly welcome.

9. EEC noted that while the United States proposal differed somewhat in scope from its own earlier proposal[1], sufficient common ground existed in the two proposals for the formulation of an agreed approach. The Community considered it necessary to launch effective negotiations before the end of this year in order to forestall any further hardening of the stalemate caused by economic and social problems in participating countries. Such clarification or modification as might be required on the proposed procedure could best be made as the negotiations proceeded.

10. Developing countries[2] generally thought it a matter of gratification that the major developed countries had finally reached agreement to enter into substantive negotiations but were seriously concerned about the complete lack of reference to special negotiating procedures and differentiated treatment for developing countries in the United States proposal. Some of them deplored the fact that a decision concerning the course of the MTN, which was of great importance to all participants, should have been virtually taken without the views of developing countries being consulted. The developing countries would not accept any proposal which did not take adequate account of their legitimate

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1/ MTN/AG/W/23.

2/ Including Argentina, Brazil, Ecuador (for the Andean Group), Honduras, India, Isarel, Nigeria, Mexico, Romania and Yugoslavia.

rights as provided for in the Tokyo Declaration. The principle of non-reciprocity, for instance, must be upheld, and there should be no reciprocal concessions from developing countries, such as had been demanded by the United States in the tropical products negotiations. The question of possible contributions by developing countries should be settled in the light of the outcome of the MTN as a whole and not in the isolated context of the Agriculture Group.

11. Some countries proposed that any new procedures should include arrangements for plurilateral consultations and negotiations which would help to compensate for the weak negotiating position of developing countries. Transparency of the negotiating process should be enhanced, for instance, through the circulation of requests and offers to all participants. Priority attention should be given to all requests by developing countries, particularly those relating to tropical products and where developing countries were individually or jointly principal or substantial suppliers. While developing countries would endeavour to meet the suggested deadline for the submission of requests they would expect that some flexibility would be allowed in this regard.

12. Developing countries generally considered it necessary to define the product coverage of the proposed new negotiating procedures, and the relationship between this and the work in other Groups, such as the Tariff Group.

13. The United States and EEC cautioned against the inclination, which appeared prevalent, to settle every conceivable procedural question in a negotiating programme in advance. Most of the unsettled questions concerning the proposed procedures would hopefully become clearer and more susceptible to solution as the negotiations proceeded. They should not be allowed to delay the launching of the new negotiating programme, thereby missing the opportunity of speeding up the negotiations.

14. The United States considered that it being self-evident that the negotiations would be conducted in accordance with the Tokyo Declaration, there was no need to burden the proposal with reiterations of the provisions concerning special and differential treatment for developing countries. If the developing countries so desired specific texts taking their concerns into account could naturally be incorporated.

Conclusions

15. After extensive informal consultations among delegations the Group agreed upon a new work programme. The decision[1/] is mainly based on the United States proposal and contains two parts, the first setting out general negotiating procedures and the second special procedures for developing countries.

16. Under the general procedures participants will submit request lists (indicating the agricultural products for which they wish to secure concessions, tariff or non-tariff) by 1 November 1977. Additional or modified lists may be submitted as the negotiations proceed. The request list will be circulated to all participants in the negotiations. For purposes of these negotiations, agricultural products shall in general be those falling within Chapters 1-24 of the CCCN. Any differences of views concerning this definition should be notified

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1/ cf. annex to MTN/AG/7.

at an early date. All participants should make a maximum effort to submit their offers by 15 January 1978. In addition, the Sub-Groups on Meat and Dairy Products will meet from 11 October 1977 and that on Grains at the earliest possible date in the light of the discussions in the International Wheat Council.

17. The negotiating procedures for the developing countries contain the same basic elements as the general procedures, i.e. a request/offer procedure, with some adaptations. Developing countries may submit request lists either individually or jointly. The target date 1 November 1977 for the submission of requests is made more flexible by the addition of the words "if possible". Outstanding requests from the tropical products negotiations may be resubmitted under the agreed procedures, and their special and priority character is unimpaired. Arrangements will be made for bilateral and plurilateral consultations and negotiations between the requesting countries and the recipients. In making their offers, developed countries will give special and priority attention to requests submitted by developing countries, especially if they are, jointly or individually, principal or substantial suppliers.

18. It is recognized in the decision that developed countries may submit indicative lists to developing countries showing their agricultural export interests. EEC and some other developed countries wished to change this reference to "agricultural trade interest" thereby including export restrictions. This was strongly objected to by developing countries, which maintained their position that it had not been envisaged at Tokyo that export restrictions would be open for negotiations. As it is formally noted in the decision there is no agreement in the Group on this matter.

19. As regards contributions from developing countries it is stated that, after offers have been presented by developed countries, developing countries in a position to do so will indicate on a provisional basis their contributions to the negotiations. The final scope of such contributions will be determined in the light of the additional benefits developing countries receive from the MTN as a whole.

20. The Group will revert at its next meeting to the question of what differential measures will be applied for securing special and more favourable treatment for developing countries in the product-by-product agricultural negotiations, on the basis of proposals by interested participants. Developing countries have stressed that their acceptance of the programme of work was conditional upon satisfactory agreements being reached on special procedures and special and differential measures applicable to them.

21. The Group agreed to continue the review of the applicability of the draft Standard Code to agricultural products at its next meeting, at a date to be fixed by the Cahirman in consultation with delegations.

(d) TROPICAL PRODUCTS

Note on the Group meeting of May 1977

1. The Group on Tropical Products met on 12-13 May 1977. In order to facilitate discussions it was agreed to divide its task into two parts: (i) review of developments with regard to the concessions and contributions notified, their implementation, and progress in the bilateral and plurilateral negotiations, and (ii) consideration of the question of promoting further progress in the negotiations on tropical products. The following paragraphs summarize the main points raised in the meeting.

Review of developments

2. Developing countries[1/] expressed their strong sense of disappointment regarding the shortcomings of the contributions and concessions that had been put into effect which they considered would result in little or no improvement in their trade. They reiterated the criticisms made at the last two meetings of the Group,[2/] such as the omission of important products of special interest to many developing countries (including semi-processed and processed items), the minimal degree of tariff reductions in many cases, the insecure nature of the tariff reductions (the large majority being made in the context of the GSP),[3/] the almost total absence of offers in respect of non-tariff measures. Developing countries could not accept that the tariff reductions and other contributions implemented by developed countries be considered to be anything more than a "preliminary" installment, which comprised unilateral action on the part of developed countries rather than the product of negotiations as such. They also expressed their disappointment over the United States' persistence in refusing to implement its offer in the absence of reciprocal concessions by developing countries. Argentina expressed the view that the results of negotiations in this "special priority" sector presaged the outcome in other areas of the MTN. It seemed to developing countries that developed countries had interpreted "priority" in the sense of timing only.

1/ Including Jamaica, Thailand (ASEAN countries), Egypt, Brazil, India, Ghana, Ecuador (Andean group), Pakistan, Nigeria, Senegal, Sri Lanka, Mexico, Argentina, Zaire.

2/ UNCTAD/MTN/40/Supp.1, pages 100-110. For additional background see "Tropical Products, A General Assessment of Negotiations to Date",pp.138--166 of this docu.

3/ Mexico considered that the Group seemed to have devoted itself entirely to "improving the GSP", and that the document MTN/TP/10 "Implementation of Concessions and Contributions", might more appropriately pertain to the UNCTAD Special Committee on Preferences; actual "concessions" in the GATT sense, accruing from the negotiations to date, totalled 10 bound MFN tariff reductions, plus the 7 items bound by Australia where MFN rates had already been duty free.

3. The United States maintained its position that it was unwilling to make unilateral trade concessions in the MTN and stood ready to implement any part of its offer in respect of which adequate contributions were agreed upon. The United States delegation emphasized that it was not seeking reciprocity "in the strict GATT sense", but that contributions were "needed" since the United States was prepared to make "meaningful" concessions, i.e. bound MFN tariff reductions on important products.

4. Other developed countries[1] stressed that concessions and contributions they had, or intended to,[2] put into effect represented the maximum effort on their part in the context of tropical products as a "special and priority sector", and could not, as developing countries had stated, be considered as a "first installment". They pointed out, inter alia, the wide trade coverage of their offers and the political difficulties which had had to be overcome in putting them into effect. They stated that while consideration could be given to the taking of further action in respect of some of the requests which had not been met, this would have to be undertaken in other areas of the MTN, in particular, in the Tariffs Group. Switzerland suggested that the Tropical Products Group could bring unsatisfied requests to the attention of other Groups and Sub-Groups. In reply to comments by developing countries on the failure to bind MFN concessions, Canada explained that it had not bound MFN reductions at this time solely for procedural reasons. The EEC recalled its earlier statement of intention to bind the offered MFN tariff reductions and observed that, from a juridical point of view, that statement of intention was tantamount to actual binding.

Further progress

5. Developing countries emphasized that they considered it essential that the Group on Tropical Products remained in active existence; they could not accept the contention of most developed countries that further negotiations in respect of the tropical products on the requests lists would have to be carried out in other areas of the MTN. Referring to the recently-held developed country "Summit" meeting in London, they asked whether these countries did not consider tropical products to be among the "key areas" of the negotiations upon which these countries had agreed to seek "substantive progress". In response to the United States position, developing countries again reiterated their intention to make contributions to the MTN when the overall results, including the additional benefits accruing to them, could be assessed.

6. In the view of some developing countries the failure so far to achieve satisfactory results in the tropical product negotiations could be largely attributed to the bilateral technique which had been adopted. Consequently, future progress would have to be sought through an effective multilateralization of the negotiations. Brazil stressed that the Group must be capable of both carrying on negotiations as appropriate and assessing results in other areas of the MTN that affected trade in tropical products. Mexico proposed that the continuation of negotiations in the Group should include (i) an overall multilateral commitment regarding the extent to which tariff rates on tropical products would be permitted to remain, (ii) agreement as to exceptions, as a percentage of items requested, that would be permitted individual developed countries, and (iii) intensified plurilateral negotiations. In addition, the GATT secretariat should carry out a technical, factual evaluation of the results of the tropical products negotiations in order to determine the real

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1/ The EEC, Japan, Canada, the Nordic countries, Switzerland, Austria, Australia and New Zealand.

2/ Austria announced that implementation of its offer was imminent as parliamentary approval had been received.

degree of progress achieved. Honduras considered that the process of multilateralization could be facilitated by drawing up a list of those requests which had not been met with offers with a view to subjecting them to plurilateral and multilateral negotiations.

7. India put forward a proposal on further work to be carried out, which included the following: (i) continuation of the process of bilateral and plurilateral negotiations; (ii) multilateral examination of problems which prevented fuller action and a timely and in-depth study, similar to that conducted by an Ad Hoc Group at the end of the Kennedy Round, aimed at identifying such problem areas, (iii) review of the progress and results in other Groups; (iv) justification of failures to comply with requests in much the same manner as would undoubtedly be required by Group Tariffs and likely by Group Agriculture for exceptions from a general tariff formula. Egypt pointed out that one important area for review would be the possible erosion of the results of the tropical product negotiations by the general tariff formula.

8. The EEC stated that it had no fundamental objection to the approach outlined by India, Honduras and others, bearing in mind that the Community had made its maximum effort in the context of the Tropical Products Group. It did not agree with the justification procedure suggested by India, considering that such an approach was only relevant in the context of a general formula and not applicable to product-by-product negotiations such as had been carried out in this sector. Canada questioned what was meant by "multilateralization" of the negotiations.

9. In response to the comments by developed countries, India pointed out that, in view of the commitments made over fifteen years ago, there was in fact a general formula for tropical products, i.e. duty-free, tax-free access to the markets of developed countries. Any failure to provide such treatment should be considered as an exception, requiring justification. Mexico referred to the agreed guidelines for the tropical product negotiations and noted that there was no mention therein of a termination date, nor of the submission of counter-requests by developed countries. Furthermore, the guidelines provided for multilateral examination of problems facing trade in tropical products, and that full account would be taken of the solutions already proposed in Group 3 (f) (which inter alia included duty-free entry).1/

10. It was agreed that at its next meeting the Group would (a) review the results achieved in the bilateral and plurilateral consultations as well as in the other negotiating Groups with a view to assessing the situation and overall progress, having regard to developments in other areas of the negotiations; (b) to examine further the question of greater security for the concessions and the "situation" of contributions 2/ which had been made; (c) to revert to points relevant to its work covered by the Guidelines including, in particular, sections 1(v) and 2(iii).3/

1/ MTN/TP/1 paragraphs 1 (ix) and 2 (iii).

2/ A reference to "stability" of the contributions (i.e. the GSP improvements) was not acceptable to the EEC.

3/ These sections read as follows:

" 1(v) Questions as to how special and priority treatment may be ensured in this sector, which need to be considered on a multilateral basis, would be taken up at the June meeting of the Group and at subsequent meetings."

" 2(iii) Full account would also be taken of the solutions already proposed during the technical and analytical work carried out in Group 3 (f)".

At an appropriate stage, and in the light of further developments, the Group would also consider the question of examining the specific problems which had affected fuller implementation and of proceeding to an evaluation of the results achieved in the tropical products sector.

Next meeting

11. The date of the next meeting would be determined by the Chairman in consultation with interested delegations and the secretariat. In the meantime the bilateral and plurilateral negotiations should continue. The TNC would be informed at its next meeting of the situation reached in the Group.

(e) INSTITUTIONAL FRAMEWORK

Note on the February meeting of the Framework Group

1. The Group met on 22-23 February 1977 at which it discussed the five questions which it had been "called upon to deal with", although a consensus had not been reached in regard to the individual items.1/

2. Brazil introduced a detailed proposal dealing with points 1-4 above,2/ intended to give GATT a more active role in promoting the expansion of trade between developed and developing countries by way of providing additional benefits to the trade of developing countries so as more effectively to integrate them into a dynamic framework of world trade. Among the Brazilian suggestions were the following: (a) GATT should provide a "standing legal basis" for GSP, as well as for the negotiation of preferential bindings between developed and developing countries; (b) a legal basis for differential and more favourable treatment should be provided in GATT through the introduction of a general clause; (c) balance-of-payments consultations should be directed toward seeking means of helping the developing countries to overcome their difficulties; (d) the legal basis in Article XVIII for economic development measures should be so broadened as to cover not only import substitution stimulants but also export expansion steps; (e) the dispute settlement procedures of GATT should be revised to provide a greater counter-balance to the inequality of economic weight between developed and developing countries; and (f) the principle of non-reciprocity should be given more precision through the development of norms and criteria guiding its implementation, including the use of trade and economic impact rather than trade coverage as the means of evaluating concessions.

1/ These "questions" were as follows:

1. The legal framework for differential and more favourable treatment for developing countries in relation to GATT provisions, in particular the MFN clause;
2. Safeguard action for balance-of-payments and economic development purposes;
3. Consultations, dispute settlement and surveillance procedures under Articles XXII and XXIII;
4. 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;
5. 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.

2/ MTN/FR/W/1.

3. In conclusion, the Brazilian delegation stressed that in presenting these proposals designed to make GATT better attuned to the particular needs of developing countries, Brazil intended thereby to enable a more active and fuller participation of developing countries in GATT and to enhance the role of GATT in international trade.

4. The United States shared the view implied in the Brazilian statement that the intent of the MTN included the improvement of GATT as an instrument of international economic co-operation but stressed that this should be achieved without impairing the integrity of the Agreement's basic principles. This being so, the most pragmatic course would be for the Group to address itself to those areas where inadequacies were manifest rather than to overhaul the GATT framework as a whole. Among other things the United States made the following points: (a) possibilities for applying differentiated and more favourable treatment should be thoroughly explored, but the MFN principle should not be relegated to secondary place; exceptions to the principle might be justified by legitimate development needs but the interest of third countries should always be taken into account; (b) developed countries should undertake to refrain from applying balance-of-payments restrictions of any kind, except in exceptional circumstances and subject to specific conditions to be agreed upon; such abstinence should benefit developing countries; at the same time existing GATT procedures governing the use of balance-of-payments restrictions should be tightened; (c) amidst the persistent clamours for additional provisions to facilitate economic development it might be worthwhile to examine why the existing provisions of Article XVIII, Section C, had seldom been made use of by developing countries; (d) the dispute settlement mechanism could be made more effective, from the point of view of both developed and developing countries, through improved and more precise surveillance, consultation and conciliation procedures; the proposal made by the United States in Group Safeguards that all trade restrictive actions should be notified to GATT would be useful in this regard; (e) the rule of non-reciprocity could hardly be better formulated than the present wording in Article XXXVI:8; discipline over unilateral action being fundamental to GATT developing countries should be prepared to accept a greater degree of obligations over time; (f) in regard to the issue of security of supply the Framework Group should at least examine whether there was not a need for a greater comparability between the GATT rules governing export and import restrictions; in fact the United States had recently submitted 90 notifications on export restriction for inclusion in the NTM Inventory.

5. Japan recalled that paragraph 9 of the Tokyo Declaration reaffirmed support for GATT principles and provided that any improvements must be consistent with the principle of trade liberalization. The problems which had arisen were equally attributable not so much to the GATT rules themselves as to the non-observance thereof. Change did not always mean improvement and this applied to Japan's general approach to the five questions being discussed. For example, Japan considered that differential and more favourable treatment and non-reciprocity should be applied only on a case-by-case basis. Japan placed emphasis on the fifth item, suggesting that there was an urgent need to consider guidelines or a code of conduct to govern the use of export restrictive measures. Present GATT provisions were weak in this regard, as it had been assumed at the conception of GATT, as a basic GATT principle, that exports would flow freely.

6. The EEC expressed views roughly similar to those of Japan emphasizing that any re-examination of the legal framework would have to be undertaken in the context of paragraph 9 of the Tokyo Declaration which reaffirmed support for GATT principles. The EEC did not think that it would be justifiable to divide the contracting parties into two groups - those who could accept obligations and those who could not.

Paragraph 6 of the Tokyo Declaration recognized the special needs of the least-developed countries which should be taken into account by all the other countries. At any rate, increased obligations on developing countries would be beneficial to other developing countries in their mutual trade. Among the other points made by the Community spokesman were: (a) there had not been enough experience with the post-1971 situation of floating exchange rates to permit a re-examination of Article XII; (b) one reason why the industrial development provisions of Article XVIII had not been frequently invoked might have been the ease with which recourse could be had to measures not inconsistent with the GATT (e.g. raising of unbound duties, state trading practices); (c) the EEC had always practiced non-reciprocity in its negotiations with developing countries, never seeking trade benefits from the other country more than it could contribute within its capability. The EEC agreed with the approach to export restrictive measures proposed by the United States and with the Japanese position that the drafters of GATT had worked under the hypothesis that exports would be free from restrictions.

7. A number of developing countries[1/] intervened to support the general thrust of the Brazilian proposal, several presenting additional ideas. Among these, Mexico stressed that the reference in paragraph 9 to the "international framework" had been deliberate, in that the contemplated improvement covered not only the provisions of GATT but all instruments and decisions of the international community in the area of trade. For example, the aims and objectives of the Tokyo Declaration should be given a legal, obligatory status and strengthened through improved surveillance, with certain trade policy decisions made subject to prior authorization.

8. Yugoslavia considered that the Group should address itself to the most urgent areas and not at present attempt to revise the whole General Agreement. In addition to the Brazilian proposals, Yugoslavia considered the legalization of preferences among developing countries to be an important issue. The principle of non-reciprocity was also crucial, and should be interpreted in the sense that trade negotiations between developed and developing countries should be based on a rational appraisal of mutual benefit. It was clearly implied by Article XXXVII, as well as recent international statements on global economic policy, that the international community had recognized that the optimum solution was the total elimination of all trade barriers facing developing countries. Consequently, negotiations should start from the premise that all such barriers should no longer exist, except perhaps where a barrier had to be maintained for "compelling reasons", which must be demonstrated.

9. India suggested that those provisions of Article XXXVIII which called for "collaboration" between GATT and other international organizations should be given more precision. A series of co-operative programmes for joint action might, for example, facilitate the process whereby developed countries would divert resources away from lines of production where developing countries had acquired sufficient scale of economy or productivity to be more efficient suppliers than their domestic producers, thus providing for a higher level of utilization of human and natural resources.[2/] Egypt stressed the need for a legalization of, and greater security for, the GSP. On the fifth point, Malaysia considered that the developed countries' concerns over security of supplies would no longer be warranted if developing countries were guaranteed fair and stable prices, and market access for their exports.

1/ Including Mexico, Egypt, Yugoslavia, Pakistan, India, Argentina, Ecuador (Andean Group).

2/ UNCTAD Resolution 96(IV) as well as the Lima Declaration and Programme of Action were quoted in this context.

10. Canada was strongly critical of the comments of Japan, the EEC and the United States on the subject of export restrictions. Canada considered that there was absolutely no basis to the view that the drafters of the General Agreement had assumed that exports would move freely. What might have been assumed in 1947 was that the market power and political influence of the major importers of food and raw materials was so great in the raw material producing countries that the question of sovereignty over resources would never be raised, but unfortunately for the former, history had proven this to be mistaken as a long-term assumption. The questions of export restrictions in certain key sectors were the subject of discussion in other groups, and thus consideration of this issue by the Framework Group was unnecessary and inappropriate. Canada had long ago indicated its preparedness to discuss supply problems in product-related groups and did not intend to engage in a general discussion on supply before some progress was accomplished in those groups. Australia referred to the views it had expressed at the TNC meeting of last November which generally supported those of Canada.1/

11. In commenting on the five points, Switzerland emphasized that in respect of the principles of non-reciprocity and differentiated treatment developing countries should be prepared to gradually accept greater obligations; contributions by developing countries would not have to be of the same value, nor necessary to be made at the same time as the concessions by developed countries were given but they should at least be visible. On export restrictions, it was clear from the drafting records of GATT that it had not been assumed at the time that exports would move freely. However, the supply problem should be dealt with in a co-operative manner, beginning with an examination of GATT rules in this area.

12. It was agreed that the Group would meet again sometime during the month of May to continue its discussions.

1/ MTN/W/30

Note on the meeting of June-July 1977

1. The Group "Framework" met on 30 June - 1 July 1977 at which it continued the consideration of the five points on its work programme in light of the proposals and statements[1/] which had been put forward at its February meeting. Delegations addressed themselves to the various points on the work programme with point (1) and (4) receiving the most attention. Most comments by developed countries were addressed to the Brazilian proposal. The following paragraphs give a brief summary of the more important points brought out in the discussion.

The legal framework for differential treatment

2. EEC stated that the point of departure in this area should be the Tokyo Declaration which provided for the application of differential and more favourable treatment where feasible and appropriate, and for special treatment for the least developed countries. Differential treatment should be neither automatic nor obligatory; it should be adapted to the needs of individual countries and be applied as long as justified by those needs. Preferential concessions would be inopportune from both an economic and practical point of view and would reduce the benefits to those countries most in need of differential treatment. Differential treatment could not become "eternal".

3. Other developed countries[2/] supported the position of EEC. The United States reiterated its position that exceptions to the MFN principle should (i) not extend beyond the legitimate needs of individual developing countries both as regards their extent and duration; (ii) not include disincentives to the reduction of trade barriers; (iii) not have an undue impact on the trade of third countries; and (iv) not constitute an obligation. This meant that while the possibilities for giving more stability to GSP could be explored, its binding was not acceptable.

4. Developing countries[3/] generally reiterated their support for the proposals which had been put forward by Brazil in this area. They noted that no delegation had suggested "scrapping" the MFN clause, but only that the principles recognized

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1/ Including the proposals by Brazil and the United States (MTN/FR/W/1 and 2) and the statements of Japan (MTN/FR/W/3), EEC (MTN/FR/W/4), Yugoslavia (MTN/FR/W/5), Canada (MTN/FR/W/6), Pakistan (MTN/FR/W/7), Egypt (MTN/FR/W/8), India (MTN/FR/W/9) and Switzerland (MTN/FR/W/10). A proposal by the Nordic countries was circulated during the meeting. See the note by the Interregional Project on the February meeting (pages 79-82); the Project also has provided a background note on this subject (pages 87-118).

2/ Including the United States, Canada, Australia, Japan, Nordics, New Zealand.

3/ Including Brazil, Romania, Yugoslavia, Jamaica, Nigeria, Ecuador (Andean), Sri Lanka and India.

in the Tokyo Declaration and elsewhere (e.g. Manila Declaration, UNCTAD IV) should be given a juridical base and that the imbalance in economic strength should be recognized in formal and legal terms. They also opposed any differentiation being made among developing countries as to their eligibility for differentiated and more favourable treatment, although the depth and methods could differ and special treatment should be accorded the least developed among them. In reply to certain comments made by developed countries, Mexico pointed out that developing countries were not seeking "change for the sake of change", nor were their arguments based upon ideology or dogma. Differential treatment would enable developing countries to increase their exports and hence their imports, thus providing universal benefit. Nigeria pointed out that no concrete proposals had been made regarding the special treatment for the least-developed countries. With regard to GSP the objective should be to bring it under GATT rules so that it could be "supervised" by the general provisions of GATT.

5. Brazil in elaborating upon certain elements of its proposal, pointed out that arguments that certain points could not be accepted because they would be contrary to GATT "missed the point". The purpose was precisely to change GATT to renegotiate the "contract" with a view to allowing developing countries to participate more fully. Brazil did not want differential treatment to be applied in its favour indefinitely. The aim should be to terminate it as soon as possible, i.e. as soon as Brazil reached a stage of development which would enable it to assume the same obligations as developed countries. The proposal to provide a "standing legal basis" for GSP should not be interpreted to mean "binding" GSP as a whole, but to give it a "quasi-contractual" status through the insertion of a clause which could dispense with the need for a waiver and provide more security through inter alia consultations and compensatory adjustments. The "preferential bindings" was a separate proposal. Brazil envisaged that such bindings would be negotiated between developed and developing countries, which would be paid for by developing countries consistent with the provisions of Article XXXVI:8.

Balance of payments and economic development safeguards

6. The United States recalled that it did not consider that balance-of-payments measures should be dealt with only from the point of view of developing countries. There appeared to be a certain convergence between the views of the United States and of Brazil. The United States could, however, not agree that bilateral trade deficits justified discrimination and had a more stringent approach to the application of balance-of-payments measures by developed countries. In respect of safeguards imposed for economic development reasons, the United States considered that prior consultations should be the rule. It questioned whether the proposal by Brazil for the "readjustment of bindings" indicated a greater willingness on the part of developing countries to bind a higher proportion of their tariff rates. In any case, work in this area should begin with a review of the reasons why greater resort had not been made to the provisions of Article XVIII: A, C.

7. Japan and EEC generally agreed with the United States so far as safeguards for economic development or balance-of-payments purposes by developing countries were concerned. On balance-of-payments actions by developed countries neither Japan, nor EEC, could support the idea of an exemption for developing countries on other than a product basis. These delegations opposed the legitimization of additional measures. Japan could, however, support the "declaration" approach advocated by the United States. Developing countries did not further elaborate in detail upon the points they had made earlier on this subject.

Consultation, dispute-settlement and surveillance procedures

8. EEC, the United States and Japan reiterated their support for the procedures of Article XXII and XXIII of GATT which experience had shown to be both flexible and effective. They noted, however, that developing countries had made little use of these procedures and had never resorted to the improved procedures for developing countries under Article XXIII contained in the 1966 Decision. Work should begin with a review of the reasons for the "non-use" of the existing procedures.

Reciprocity and developing country participation in an improved trade framework

9. EEC reiterated its position that it had consistently followed the provisions of Article XXXVI:8. Any suggestion of more precise methods for calculating the degree of reciprocity to be required from developing countries would not take account of the diversity of the situation in which at present some "developed" countries were less advanced than certain so-called "developing" countries. EEC could not agree that developing countries should make contributions only in respect of differential or preferential actions. Although developing countries needed a certain level of protection and a certain degree of flexibility in its application, in many cases contributions would be in the interests of developing countries themselves. The reduction of barriers which in some cases existed for historical reasons only, could eliminate measures which not only resulted in additional costs to the economies of developing countries but also lead to increased trade among developing countries. The United States agreed with the EEC approach. If it could be assumed that individual developing countries would assume a greater degree of obligation as their development progressed, the United States government would be in a better position to deal "in a promising manner" with developing country requests1/. Other developed countries agreed with this position. With respect to the Brazilian proposal, Canada considered that it was impossible to draft provisions which would overcome commercial and political realities.

10. Developing countries maintained their view that the principle of non-reciprocity should be given more precision. Nigeria considered that this would facilitate negotiations between developed and developing countries. Argentina, supporting this view, explained that "reciprocity" and "contributions" did not entail the same concepts. Trade flows were the key element in the calculation of "reciprocity", while "contributions" took into account the overall level of economic development. For developed countries trade could be considered to be an end in itself, while for developing countries it was only a means for economic development. Argentina would not claim that unilateral tariff reductions implemented for economic development reasons would constitute its contribution to the MTN. Brazil considered that the developed countries had to some extent misunderstood its proposal and wished to discuss the subject in greater detail at the next meeting.

Measures affecting exports

11. There was not much further elaboration of existing positions in this area. Japan reiterated its proposal for guidelines or a Code of Conduct to ensure a free flow of trade on the export side. Canada however, questioned the utility of

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1/ The United States suggested that the GATT secretariat should study the extent to which developing countries had bound their tariff rates in the GATT Schedules.

continuing to discuss this item in the Framework Group context, when the two main suppliers of raw materials among the developed countries (which would not be seeking differentiated and more favourable treatment in the application of any new obligations) had refused to take part.1/

Future work

12. The Chairman commented that the stage of "generalizations" seemed to have been completed. At its next meeting, to be held in the autumn (at a date to be fixed later) the Group should, as certain delegations had suggested, conduct its work on a more precise point-by-point basis.

1/ i.e. Canada and Australia.

III. BRIEFS ON SPECIFIC ISSUES

(a) REFORM OF THE INSTITUTIONAL FRAMEWORK: THE MAIN ISSUES

Contents

INTRODUCTION

In November 1976 the Trade Negotiations Committee established a new Group an assigned it the task to "seek to negotiate improvements in the international framework for the conduct of world trade, particularly with respect to trade between developed and developing countries and differential and more favourable treatment to be adopted in such trade".

In the decision[1/] establishing the Group the following items were included in its work programme, although it was stressed by the Chairman (Director-General of GATT) that there had not been agreement on each of the questions listed:

1. The legal framework for differential and more favourable treatment for developing countries in relation to GATT provisions, in particular the MFN clause;

2. Safeguard action for balance-of-payments and economic development purposes;

3. Consultations, dispute settlement and surveillance procedures under Articles XXII and XXIII;

4. 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;

5. 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.

This paper is intended to (a) provide some background information on the first four of the five items, supplemented by cross-references in areas where detailed sources of reference material exist,[2/] (b) summarize the positions taken and views expressed by various delegations up to and including the Framework Group meeting of February 1977 [3/] and (c) put forward certain considerations which may be relayed to delegations for use in preparing and developing their positions. It is not intended to be exhaustive, but simply to provide a synthesis of events to date,

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1/ See MTN/17 and the note prepared by the Interregional Project on that meeting. Reference Manual, UNCTAD/MTN/40, Supp.1, pp. 111-113.

2/ Item 5 issues have already been treated in an early paper of this Project on "Access to supplies of raw materials" (UNCTAD/MTN/40, pp.75-87). The present paper draws heavily upon material earlier prepared for the Group of 77 Study Group on the Reform of the Framework or otherwise for use by the Project's advisory services.

3/ See also the note on the February 1977 meeting of the Framework Group (pp. 78-81).

it being anticipated that more detailed papers will be produced on individual aspects of the subjects under discussion as negotiations in this area develop.1/

3. Paragraph 9 of the Tokyo Declaration2/ which provides the mandate for the consideration of reform of the international framework for the conduct of world trade was inserted mainly at the initiative of both the traditional proponents of reform, namely the developing countries, and the United States.

4. Ever since the inception of GATT, developing countries have consistently sought to have recognition of their special trade problems incorporated into this contractual framework of international commercial relations. Progress in this regard has been meagre and slow. The only provisions of GATT which give a degree of such special recognition are those in Article XVIII and Part IV. The Generalized System of Preferences, negotiated in OECD and UNCTAD, has not been incorporated in this framework but only "legalized" through a waiver as a temporary deviation from the basic GATT principle of unconditional most-favoured-nation treatment. The developing countries thus regard the MTN as presenting an opportunity to continue these efforts and have concentrated on elaborating the aims and objectives of the Tokyo Declaration, in particular those of paragraphs 2 and 5, incorporating them as additional provisions in GATT and thereby giving them a legal and obligatory status. The proposal to establish the Framework Group was put forward originally by Brazil with the general support of developing countries at the December 1975 meeting of the Trade Negotiations Committee. Developing countries also expressed their desire for reform at the Ministerial Meeting of the Group of 77 in Manila in February 1976, and again at the Fourth UNCTAD Conference in Nairobi in May 1976.

1/ Nor is the intention of this paper to delve into basic policy issues which are considered to be beyond the competence of a technical assistance project. It may be observed that when this subject of an institutional framework comes up in international fora other than the GATT and MTN - such as the United Nations General Assembly and UNCTAD - Third World countries generally base their proposals and statements on basic and long-term considerations, reflecting a desire for fundamental changes in the international set-up and often inspired by the vision of a new international economic order. A more"realistic" approach, however, is required of participants in the MTN, which proceed in terms of textual modifications of GATT, adoption of codes relating to the implementation of its provisions and the "strengthening" of Part IV thereof. It implies an acceptance of GATT as the framework to build upon which may require improvement on specific points but no fundamental change in structure. It is submitted that a technical assistance brief need not and should not go beyond this perimeter set by the general disposition of developing countries reflected in their actual participation in the negotiations.

2/ Paragraph 9 reads as follows:

> "9. Support is reaffirmed for the principles, rules and disciplines provided for under the General Agreement. (This does not necessarily represent the views of representatives of countries not now parties to the General Agreement.) 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."

5. Brazil has followed up its original initiative by a detailed proposal,1/ presented to the Framework Group at its February 1977 meeting. The Brazilian "concept papers", summarized below, also cover the first four of the five items.

6. The United States, the most active of the original drafters of GATT and traditionally the most vocal defender of its principles, now on the ground of changing economic and political circumstances, takes the position that a major revision of the GATT is urgently needed. Section (121) of the United States Trade Act of 1974, entitled "Steps to be taken toward GATT revision", instructs the President to seek amendments to the GATT in specific areas with a view to bringing about "an open, non-discriminatory and fair world economic system" and sets out the proposals which are considered by the United States Congress, reflecting segments of domestic public opinion to be necessary and desirable.2/

7. The United States took an active role at the most recent Framework Group meeting, circulating several discussion papers in addition to a comprehensive statement.

8. In general the EEC and Japan are much less enthusiastic in regard to any changes in the GATT provisions.3/ Japan in particular has been extremely reluctant to consider any significant departures from the status quo in any area of the negotiations and has maintained that the main problems facing the international trade of both developed and developing countries arise from the non-observance of GATT provisions rather than through any serious inadequacy in the rules themselves. The EEC has expressed clear opposition to any modification of the GATT rules on balance-of-payments measures (as they affect trade among developed countries) and the dispute-settlement procedures.

9. The Community and Japan, however, do show considerable interest in developing stronger obligations in respect to export restrictive measures (item 5). Their approach here, however, along with that of the United States, has been strongly opposed by Canada and Australia. The Nordic countries and Switzerland have adopted a cautious but more flexible approach toward the item in question.

1/ MTN/FR/W/1

2/ For a discussion of the provisions of Sector 121 see UNCTAD/MTN/40, pp.47-55. Also see article by Alan Wm. Wolff, "The United States Mandate for Trade Negotiations", Virginia Journal of International Law, Vol.16, No.3, Spring 1976.

3/ For example, the EEC "Directives" for the MTN do not specifically mention the possibility of GATT reform.

I. THE LEGAL FRAMEWORK FOR DIFFERENTIAL TREATMENT[1/]

1. From the time of the negotiation of the General Agreement on Tariffs and Trade and the drafting of the Havana Charter, developing countries have repeatedly attempted to have incorporated into the legal framework of international trade provisions recognizing preferences as a legitimate means of increasing their export earnings and thereby facilitating economic development.2/ They have considered that the strict application of the MFN clause, by treating all countries equally, provides "equality rather than equity" and does not take account of the weaker position and special needs of developing countries.3/ Efforts were made at the drafting of Part IV of GATT (in the GATT Working Party on Preferences) to include provisions authorizing the granting of preferences in favour of developing countries.4/ The GATT Committee on Trade and Development, established in 1964, inter alia, to review the application of Part IV, took over the functions of the Working Party on Preferences and established a new Working Group to continue the examination of proposals in this area in the light of the practical and legal problems involved.5/ When the GATT Contracting Parties considered what legal cover could be found for the Protocol Relating to Trade Negotiations among Developing Countries, developing countries sought to obtain an agreed interpretation of Article XXXVII to cover these preferences. This approach, however, did not gain general acceptance, and the solutions used on this scheme, as well as regarding the GSP, involved the adoption of ad hoc decisions waiving the obligations of Article I:1 to the extent necessary to enable the implementation of the scheme in question.6/

1/ See the full definition of this item on page 2.

2/ Jackson discusses the MFN clause in detail in World Trade and the Law of GATT, pp.249-272, in which he notes the extensive literature on this subject quoting a League of Nations report which considered, in 1936, that the subject had been exhausted. However, there have been recent works on the MFN clause including, Edouard Sauvignon La Clause de la Nation la Plus Favorisée, (Grenoble 1972), Derecho Internacional Económico, by Francisco Orrego Vicuna, (Vol.I América Latina y la Cláusula de la Nación Más Favorecida, Vol.II: Las Nuevas Estructuras del Comercio Internacional)(México 1974) and the ongoing work of the United Nations International Law Commission on the subject, see the Commission's Seventh Report to the General Assembly on the Most-favoured-nation Clause (A/CN.4/293 and Add.1).

3/ e.g. Article 15 of the Havana Charter.

4/ See GATT BISD, 13th Supplement, pp. 100-105 and L/2195/Rev.1. The texts of some of these proposed amendments are reproduced in UNCTAD/MTN/40/Supp.1 "Legalization of preferences", pp. 142-152.

5/ BISD 13th Supplement pp. 87, 88, see also COM.TD/W/239.

6/ Although no explicit reference is made in either of these decisions to Article XXV:5 of GATT (as it has invariably been the case in other "waiver" decisions), they have been classified by the GATT secretariat as decisions taken under that provision. This procedure also applied to the Australian preferential scheme in 1966. The Agreement between India, Egypt and Yugoslavia was authorized by a decision which did not strictly follow the waiver terminology.

2. Developing countries have taken the position that to treat preferences for developing countries as deviations from the rules of world trade requiring sanction is no longer acceptable. One of the primary objectives of a revision of the international framework for the conduct of international trade would be to correct this situation. This objective, especially in regard to the GSP, could be either: (a) to establish that preferences in favour of developing countries are permitted on a normal basis by virtue of a new legal provision, thus requiring no resort to a waiver, or (b) more ambitiously, to establish preferential treatment as an obligation on the part of the developed countries.1/

3. The term "differentiated and more favourable treatment" evolved during the preparatory work undertaken early in 1973 leading to the Tokyo Ministerial meeting as a compromise solution, being acceptable to developing countries which opposed the term "preferential". The term, being generally worded, applies obviously to tariff as well as non-tariff measures, although in practice it has come to apply largely to non-tariff measures. (In pressing for such treatment developing countries basically have in mind a special treatment regarding (a) the application of non-tariff measures to their trade by developed countries,(e.g. including safeguard action) as well as (b) the right to make use of certain measures not permitted to developed countries in particular situations,(e.g. export subsidies.)

4. The key provision of the Tokyo Declaration (final sentence of paragraph 5) relating to differential and more favourable treatment reads:

> "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."

The Manila Programme of Action (February 1976), in addition to stressing the need for differential treatment in the context of specific measures, stated that:

> "In accordance with the Tokyo Declaration, immediate consideration should be given to reforming the provisions of GATT, including Part IV, in order to provide on a mandatory basis for differentiated and more favourable treatment to developing countries, and for extension of these principles to the existing codes and those that may be drawn up."

This provision was "recalled" in UNCTAD resolution 91(IV) (May 1976).

The positions of developed countries

5. The approach of the United States to this subject, as presented at the February meeting of Group "Framework", would begin with an examination of the existing legal framework, which, in the view of the United States already provides for differential

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1/ Basically, proposals for amendments to GATT to cover preferences have taken three lines, viz. (a) to add new provisions or interpretative notes to Part IV, (b) to include new provisions in Parts II or III, and (c) to amend Article I. The implication of these three approaches has been examined in detail in UNCTAD/MTN/40/Supp.1, pp. 142-152, "Legalization of preferences".

and more favourable treatment in practical terms. The United States is satisfied with the waiver approach to "arrangements inconsistent with the GATT principle of non-discrimination", but is ready to examine the existing framework with a view to addressing the concerns of developing countries.

6. The United States thinks there are three essential considerations to bear in mind in undertaking such an examination: (i) that the MFN clause should not be "relegated to some residual role" and any exceptions therefrom should be strictly limited; (ii) that any new formulation would not impede the continued reduction or elimination of restrictions to trade on an MFN basis; (iii) that the impact on third countries of specific provision for differential and more favourable treatment would be taken into account; and (iv) that countries would not be obliged to negotiate measures providing differentiated and more favourable treatment and any clause would be of a permissive nature.

7. The EEC has not stated its position on this subject in any detail but has confined itself to expressing willingness to study ways and means by which differentiated and more favourable treatment could be incorporated into the legal framework. Japan has emphasized the benefits of the MFN principle and its contribution to world prosperity, pointing out that the GSP demonstrated how the traditional pragmatic and flexible GATT approach can be applied without jeopardizing the basic MFN principle. Switzerland has expressed a willingness to examine modifications leading to an increased participation of developing countries in GATT.

8. Developed countries in general have had little to say on this subject at the Framework Group meetings, nor have they been forthcoming in commenting on the developing countries' proposals on differential treatment in the other fora of the MTN. When, faced with the insistence by developing countries that some reaction be made to these proposals, they have been defensive or evasive.1/ One underlying reason for their reticence in this regard may be that they are still in the process of working out common positions on such treatment in their usual sanctuary, namely the OECD. There the possibilities for differential treatment and proposals have been examined from three points of view, viz. political, economic, and technical. They have also been discussing criteria under which individual developing countries would gradually lose their right to more favourable treatment over time and in relation to their increasing levels of development (termed "graduation" in OECD lexicon). So far, these deliberations in the OECD have not touched upon the legal aspect of differential treatment as it has been presented by Brazil and others in the Framework Group.

Developing countries' proposals and views

9. The proposal of Brazil essentially treats the two aspects of the problem separately as preferential tariff treatment and differential and more favourable treatment in respect of non-tariff measures.2/

10. For the former Brazil aims at (a) a standing legal basis for the GSP which would (i) define its non-reciprocal and non-discriminatary character, (ii) ensure its maintenance as an element in the international trading system, (iii) provide

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1/ As in Group "Safeguards", ~~see~~ pp. 54-56.

2/ MTN/FR/W/1, pp. 8-9.

for its security and continuing improvement; and (b) a legal basis for the granting of "preferential concessions" could take the form of a bound preferential rate or a bound preferential margin and would be extended on a non-discriminatory basis to all developing countries. They would enjoy a legal status equivalent to MFN bindings; a new Part III in the Schedules of Concessions bound under Article II would be established for such preferential bindings.

11. For the latter, i.e. differential and more favourable treatment in respect of NTM's, Brazil envisages the insertion in the General Agreement of a general "enabling" clause which would provide a standing legal basis for the adoption of such treatment in all aspects of trade between developed and developing countries, covering the conduct of trade under GATT provisions and Codes of Conduct, barriers affecting access to markets for exports of developing countries and procedures for trade negotiations between developed and developing countries.

12. Developing countries, maintaining that differential and more favourable treatment should be applied, as stated in the Tokyo Declaration, where feasible and appropriate, have put forward specific proposals in many of the negotiating Groups and Sub-Groups. In the Framework Group they are supporting the Brazilian approach even though certain delegations went further than the "enabling clause" step. Mexico, for example, stressed the need for a review of all GATT provisions, in addition to those being dealt with in the various TNC bodies, with the view of endowing the aims and objectives of the Tokyo Declaration with a legal, obligatory status. The Andean Group position is similar, stressing the need for differential and more favourable treatment to be extended on a permanent and global basis, covering all the aspects of the negotiations. Egypt stresses the fact that the MFN principle had to be viewed against its actual application, in the light of the numerous exceptions - some institutionalized but others not and in most cases indulged in by developed countries. The developing countries' aim is not to "scrap" the MFN clause but to institutionalize exceptions justified by their own special needs. Yugoslavia has pointed out the need for a legal basis for preferences among developing countries and India noted that the growth of the EEC - and many other historical examples - have demonstrated how preferential treatment could be a powerful stimulus to trade.

General considerations

13. The Brazilian approach of treating separately (a) preferential tariff treatment and (b) differential and more favourable treatment in the non-tariff area appears to be a very propitious way of dealing with the question of making legal provisions in this regard.

14. The questions of providing a legal basis for the extension of preferential tariff treatment by developed countries in favour of developing countries, and the exchanging of such treatment between developing countries has been discussed extensively in the past, mainly in connexion with the debate surrounding the incorporation of the GSP into the GATT framework. It appears that apart from the present waiver techniques, which are considered undesirable or inappropriate by the

by the developing countries, there are basically three alternative approaches, (i) an amendment to Part IV, (ii) additions to Parts II or III, in particular through the modification of Article XXIV, and (iii) an amendment to Article I. The third option appears to be the most suitable and direct, although politically perhaps the most difficult.

15. The question of differentiated and more favourable treatment is considerably more complex. Differentiated treatment would relate not only to the application of non-tariff measures, including safeguard action, but the procedures for negotiation of both tariff and non-tariff measures. Part IV provided a very sketchy and nebulous lead towards this aim, but the lack of commitment therein and its vague legal status have rendered it a rather weak foundation to build upon. The first general acceptance of the concept by the international community is in the Tokyo Declaration in which participating countries "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 the areas of the negotiations where this is feasible and appropriate". This must be taken as the starting point, and one should not allow it to be weakened by being adorned with circumstancial qualifications or enshrined in clauses or an intergovernmental instrument of doubtful legal status.

16. The task for developing countries is to use the negotiating forum provided by the MTN to build upon these "aims and objectives" with a view to giving them a general legal status as well as obtaining commitments in specific areas of government policy.

17. An enabling clause concerning non-tariff measures, as proposed by Brazil, would be subject to the same considerations facing amendments to legitimize preferential tariff treatment. The several alternatives, and the related difficulties discussed in that context, (amendment to Article I, additions to Part II, etc.) would seem to apply to the insertion of such a clause.1/

18. A practical question is how to co-ordinate the work on differentiated and more favourable treatment in the Framework Group and that in other MTN bodies. Developed countries are exerting themselves in the various Groups and Sub-Groups to (i) define and propose differential measures in the respective contexts, and (ii) convince developed countries of the feasibility and appropriateness of their proposals. The fact that work on a general clause is allowed to proceed in the Framework Group may be invoked to dismantle the developed countries arguments that certain measures are unacceptable simply because they conflict with Article I.

19. In considering the appropriate form of such a clause, one should bear in mind that it should go at least as far as the aims and objectives of the Tokyo Declaration which have already been accepted by all the developed countries.2/ While it does appear unrealistic to seek to place an absolute obligation on developed countries to extend differential treatment in respect of all non-tariff measures, it would certainly not be asking too much to give this principle a mandatory nature so that it will be applied except where it is clearly infeasible or inappropriate.3/

1/ The fact that most of the current proposals relate to Part II of the GATT is relevant in this regard. See Reference Manual, UNCTAD/MTN/40/Supp.1, pp. 38-40.

2/ Note the position expressed by Mexico, Andean Group above.

3/ Note the relevant paragraph of the Manila Programme of Action in this regard (paragraph 4 above).

20. The 5 November 1976 decision of the Trade Negotiations Committee states inter alia that "in carrying out its work, the Framework Group shall not interfere with work in other Groups of the Trade Negotiations Committee, or seek to re-open issues or agreements settled in other Groups. It shall, however, be open to the Trade Negotiations Committee to bring to the attention of the Group any issue directly relevant to the Group's tasks, if the Trade Negotiations Committee considers this would facilitate progress in the negotiations". Developing countries would be well advised to be vigilant and to beware the pitfalls opened up by this apparently invacuous injunction. Strictly interpretated, this provision could preculde all discussion of any matters of substance (unless indeed there are matters which are unrelated to neither tariff nor non-tariff problems, which are all dealt with in the other existing negotiating groups).

21. The remedy would seem to lie in a co-ordinated approach towards the work in all the groups and in the TNC itself. The following process could be envisaged. Firstly, a general clause along the lines of paragraph 5 of the Tokyo Declaration should be inserted in the General Agreement. This would lay down as a basic legal obligation that developed countries shall, wherever feasible and appropriate, apply differential measures to developing countries in ways which will provide special and more favourable treatment for them in respect of all matters treated elsewhere in the Agreement.

22. Draft instruments emerging from other negotiating bodies would then be examined against this criterion.1/

23. The question of the reform and strengthening of Part IV has not been elaborated in discussions in the Framework Group. The reference to Part IV appeared in the Manila Programme of Action, but not in UNCTAD resolution 91(IV). The lack of interest in Part IV appears to reflect a general disenchantment with these cosmetic provisions, not intended from the start by the developed countries to have any real effect on the flow and pattern of trade. The experience with Part IV has demonstrated to developing countries the danger of relegating commitments relating to their special problems to a separate chapter in a legal instrument. Although proposals have been made to strengthen the degree of commitment of Part IV non-existent at present, this would not overcome the inadequacies, owing to the lack of precision and overlapping with rights and obligations elsewhere in the General Agreement.

1/ This would avoid the errors of the Kennedy Round where reviews were conducted after, not during the negotiations. It should also be noted that in the type of negotiations being carried out in the majority of bodies of the MTN, i.e. the preparation of a legal instrument either introducing new rights and obligations or giving more precision to existing ones, developing countries enjoy a relatively stronger position than that faced in negotiations confined to tariffs and the more simple forms of NTM's.

II. BALANCE-OF-PAYMENTS AND ECONOMIC DEVELOPMENT SAFEGUARDS

A. Background

Safeguards for balance-of-payments reasons

1. Proposals for reform of Articles XII and XVIII:B of GATT over the last decade have been directed primarily to increasing the kinds of restrictive measures or methods that can be used for balance-of-payments purposes. This concern arises from the increasing tendency for countries to make use of such measures as import surcharges and import deposit schemes, while quantitative restrictions are the sole measure permitted under those provisions. In the view of many countries the former measures are preferable to quantitative restrictions in that they generally have a less restrictive or detrimental effect on trade. Certain countries have also suggested reforms aimed at placing increased obligations on countries having "chronic" balance-of-payments surpluses, such as requiring these countries to take positive measures to increase imports on a unilateral basis.

2. There has also been some pre-occupation with deficiencies of the Committee on Balance-of-Payments Restrictions (BOPs Committee).1/ Some reform of the procedures of Article XVIII:B was achieved in 1972 with the adoption of the "mini-consultation" system aimed at reducing the administrative and financial burden involved for developing countries under these provisions. The "streamlining" of the procedures was also intended to encourage reluctant countries formally to invoke Article XVIII:B (i.e. to "legalize" their actions). Developing countries have pressed for the institutionalization of these revised procedures and a general revision of Article XVIII:B to permit them more flexibility and tolerance with the measures they apply for balance-of-payments reasons.

3. A fundamental element of the developing countries' position is that they should be exempted from balance-of-payments restrictions imposed by developed countries under Article XII.

4. Among the procedural improvements sought are: (a) full appraisal by the Balance-of-Payments Committee of measures taken; (b) examination of whether alternative, less trade-distorting measures might not be possible; (c) reasoned reporting by the Committee of its conclusions with a view to developing guidelines for future trade actions taken for balance-of-payments purposes; (d) improved surveillance in respect of the Committee's recommendations or conclusions; (e) improved co-ordination and exchange of information between the GATT and IMF secretariats; (f) account to be taken of the special needs of developing countries, and of the flexibility of countries concerned in adjusting to disturbances in the international economy; (g) examination of restrictions imposed by third countries that may have precipitated the measure under review; (h) the preparation by the secretariat of objective trade-policy-oriented studies on the measures under review.2/

1/ The main areas identified for possible reform are described in GATT document L/4200.

2/ The question of revised rules in this area has been one of the main themes of discussion in the GATT Consultative Group of Eighteen, see L/4423.

Safeguard for economic development purposes

5. The provisions in question are those in Article XVIII:A and C. Unlike Section B, very little recourse has been made to these Sections, none at all in recent years. Section A permits developing countries to modify or withdraw concessions in order to promote the establishment of a particular industry when it is considered "desirable" with a view to raising the general standard of living of its people. It provides for the renegotiation of tariff items with the countries possessing initial negotiating rights, or a substantial interest. The possibility of the developing country making a "compensatory adjustment" is noted, as is the possibility of the modification or withdrawal of concessions by affected countries, with or without the consent of the affected country (but with the consent of the CONTRACTING PARTIES).

6. Section C permits a developing country to impose a measure that would otherwise be inconsistent with the GATT, if such a measure is "required" to promote the establishment of a domestic industry and no other measure "consistent" with the GATT is "practicable" to achieve that objective. The invoking country is obliged to notify its intentions to the CONTRACTING PARTIES and may implement the measure if the CONTRACTING PARTIES approve or do not disapprove, within a specific time limit. The developing country concerned is obliged to consult with the CONTRACTING PARTIES only if they request it to do so. In the case where the CONTRACTING PARTIES "have not concurred in such measure" within ninety days after the initial notification, the developing country concerned may introduce the measure after informing the CONTRACTING PARTIES. This does not, however, prevent "any contracting party substantially affected" from suspending, in respect of the trade of the invoking party "such substantially equivalent concessions or other obligations ... the suspension of which the CONTRACTING PARTIES do not disapprove".

7. If the proposed measure affects a product which is the subject of a concession included in a Schedule, however, the developing country is obliged to enter into consultations with a country having initial negotiating rights or a substantial interest in the concession. In such a case the CONTRACTING PARTIES "shall concur" if they agree there is no measure consistent with the GATT that is practicable to achieve the objective, and that either agreement has been reached in the consultations with other contracting parties, or that, in absence of such agreement, they are satisfied that the developing country has "made all reasonable efforts to reach an agreement and that the interests of other contracting parties are adequately safeguarded".

8. As the above paragraphs demonstrate the provisions of Article XVIII Sections A and C are, even by GATT standards, extraordinarily complex. In many respects they duplicate, with only minute variations, other provisions of GATT and this uneconomic way of providing for additional rights for developing countries has been deliberately adopted for presentational, rather than substantive reasons. The difference between Section A and the relevant provisions of Article XXVIII is minimal and whatever value of this differentiation must have disappeared with the adoption of the non-reciprocity principle of Article XXXVII:8.1/ Records show that it was understood right from the time these provisions were written into GATT that inasmuch as developing countries could justify their import restrictions on balance-of-payments grounds, they would

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1/ According to the interpretative note to Article XXXVI:8 the non-reciprocity rule would apply inter alia in the event of action under Article XVIII, Section A.

be free to restrict the import of any products as necessary for economic development ends without further ado as per Section C or otherwise. This is why the Section C provisions have seldom been invoked.

United States aims

9. Background to the United States position on this item can be derived from the provisions of the Trade Act of 1974 relating to balance-of-payments measures. Firstly, Section 121, entitled "Steps to be taken toward GATT Revision", contains in sub-section (a) (6) instruction to the President to seek to negotiate:

> "The revision of the balance-of-payments provision in the GATT articles so as to recognize import surcharges as the preferred means by which industrial countries may handle balance-of-payments deficits insofar as import restraint measures are required."

10. The objectives of such "revision" become clearer when seen in the light of Section 122, "Balance of Payments Authority", under which the President is required to impose a 15 per cent surcharge, quantitative restrictions, or both, in order to (a) deal with "large and serious" balance-of-payments deficits, (b) prevent an imminent and significant depreciation of the US dollar and (c) cooperate with other countries in "correcting" an international balance-of-payments disequilibrum. These actions are to be applied in a non-discriminatory manner with the important exception that where "the President determines that the purposes of this section will be best served by action against one or more countries having large or persistent balance-of-payments surpluses, he may exempt all other countries from such action". Product exemptions from surcharges or quotas can be made "because of the needs of the United States economy", which means mainly raw materials.

11. Section 122, makes no specific exemption for developing countries in the application of balance-of-payments surcharges or quantitative restrictions. However, it is obvious that any rules that would permit discrimination against surplus countries should, by the same logic, exempt imports from developing countries from the application of such measures.

EEC approach

12. It may be recalled that while the EEC has no definite negotiating objective regarding GATT rules on balance-of-payments restrictions - other than maintenance of the status quo - it was the Community which, at the time of the Tokyo Ministerial Meeting insisted a link between trade and monetary negotiations. The "Global Approach"1/ which sets out the initial negotiating position of the EEC, stated that "the policy of liberalizing world trade cannot be carried out successfully unless parallel efforts are made to set up a monetary system which shields the world economy from the shocks and imbalances which have recently occurred", and that "the trade negotiations therefore imply that prospects exist for the establishment of a fair and durable monetary system, based on the principles listed in paragraph 4 of the Paris communiqué" (i.e. including fixed but adjustable parities, the general convertability of currencies and the taking into account of the interests of developing countries).

1/ L/3879.

B: Current proposals before Group Framework

The Brazilian proposal

13. The Brazilian proposal[1/] treats separately the three component issues, safeguard action for balance-of-payments purposes taken by (i) developing countries, (ii) by developed countries, and (iii) safeguard action taken for economic development purposes. In regard to balance-of-payments action by developing countries, Brazil proposes that GATT should more clearly and explicitly recognize that developing countries suffer a structural imbalance[2/] and that the application by them of trade measures for balance-of-payments purposes is likely to be necessary, and that on the balance-of-payments situation of a developing country may be affected by the restrictive actions of other countries. As a consequence, examinations of developing countries' balance-of-payments actions should aim at exploring means of redressing their difficulties through international cooperation and developing countries should be permitted greater flexibility in the choice of measures and in certain cases allowed to deviate from the MFN principle. What should be examined is the overall trade situation of the developing country and of measures imposed by other countries which might have precipitated or accentuated the specific action in question.[3/] The CONTRACTING PARTIES could make recommendations to other countries with a view to individual or collective action to help redress the payments difficulties of the developing country in question. If such recommendations are not followed, the CONTRACTING PARTIES may take joint action to remedy the situation.

14. Developing countries should as a rule be exempted from balance-of-payments measures applied by developed countries and a clause should be inserted in GATT to this effect. Exceptions would be permitted in certain circumstances, however, such as when products imported exclusively from developing countries are found to be a direct or major cause of the BOP's difficulties, where restrictions on imports of certain products from developed countries are found to be insufficient to contain the major inflow of such imports or where the safeguard measures are not likely to cause a direct and substantial damage to the economy of the exporting developing country. If after examination, the CONTRACTING PARTIES find that the application against developing countries is not justifiable, they may recommend withdrawal of the measure. If such recommendation is not followed, they may determine that adequate compensation be provided or take any other joint action to remedy the situation.

15. The Brazilian proposals with respect to safeguard action for economic development purposes are based on the position that Sections A and C of Article XVIII

1/ MTN/FR/W/1 pages 10-14.

2/ That is, more clearly than do the provisions in paragraphs 2 and 8 of Article XVIII and more explicitly than through the difference between the criteria in Article XVIII:9 (a) and (b) and Article XII:2 (a) (i) and (ii).

3/ It has always been recognized that these are legitimate subjects for a consultation under Article XVIII:12, but in practice few developing countries were adequately equipped or prepared to make effective use of the opportunity (c.f. BISD 5th Supplement, pp. 51 and 55-56).

are to a large extent outmoded in that they deal basically with import substitution measures which is only one facet of the development process. Brazil foresees widening Article XVIII to cover the need for (i) economic structural adjustment, (ii) industrial and agricultural development, (iii) adjustment to changing trade patterns, (iv) promotion and diversification of exports.

16. Brazil recognizes that GATT permits a developed country to modify or withdraw a concession with respect to a developing country taking action under XVIII, with the authorization of the CONTRACTING PARTIES. It is proposed that before such authorization be given the following considerations be taken into account: (i) real effect of the Article XVIII action on the economic interests of the developed country, (ii) the need to avoid any impairment of the economic development programmes and policies of the developing country, (iii) whether the developed country is a principal supplier of the product affected by the measure taken by the developing country.

17. In addition to these criteria a number of specific additional provisions should be introduced into Article XVIII, including:

in Article XVIII:A:

- periodical recomposition of the schedules of concessions of developing countries, as necessary, to take into account economic development needs;

- phased compensation of a concession by developing countries, through the granting of a three-year grace period to recompose their schedules of concessions as well as by staging of implementation;

in Article XVIII:C:

- allowance for measures by developing countries affecting their exports;

- abolition of the time-limits as well as any other prior requirements, for the introduction of measures under this section;

- allowance for prior or ex-post facto notification.

United States' proposals

18. The main thrust of the United States position is that, at least as far as developed countries are concerned, trade measures of any kind should not be imposed for balance-of-payments reasons and that to this end developed countries should consider the adoption of a declaration of abstinence on the use of such measures. The rationale of the United States is that given the trend towards greater flexibility in exchange rate adjustments the need for such trade measures has been greatly reduced.

19. In recognition, however, that exceptional circumstances might arise in which the imposition of trade measures would be unavoidable, the United States proposes that a review be conducted to clarify the extent to which such departures could be made and that criteria should be developed for such circumstances.1/

1/ An insight into some of the thinking behind the United States position is provided in C.F. Bergsten "Reforming the GATT, the Use of Trade Measures for Balance-of-Payments Purposes", Journal of International Economics 7 (1977).

20. The United States also proposes a strengthening of GATT procedures for review of trade measures taken for balance-of-payments reasons including:

(a) immediate notification of any trade measure imposed for balance-of-payments reasons;

(b) review by the Committee on Balance-of-Payments Restrictions of all trade measures taken for balance-of-payments purposes, i.e. including quantitative restrictions, import surcharges, import deposits. This review would be conducted in terms of conformity with GATT, and should include an appraisal of the trade effect of the measures on the trade of developing countries, and whether alternative trade measures or adjustments to reduce distortions might not be possible. Attention should be paid to any limitations that might exist with respect to the flexibility of the country concerned in adjusting to disturbances in the international economy;

(c) preparation by the GATT secretariat of trade-policy oriented studies, in order to provide a basis for better focussed and more productive consultations in regard to the trade effects of such actions, including the effects on developing countries;

(d) While the need to impose trade measures for balance-of-payments purposes may have been lessened for all countries, it should be recognized that the developing countries do not, in practice, enjoy the same flexibility as most developed countries to adjust their exchange rates. Recognition of the special needs of developing countries should, however, not lead to a weakening of international procedures; the objective should be to make the process of review more constructive;

(e) the review should cover the effects of trade restrictions imposed by other countries on the balance-of-payments situation of the country in question. While it is recognized that such effects are likely to be felt most frequently by developing countries, the consultations should nevertheless not be allowed to evolve into a general review of various trade restrictions maintained by several contracting parties;

(f) the Committee should state fully the reasons behind its decisions so as to build up a body of commentary that could facilitate the development of guidelines governing future actions. The United States stresses that the conclusions should be viewed as general guidelines but not binding precedent for future cases;

(g) the Committee should follow up and review actions that are taken in light of its conclusions or recommendations.

21. The United States proposals to the extent that they refer to developing countries, do not refer to safeguards for economic development purposes.

Other developed countries' views

22. The European Economic Community has indicated an unwillingness to take part in discussions aimed at any reform of GATT Article XII but would oppose a review of the existing rules governing the use of balance-of-payments measures by developing

countries.[1] The experience with floating exchange rates is too brief and current knowledge of the relationship between flexible rates and the balance-of-payments too little for conclusions to be based on them as to how GATT provisions should be reformed.

23. On the other hand the Community has also questioned the need for a revision of Article XVIII, and sought clarification as to what difficulties developing countries encounter in fulfilling the obligations of that Article, noting that the consultations held under Article XVIII had never led to the "condemnation" of any country. The EEC suggested that the reason of Article XVIII provisions not being fully made use of may well be the ready availability of other measures which are in conformity or "quasi-conformity" with GATT (state trading measures, and unbound duties, etc.) which could be resorted to for limiting imports.

24. Japan has shown opposition to a revision of Article XII, the provisions of which it considers to have a major deterrent effect on the use of restrictions. In its view the GATT procedures can be improved with a tightening of disciplines and more attention to be given to an accurate appraisal of the trade effects of such measures.

25. Switzerland considered that improvements could be made in the GATT procedures, including the co-operation between GATT and the IMF, and that there was a need to ensure that the lack of action would not lessen the GATT's competence in this area.

Other developing countries' positions

26. Developing countries generally supported the Brazilian initiative, several delegations having put forward additional ideas. Mexico stressed that balance-of-payments actions affecting imports from developing countries should be subject to prior authorization. In considering measures imposed by developing countries account should be taken of their trade deficit with developed countries. Argentina put emphasis on the structural nature of the balance-of-payments problems of developing countries and the effect of protectionism on the interest of other countries. Consultations should be reformed in order that they provide an effective means of assisting the developing country in balance-of-payments difficulty.

General considerations

27. The positions of the United States and Brazil on this item show a noticeable similarity in certain respects, especially on procedures (e.g. consideration of the effects of other countries' restrictions, preparation by GATT of trade-policy-oriented studies, follow-up surveillance of action pursuant to recommendations). The United States' proposal, however, has a narrower sweep than Brazil's. With regard to actions by developing countries there appears to be nothing in the United States' proposal that would be in the way to the adoption of those elements in the Brazilian proposal. There is no reference in the United States' proposal to the economic development measures or to Section C of Article XVIII. The United States' intention in this regard is not clear.

1/ See "Lettre d'Information du Bureau de Genève des Communautés Européennes" Numéro 27, 17 novembre 1976, numéro 33, 3 mars 1977.

28. The reasons for resistance of the EEC and Japan to any reform of Article XII become more clear as the various underlying aspects of the United States position become more apparent. Acceptance of the United States position would imply recognition that floating exchange rates are here to stay and it is not apparent that these countries are willing to accept this hypothesis. Furthermore, the deficit countries (e.g. United Kingdom, Italy) might not be entirely enthusiastic to see their freedom to take trade measures reduced or to have their actions subject to greater scrutiny in GATT. Countries such as Japan and the Federal Republic of Germany, are probably somewhat wary of the United States' intention to impose additional obligations upon countries which consistently maintain a payments surplus, especially in light of those provisions of the Trade Act of 1974 which would authorize discrimination against surplus countries when import restrictions are applied for payments reasons.1/

29. The rationale developed by the United States, on the other hand, may have a certain appeal to developing countries. The obvious corollary to the argument that a system of flexible exchange rates renders balance-of-payments trade measures unnecessary is that any justification that might have existed for not exempting imports from developing countries is no longer valid.

30. The proposals put forward by Brazil with respect to safeguards for economic development purposes and for the amendment to Section C of Article XVIII would also seem extremely pertinent. Again, the issues dealt with in this proposal illustrate the importance of the overall link not only among the individual elements of the work programme of the Framework Group, but also with respect to these items and the negotiations in the other Groups and Sub-Groups. For example, it would seem logical for Article XVIII to recognize the need for developing countries to impose export restrictions on certain raw materials and to grant export subsidies on manufactures and semi-manufactures (thus linking negotiations under this item to item 1 and item 5 as well as those in the Sub-Group on Subsidies and Countervailing Duties). The work being conducted in the Group on Safeguards is, of course, also relevant although developed countries have maintained that the question of safeguards for developing countries should be dealt with exclusively by the Framework Group. A "feasible and appropriate" form of differential treatment in this area would be to permit developing countries to apply safeguards without proof of serious injury, but according to the economic development criteria laid down in Article XXVIII A and C. It should be noted that as of now developed countries are relatively free to take restrictive action with impunity to prolong the agony of those dying industries for which developing countries have acquired a comparative advantage and which are thus perpetually facing "threats" of serious injury, while, on the other hand, developing countries would remain subject to the onerous criteria of Article XVIII (including threat of retaliation) in respect of trade measures applied to promote their economic development.

31. The proposal by Brazil that developing countries be given the flexibility to "recompose" their schedules of concessions under Section A of Article XVIII would seem interrelated with the provisions of Article XXVIII, even though the Brazilian delegation has emphasized that it is referring to something other than the Article XXVIII:1 "open season" renegotiation procedures.2/ In fact, the possibilities might

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1/ Trade Act of 1974, Section 122 (d)(2).

2/ Including Article XXVIII:4 which permits renegotiations in "special circumstances".

be considered of a comprehensive review covering Articles XVIII, XXVIII and XXXVI:8 (non-reciprocity) with a view to establishing:

(i) the nature and scope of safeguard measures which a developing country could take for its economic development purposes;

(ii) the conditions under which these measures could be taken;

(iii) measures that developed countries should implement to assist developing countries in achieving specific development objectives through trade policy measures, including the improvement of the balance -of-payment situation; and

(iv) the relationship between these measures and the other obligations of GATT.

32. The objective of such a review would be to develop a legal framework which would be oriented toward enabling developing countries to use trade policy measures more effectively in pursuance of their trade, financial and development objectives. Agreement upon such a framework would also benefit developed countries as it would reduce the uncertainty and confusion that they claim exists in the trading regimes of developing countries. Furthermore, if the developing countries possess a greater degree of certainty as to the measures that they are permitted to take in pursuit of their development objectives, it is conceivable that they will find themselves in a better position to make contributions in the MTN (e.g. in the binding of tariff rates). From a procedural point of view it would make consultations more efficient in that there would be less need to examine facts or compliance with obligations and the deliberations could be addressed mainly to resolving problems.

III. CONSULTATION, DISPUTE SETTLEMENT AND SURVEILLANCE PROCEDURES

1. This section deals with the third "question" to be discussed by the Framework Group i.e. "Consultations, dispute settlement and surveillance procedures under Articles XXII and XXIII". Over the last thirty years these procedures have gone through substantial evolution and there have been efforts at reform both of a general nature and specifically to take account of the position of developing countries. The frequency of recourse to these procedures and the types of mechanism used have gone through several distinct phases. This section does not attempt to discuss the problem in depth but confines itself to describing briefly the background to the issue (indicating the most useful reference sources),1/ summarizing the positions taken by delegations at the Framework Group, and outlining a few considerations which delegations might find useful in developing their positions in regard to this question.

Background

2. The articles mentioned above, Articles XXII and XXIII, do not constitute the only "conciliation, dispute settlement and surveillance procedures" in the General Agreement.2/ It has been noted that there are 19 clauses in the GATT that oblige parties to consult in particular circumstances - roughly parallel to the provisions of Article XXII and XXIII:1 - and at least 7 different provisions for the compensatory withdrawal of concessions.3/ However, the consultation and conciliation provisions of Articles XXII and XXIII are of a general nature and not confined to matters arising from specific circumstances. Article XXIII:1 refers not only to matters relating to GATT obligations but also to any measures whether or not conflicting with the provisions of the General Agreement or even "the existence of any other situation". The procedure of referring a matter to the CONTRACTING PARTIES under Article XXIII:2 constitutes the last resort for parties wishing to achieve a settlement of a dispute.4/

1/ These are outlined in MTN/SG/W/8. However, the most complete analysis of the dispute settlement procedures of GATT is in Robert E. Hudec, The GATT Legal System and World Trade Diplomacy, Praeger Publishers, 1975.

2/ For background on International Surveillance Systems see MTN/SG/W/7.

3/ See John H. Jackson, World Trade and the Law of GATT, pages 164-166. Consultation clauses are contained in Articles II:5, VI:7, VII:1, VIII:2, IX:6, IX:6, XII:4, XIII:4, XVI:4, XVIII:7, XVIII:12, XVIII:16, XVIII:21, XVIII:22, XIX:2, XXII, XXIII, XXIV:7, XXV:1, XXVII, XXVIII:1, XXVIII:4, XXXVII:2. Articles providing for compensatory withdrawals are: II:5, XII:4, XVIII:7, XVIII:21, XIX:3, XXIII, XXVII, XXVIII:3, XXVIII:4. Jackson discussed the issue in Chapter 8, pp. 163-189.

4/ For example, Article XXIII:2 has been resorted to in respect of compensatory withdrawals justified under other GATT provisions which also could fall into the category of "dispute settlement", e.g. Canada's recourse to Article XXIII in the context of its Article XXIV:6 renegotiations with the European Communities.

3. The basic problem facing developing countries in the present dispute-settlement procedures of the GATT is that ultimately the final sanction on an offending party is for the CONTRACTING PARTIES to authorize the suspension of the application to the other party of "concessions or other obligations" under the GATT. Obviously the effect of such "suspension" is to a large extent a function of economic size and the ability of a country to obtain "justice" in a dispute depends to a certain extent on its relative bargaining power, a fact which places most developing countries in a weak position in seeking conciliation of disputes with the major developed countries.

4. A second, related disadvantage is the difficulty that many developing countries would face in obtaining a ruling in their favour in the first place. Initiation of Article XXIII action and following through with the preparation of a "case" and its presentation before a Panel or Working Party requires not only the availability of officials or diplomats possessing considerable experience in trade policy and GATT matters but also extensive technical back-up work at the home base. Governments of smaller developing countries may have serious deficiencies in these areas, the realization of which might have resulted in many developing countries being reluctant or hesitant, in the past, to make full use of the dispute settlement procedures.

5. Of the five cases of complaints1/ by developing against developed countries submitted to the GATT dispute-settlement procedures, by far the most significant was the Article XXIII action initiated by Uruguay in 1962-1964 concurrently against 15 developed countries. The outcome of this case clearly demonstrated the practical implications of the problem. Uruguay had attempted, under the normal procedures of Article XXIII, to obtain removal of those measures applied by developed countries contrary to the GATT which adversely affected its exports. As a consequence of an examination by a Panel, the CONTRACTING PARTIES made recommendations to Austria, Belgium, France, the Federal Republic of Germany, Italy, Norway and Sweden "to give immediate consideration to the removal of certain measures whose maintenance could nullify or impair benefits to Uruguay under the General Agreement".2/ When it was found later that, in a number of cases, some of these countries had not complied with the recommendations, the Panel merely observed that it was up to Uruguay to consider what consequent action it would wish to take and that it stood "ready to deal with any proposals which Uruguay... might wish to submit in terms of the penultimate sentence of Article XXIII:2 concerning the suspension of Uruguay's rights and obligations".3/ Thus, efforts to enforce the recommendations were not pursued but it was left to Uruguay to retaliate alone against several highly developed countries.

6. The Uruguayan experience led to efforts exerted by developing countries, at the subsequent Committee on Legal and Institutional Framework (which led to the drafting of Part IV), to secure improvements in Article XXIII aimed at providing some counter balance for the lack of bargaining power of developing countries. A

1/ The other four disputes were Chile versus Australia (subsidies on ammonium sulphate, 1949), Cuba versus United States (tariff preference, 1949), Brazil versus United Kingdom (margins of Preferences on bananas, 1961), Malawi versus United States (export subsidies on tobacco, 1967). Hudec, op.cit. provides summaries in varying degrees of detail of all disputes submitted to the GATT procedures.

2/ BISD 13th Supplement, page 37.

3/ BISD 13th Supplement, page 36.

proposal by Brazil and Uruguay would have incorporated into Article XXIII a number of additional elements, including the possibility of requiring indemnity of a financial character when a measure adversely affecting the trade and economic prospects of a developing country was not eliminated nor was adequate commercial remedy provided. In cases where the import capacity of a developing country had been impaired by the maintenance of measures contrary to the provisions of GATT by a developed country, the former would be automatically released from its obligations under the General Agreement towards the latter. Failing compliance with the CONTRACTING PARTIES' recommendation within a given time-limit, the CONTRACTING PARTIES would also consider what collective action they could take to obtain such compliance.

7. Although the proposal received the general support of the developing countries it was not acceptable to developed countries. As a compromise, a Decision was adopted in 1966 to modify the procedures of Article XXIII in cases when a developing country initiated a complaint against a developed country and consultations under Article XXIII:1 had not lead to a satisfactory settlement.1/ This procedure added resort to the "good offices" of the GATT Director-General in the paragraph 1 consultations and, failing in mutually satisfactory solution within two months, initiating the Article XXIII:2 action before the CONTRACTING PARTIES or the GATT Council. The revised procedures also provide for the establishment of a panel of experts (not specifically provided for in Article XXIII or anywhere else in the GATT), which is to submit its finding in sixty days, and then the CONTRACTING PARTIES may address a recommendation to the party in question which then has ninety days to report back on the action taken in pursuance of the decision. If it is found that the recommendation has not been complied with in full the CONTRACTING PARTIES then may authorize the suspension of concessions or other obligations. In addition, the CONTRACTING PARTIES shall consider what further measures should be taken to resolve the matter.2/

8. The revised procedures also introduced a link between the Part IV dispute settlement procedures and Article XXIII for measures maintained by a developed country without justification under a provision of the General Agreement. Article XXXVII:2 provides procedures for settling disputes arising from the non-compliance with the commitments if Article XXXVII:1. These procedures involve "consultations" with the CONTRACTING PARTIES but do not refer to the possibility of their making recommendations. In order to get to the arbitration stage of Article XXIII:2, a developing country, having exhausted the XXXVII procedures, would have to undergo the ritual of Article XXIII:1. This cumbersome and burdensome procedure is supposed to have been ameliorated by the new Article XXIII procedures under which an Article XXXVII consultation, once concluded, would be deemed to fulfill the requirements for the initiation of Article XXIII:2 action. One limitation of this procedural provision is that it is valid only when the damaging trade measure in question is one not authorized under GATT. This goes to demonstrate another facet of the essential weakness - some would say negative value - of Part IV; for measures which infringe Article XXXVII:1 but which happen to be covered by a provision in Parts I-III, there appears to be no remedy except going through procedures which are more difficult and time-consuming for the plaintiff developing country, and there is no guarantee that there is remedy at the end of the road.

1/ These procedures are laid down in BISD, 14th Supplement, page 18.

2/ Although the revised procedures were accepted by Brazil and Uruguay they were done so on the understanding that the Committee on Trade and Development (more precisely its Ad Hoc Group on Legal Amendments) would continue its work with a view to resolving this issue (BISD 14th Supplement, pp. 139-140).

The Brazil proposal

9. The Brazilian proposal1/ calls for the incorporation into the GATT itself of the above-mentioned 1966 special procedures for complaints by developing countries against developed countries, supplemented by the following new provisions:

(a) Notification and consultation (the first stage)

(i) prior notification (except in critical circumstances to be defined) of all government decisions which might adversely affect the trade interests of developing countries,

(ii) prompt consultation and notification of their results to other contracting parties, and

(iii) resort to the good offices of the Director General, the Chairman of the CONTRACTING PARTIES or the Chairman of the Council at the request of the interested developing country.

(b) Dispute settlement (in the absence of a mutual satisfactory solution); prompt appointment of panels of experts, and prompt recommendations or rulings (by the CONTRACTING PARTIES, or the Council) which, in the case of a finding favourable to the complainant would provide for either (i) suppression of the offending measure, (ii) authorization to withdraw concessions or suspend obligations, and (iii) provision of adequate compensation to the affected developing country.

(c) Surveillance, including continued surveillance of the situation at the request of the developing country concerned, and the possibility, in addition to the possible withdrawal of concessions or suspension of obligations mentioned above, of joint action by the CONTRACTING PARTIES such as suspension of rights under the GATT of the offending developed country. In determining the extent of any retaliatory action, the damage would be evaluated not only in terms of trade coverage but also in terms of its impact on the trade flows of the affected developing country.

(d) Technical assistance would be provided by the Director-General of GATT to developing countries in the matters mentioned above.

The positions of developed countries

10. The background to United States initiatives in this area can be found in Section 121 of the Trade Act ("Steps to be taken toward GATT revision"). Subsection 121(a) paragraph (9) states as a United States negotiating objective:

> "Any revision necessary to establish procedures for regular consultation among countries and instrumentalities with respect to international trade, and procedures to adjudicate commercial disputes among such countries and instrumentalities."

1/ MTN/FR/W/1, pp. 15-16.

11. At the February 1977 "Framework Group" meeting the United States presented its position in considerable detail which contained the following elements:

(a) Notification of all trade restrictive measures (this concept had also been included among the "broader obligations" to be accepted in conjunction with the Code on Safeguards proposed by the United States).1/ Where a contracting party failed to notify its implementation of such a measure within a reasonable period of time any other contracting party would be free to do so.

(b) Surveillance and consultations - All trade measures affecting the interests of contracting parties would be subject to regular surveillance similar to that presently undertaken by the Committee on Balance-of-Payments Measures and the Textile Surveillance Body.

(c) Dispute resolution procedure - Emphasis would be given to increasing the effectiveness and impartiality of panels of experts; there should be (i) time limits governing the selection and operation of GATT panels, (ii) written opinions explaining the basis for findings reached, and (iii) a "standing roster" of elegible panelists. Panels should in all cases provide full written opinions explaining the bases for findings reached; the work of the panel should be focussed on determining questions of fact and the application of agreed rules to the facts.

12. At the November 1976 meeting of the Trade Negotiations Committee which established the Framework Group, the EEC stated its opposition to the inclusion of item 3 in the list of subjects to be dealt with in the Group. In the view of the Community, it was doubtful whether an examination of GATT dispute-settlement procedures would be fruitful since the existing GATT procedures were the result of a long evolution and based upon the traditional GATT concern for pragmatism. Any difficulties which might have arisen were more a question of the political will of governments to resort to the conciliation procedures rather than any real deficiencies in the existing mechanisms.2/ The EEC also opposed inclusion of this item on the grounds that the question of dispute settlement mechanisms was being discussed in other negotiating groups, notably those on safeguards, technical barriers to trade and subsidies and countervailing duties. (It may be noted that in these Groups the Community has opposed proposals that would spell out detailed dispute procedures and has taken the position that the general conciliation procedures of Articles XXII and XXIII would be sufficient to deal with disputes arising from interpretation of the Codes being discussed in these groups.)3/ At the February 1977 meeting of the Framework Group, the Community did not maintain its opposition, but rather adopted a sceptical attitude to the effect that it would be prepared to consider proposals intended to put the finishing touches on rules which already existed in an unwritten form.

13. Other developed countries have had little to say on this subject in the Framework Group. Japan has adopted a position similar to that of the EEC, stressing the basic effectiveness of Articles XXII and XXIII procedures, but ready to consider a review

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1/ MTN/SG/W/11.

2/ See also Communautés Européennes - Lettre d'Information du Bureau de Genève, numéro 27, 17 November 1976.

3/ See, for example MTN/SG/W/18.

of the manner of their application. Switzerland considers that there is a need for a definite "rhythm" to be followed after the procedures are invoked. Canada has not addressed itself to the subject in the Framework Group but it has put forward detailed proposals relating to the establishment and composition of Panels in the contexts of other subjects, including technical barriers to trade and the sector approach.1/ In the latter case Canada has suggested that any institutions developed in a general strengthening of the enforcement provisions of GATT could serve for the enforcement of any sector agreement.

Developing countries' positions

14. In the Framework Group developing countries have supported the general thrust of the Brazilian proposal. India considered that it was futile from the point of view of developing countries to over-emphasize the retaliation aspect as developing countries would rather have to rely on a "collective consensus" in attempting to resolve disputes with developed countries. Developing countries have also pressed for effective enforcement and precise dispute settlement provisions in the context of draft instruments or solutions being considered in other Groups. For example, Mexico has put forward a detailed proposal for inclusion in the Code of Preventing Technical Barriers to Trade.2/

General observations

15. As has been noted by many authors on the subject, dispute settlement in international economic agreements tend to reflect two concerns: (a) that of the need for negotiation and compromise, aimed at arriving at a mutually acceptable solution, and (b) that of an objective, impartial evaluation of the dispute against the established rules. It is obvious that the interest of developing countries, given their weaker negotiating position, is in the strengthening of the latter aspect so that their rights are eroded to the least extent possible by bargaining considerations. Naturally, however, the value of a legalistic approach depends to a large extent on the degree to which the rules themselves take account of their special position. The effectiveness of improved rules is, of course, dependent on improved dispute settlement procedures and vice versa but from the point of view of the current MTN exercise, each can be dealt with separately.3/ The apparent "anti-legal" attitudes toward the GATT for which developing countries have been criticized by academic and government circles in developed countries can be attributed largely to the fact that developing countries consider that neither the rules themselves nor the dispute settlement procedures take account of their special needs, improvements in both these areas are, therefore, necessary to enable developing countries to assume a more active role.

1/ The Canadian approach to this issue has, however, been elaborated by Ambassador Rodney de C. Grey in his paper "Surveillance and dispute settlement: Issues in the Multilateral Trade Negotiations", Trade Policy Research Centre (London 1976).

2/ See MTN/NTM/W/95, pp. 14-16, 19-20.

3/ Jackson, in his address on 10 March 1976, outlined a scenario where by dispute resolution procedures could be developed separately from the rules themselves which he considered should be under continual review. He outlined a possible five step dispute settlement system including (i) consultation, (ii) mediation (good offices) and conciliation, (iii) tribunal, (iv) recommendation, (v) sanctions (see UNCTAD/MTN/47).

16. An important consideration is the eventual link between the examination of the general Article XXII and XXIII procedures which fall within the purview of the Framework Group and the "special" procedures being discussed in other areas of the MTN or provided in other existing Articles of the GATT. For example, in regard to the questions of surveillance and consultation, both the United States and Brazil have suggested a broader requirement for notifying all trade restrictive measures (in the case of the Brazilian proposal, all government decisions which might adversely affect the trade interests of developing countries). On the one hand it would seem logical that such measures be first examined by a committee specialized in the area, such as the Committee on Balance-of-Payments Restrictions, or the proposed committees on safeguards and on preventing technical barriers to trade, while on the other hand it would be necessary to ensure that all such measures were subject to some sort of surveillance, even when no specific surveillance body would be directly relevant.

17. In examining further the dispute settlement procedure itself it should be borne in mind that in several cases Panels have not only addressed themselves to determining whether an existing rule has been breached, but also to more quantitative questions such as that of assessing compensation required. While any determination of conformity with the rules would, of course, be conducted in an impartial manner, there is still room for qualitative (and quantitative) assessments and thus it would seem necessary that Panels operate against a frame of reference which takes into account the special problems of developing countries and the aim of providing them with differentiated and more favourable treatment. A broadening of the Panel's scope for analysis (e.g. to examine questions of trade impact) would also serve to increase the "objective" element relative to the negotiating element.

18. One could foresee the possibility of a framework incorporating the following steps in cases where a developing country was affected by actions taken by a developed country:

(a) Notifications would be made to the GATT in general (through the Director-General) with an explanation of the rationale and justification for such action, as suggested by the United States. As recognized in the Brazilian proposal, not only frontier measures would be subject to notification but other government decisions which might adversely affect the trade interests of developing countries. Notifications could be made by affected countries if none come from the applying country;

(b) Such notifications would be brought to the attention of the relevant body (e.g. the Committee on Safeguards or the Committee on Preventing Technical Barriers to Trade). It could be expected that the justification of the measure would suggest in which forum it was appropriate for it to be first discussed;

(c) Efforts at conciliation could take the following steps:

(i) discussion in the specialized surveillance bodies (if the issue fell under their jurisdiction);

(ii) bilateral and/or plurilateral consultations;

(iii) reference to a Panel which would report both on the legal case and the trade impact on the developing country or countries concerned;

(iv) a recommendation by the CONTRACTING PARTIES or the Council, based on the Panel's report;

(v) if the recommendation were not complied with, the CONTRACTING PARTIES could authorize the withdrawal of concessions or suspension of obligations by affected developing countries (not only the complainant) to the extent determined by the Panel,1/ and payment of financial compensation if appropriate, on regular basis until the offending measure was removed;2/

(vi) there would be fixed time limits for each of the steps listed above.

1/ It has been suggested that there is no reason to assume that such suspension of obligations could not involve the imposition of export restrictions.

2/ The payment of financial compensation, included in the original proposal on dispute settlement put forward by Brazil and Uruguay in the 1960's (referred to above), was opposed on a number of grounds, including inter alia that it would be improper and dangerous for a country to be able to "buy" its way out of its GATT obligations. It is possible, however, to envisage two separate aspects of compensation, that are necessary to maintain the previous balance of rights and obligations, through the traditional forms of retaliation or compensation through trade policy actions, and that are necessary to offset the damage to the export industry in the developing country affected by the measure in question. In the case of safeguard-type measures, knowledge that payments might have to be made to affected developing countries would encourage developed countries to resort to adjustment assistance measures rather than import restrictions (i.e. to pay their own nationals rather than foreigners). The concept of financial compensation has recently been further developed in Jagdish N. Bhagwati "Market Disruption, Export Market Disruption, Compensation and GATT Reform", World Development 1976, Vol. 4, No. 12.

IV. RECIPROCITY AND DEVELOPING COUNTRY PARTICIPATION IN TRADE FRAMEWORK

1. Item 4 on the Framework Group's list of subjects reads: 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 account of their development needs.

2. The principle of non-reciprocity refered to above is recognized in Article XXXVI:8 of GATT which states that:

> "The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties."

qualified by the following important interpretative note:

> "It is understood that the phrase 'do not expect reciprocity' means, in accordance with the objectives set forth in this Article, that the less-developed contracting parties would not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments...."1/

Paragraph 5 of the Tokyo Declaration paraphrases these provisions for the purposes of the multilateral trade negotiations.2/

3. Since the entry into force of Part IV of GATT there has been considerable debate over the interpretation of Article XXXVI:8 and its application in practice. Discussions were held in the Sub-Committee on Participation of Developing Countries in the Kennedy Round and during the preparatory stage of the MTN in the GATT Committee on Trade and Development and the Group of Three. The debate to date, however, has focussed almost exclusively on the question of defining contributions to be made by developing countries "not inconsistent with their individual development, financial and trade needs",3/ under the real threat that developing countries might be denied the benefits deriving from tariff reduction formulae or codes or other solutions concerning the removal of non-tariff barriers in the absence of such contribution. Other elements of the application of non-reciprocity principle have not yet been the subject of detailed consideration in the GATT or the MTN, including (i) how developing countries can ensure that concessions are made in their favour in the absence of reciprocity on their part, and (ii) how to apply

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1/ The note also states that Article XXXVI would apply to actions under Section A of Article XVIII, Article XXVIII and bis, Article XXXIII "or any other procedures under this Agreement".

2/ The terms of item 4 refer to "future trade negotiations".

3/ An extensive discussion of this question is contained in a GATT secretariat paper prepared as background note on this subject in 1973, COM.TD/W/177.

the principle of non-reciprocity in the daily conduct of trade relations (as opposed to rounds of negotiations) such as in the case of re-negotiations under Article XXVIII.1/

4. The current negotiations on tropical products have demonstrated the disadvantage of the lack of precision in Article XXXVI:8. These negotiations started badly with the adoption of a bilateral, item-by-item, request/offer procedure conducive neither to substantive results nor to a meaningful application of the principle of non-reciprocity. The outcome of this process to date speaks for itself. The United States has withheld its offers, awaiting counter offers from developing countries, while the other developed countries have offered a certain degree of liberalization largely, however, on a no-binding, no-commitment basis.

Brazil's position

5. The Brazilian proposal2/ envisages a further elaboration of Article XXXVI:8 to include the following elements: (a) any contribution by developing countries should be directly linked to the additionality of benefits accruing to them; any concessions should be evaluated on the bases of trade and economic impact rather than simply trade coverage and concessions by developing countries could be deferred and staged over an extended period and (b) in negotiations a group of developing countries could be taken as a single negotiating entity; a single concession by a developing country could be considered to provide benefits to more than one developed country.

6. The Brazilian paper also deals with the application of non-reciprocity in regard to withdrawal or modification of concessions, as follows:

(a) compensation for withdrawal or modification of a concession by a developing country would be extended (i) only to the contracting party with which the concession was initially negotiated; or (ii) if the concession was negotiated with more than one contracting party, only to that contracting party which is also the principal supplier; or (iii) if the initial negotiator cannot be determined, only to the principal supplier;

(b) phased compensation of a concession by developing countries, through the granting of a three-year grace period to recompose their schedules of concessions, as well as by staging of implementation;

(c) extension to a developing country or group of developing countries with substantial supplier interests of initial negotiating rights for withdrawal or modification of a concession by developed countries;

(d) recognition of the relative importance of a product for the trade of a developing country in the definition of its substantial supplier interests;

1/ This particular aspect of the non-reciprocity principle was examined in detail by the Group of 77 Study Group on the Reform of the Framework, see "Trade Negotiations under the Principle of Non-Reciprocity" in UNCTAD/MTN/40/Supp.1, pp. 130-134. The general legal aspects of reciprocity have been examined by Professor Michel Virally in his study "Le Principe de Réciprocité dans le Droit International Contemporain", RCADI, 1967.

2/ MTN/FR/W/1, pp. 17-18.

(e) periodical adjustment of concessions granted by developoed to developing countries, and of concessions granted by developing to developed countries, in order to compensate the developing countries for emerging imbalances in the value of reciprocal concessions as a result of new patterns of trade.

The developed countries' positions

7. The United States has made it clear in statements in various Groups as well as through its conduct of the negotiations on tropical products that its concept of non-reciprocity is a well circumscribed one. At the February meeting of the Framework Group, the United States delegate stated that he did not see much room for improvement in or increased clarity of the provisions of Article XXXVI:8.

8. In the view of the United States, reciprocity is only one element of a broader question of the fuller participation of developing countries in both the rights and the obligations of GATT, justification for special treatment would cease as each development objective was met and developing countries should be prepared over time to accept increasing obligations. The rate of acceptance could be based on a range of economic indicators and it would not be expected that developing countries would give up special and more favourable treatment in all areas at the same time.

9. The EEC maintains that it has consistently abided by the rules of Part IV and has never sought equivalence of concessions from developing countries in the past. The EEC will be prepared to consider proposals that serves to confirm in a text what has been the practice of the Community. In the Community's view the guiding principle should be that each country should contribute to the overall level of obligations to the extent of its ability. Japan, Canada, Switzerland and the Nordic countries have generally adopted positions similar to those of the EEC.

10. For most developed countries it is essential that contributions from developing countries be "visible" in order to help overcome domestic counter-pressures.

Developing countries' views

11. Discussions in the Framework Group have shown the developing countries to be in support of the Brazilian approach. Egypt is for giving more precision to Article XXXVI:8 (including its interpretative notes) which in its present form is self-contradictory. Yugoslavia takes the position that non-reciprocity should be considered in the context of negotiations aimed at a rational appraisal of a mutually beneficial resulting position rather than simply the weighing of mutual sacrifices or contributions. The international community has recognized the optimal situation as being one where all barriers to the exports of developing countries are removed and negotiations between developed and developing countries should start from this premise. India considers that non-reciprocity should be viewed in a positive light, as a cooperative attempt by all participants to further their mutual trade.

General observations

12. While the general aim - at least for the developing countries - is to give more precision to the concept of non-reciprocity and to improve the text of Article XXXVI:8, this complex matter has not been grappled with effectively to date. Although various concepts have evolved on the many studies on the subject

of reciprocity (e.g. real reciprocity, formal reciprocity, effective reciprocity, reciprocity of benefits, reciprocity of results, etc.), there has been no agreement as to which of these concepts are more appropriate so that it could be further elaborated to the extent necessary to provide criteria for determining precisely what constituted reciprocity between negotiating partners of inequal strength in the context of present-day objectives. This paper does not attempt such a task but confines itself to listing certain considerations that would seem relevant to such a discussion.

13. It would appear that there are at least two distinct aspects of the problem to be considered separately. The first is the "static" issue of how to define the appropriate form of contribution by a developing country in return for a given concession in accordance with the existing written rules on non-reciprocity; the second, more important, might be termed the "dynamic" aspect, i.e. how developing countries are to obtain meaningful trade concessions in their favour without offering a degree of reciprocity going beyond that described in Article XXXVI:8 and its interpretative notes. By making no contribution at all, developing countries would be able to benefit to a certain extent from reciprocal concessions exchanged among developed countries and extended on an MFN basis. Such a situation, which roughly approximates that of the Kennedy Round, should thus not be expected to entail any contribution by developing countries. Contributions by developing countries should only be calculated in respect of the benefits they obtained additional to that accomplished through MFN concessions exchanged between developed countries. The question is what to do if such additional benefits are not forthcoming.

14. The tropical product negotiations, where for the first time GATT negotiations were conducted between developed countries on one side and developing on the other, illustrates clearly the nature of the problem. One observation born out by these negotiations to date is that in general developing countries are faced with the alternatives of (a) making no contribution to the satisfaction of developed countries and being content with liberalization measures applied "without commitment", and (b) making reciprocal concessions in order to receive meaningful benefits.

15. Another lesson which can be drawn from the tropical product negotiations is the need for developing countries to define their objectives in advance. One could imagine that, in a manner analagous to negotiations among developed countries under a general tariff formula, a goal could be adopted such as duty-free access for tropical products. Developing countries would indicate, individually, the contributions that they would be prepared to make were that objective obtained; to the extent that developed countries failed to meet this objective contributions offered would be withdrawn. This would clearly place the onus on the developed countries to provide meaningful concessions, with the eventual contribution of developing countries to be measured in relation to the performance of developed countries, and not vice versa.

16. This approach might serve to overcome a further problem, that of so-called "burden sharing" among developed countries, which sometimes results in offers by a developed country in favour of developing countries being withdrawn on the ground that other developed countries have failed to make an equivalent effort.

17. The question of how to effectively apply the concept of non-reciprocity in the negotiation of codes of conduct is also a key issue as the outcome of negotiations on non-tariff measures will largely assume this form. Developed countries, in their discussion in the OECD regarding differential and more favourable treatment, have

expressed concern over the workability of Codes under which a certain group of countries (i.e. the developing countries) enjoy all the rights without assuming the obligations. It is not surprising that isolated discussion in this sanctuary should miss the point. For developing countries have consistently stated their desire to assume more fully the obligations of the GATT but in doing so they seek to enjoy additional rights and benefits, not just the spin-off from negotiations between developed countries. The Codes which are being drawn up at the present stage of the MTN are illustrative of this point. The draft Code on Preventing Technical Barriers to Trade, for example, is considered necessary by developed countries to impose more stringent obligations upon their main trading partners, i.e. the other developed countries, in order to contain a trade barrier rapidly growing in importance. For the developed countries to request the developing countries to assume the same obligations as they have decided to accept among themselves without providing additional benefits for developing countries would not be in keeping with the principle of non-reciprocity. The very least the developed countries can do in this context is to institute meaningful obligations for the provision of technical assistance and information for the benefit of developing countries. Again the concern of developing countries is to get more for what they give, rather than giving less for what they get.

18. It is clear that the second part of the text of item 4 is a function of the first, in that fuller participation of developing countries in the GATT framework of rights and obligations depends to a large extent on the outcome of the efforts, discussed above, to elaborate the principle of non-reciprocity in a more precise and predictable manner. On a wider plane, it is also related to the other questions on the work programme, especially item 1 - the legal basis for differentiated and more favourable treatment.

19. The Brazilian proposal places considerable emphasis on procedures and modalities for renegotiation of concessions. Such emphasis appears extremly relevant given the probability that the MTN may well be the last "round" of GATT negotiations to be replaced by a system of permanent negotiations.1/

20. This likelihood, renders it ever more important to developing countries to ensure that the aims and objectives of the Tokyo Declaration, including that of non-reciprocity, are imcorporated into the legal framework in a precise, obligatory and operative form in order to provide an effective set of rules to govern all future trade negotiations between developed and developing countries, whether or not they be part of any general round.

1/ This point of view is shared by a number of experts, including members of the United States Administration, the country whose system of government has largely been responsible for the "round" approach. For example, Alan Wolff states that "calling together multilateral trade conferences at periodic intervals should become an anachronism. A continuing process is required" and adds that "The greatest achievement of the Tokyo Round could be the establishment of the institutional framework and process for an uninterrupted effort aimed at the reduction, harmonization, and elimination of international trade barriers and distortions". (Virginia Journal of International Law, Vol.16:3, page 560). Similar views were expressed by John H. Jackson in UNCTAD/MTN/47.

(b) QUANTITATIVE RESTRICTIONS

1. Negotiations on Quantitative Restrictions have remained at the stage of bilateral and plurilateral consultations as part of the process of "information, examination and dialogue" adopted by the Sub-Group1/ in April 1975. This fact-finding phase, in spite of the long lapse of time, is yet to be terminated.

2. Meanwhile, the Sub-Group has continued its discussion of possible procedures or formulae for actual negotiations, including differentiated treatment for developing countries. This note examines the course of the negotiations to date and analyses the positions of main participants and various proposals before the Sub-Group.

A. STATUS OF THE CONSULTATIONS

3. The notification and consultation procedure adopted in 1975 was ostensibly aimed at clarifying the legal, economic and social justification of individual restrictions notified by participants as being of direct trade interest to them, and at eliciting suggestions for action in regard to them. The results of the consultations were subject to examination by the Sub-Group.2/

4. So far, 26 participants (EEC and the Nordic countries are each counted as one participant) have requested consultations with 66 countries. Participants requesting consultations and recipients of the requests comprise both developed and developing countries. Many of the requested consultations have been concluded but a certain number is still in progress or yet to be held.

5. The reports on these consultations differ considerably with regard to the amount of information included. Some, notably those submitted by the United States are fairly elaborate; others are less detailed. While a systematic analysis is difficult, it appears that:

(a) a large number of notifications include restrictions on both industrial and agricultural products. While some developed countries, e.g. the United States and Canada, have accepted to exchange factual information on agriculture restrictions, the EEC and the Nordic countries have refused to consider such restrictions in the context of this Sub-Group

(b) quantitative restrictions on tropical products have in most cases not been included in the notifications by developing countries, presumably on the assumption that such restrictions would be discussed in the Tropical Products Group, the removal of quantitative restrictions having been included in many tropical products requests lists.

1/ The Sub-Group on Quantitative Restrictions of the Group on Non-Tariff Measures.

2/ Written reports submitted to date are contained in GATT document MTN/NTM/W/40 and addenda. In addition, a number of countries have made oral reports in the meetings of the Sub-Group. GATT has periodically issued brief reports on the status of consultations. The last report is contained in document MTN/NTM/W/54/Rev.2.

(c) many developing countries have requested consultations in respect of restrictions on textiles, sometimes including those covered by the Multifibre Arrangement. Developed countries have in general declined to discuss restrictions on textiles covered by the MFA, though not those on other textiles. Certain other categories of restrictions have also been excluded from some consultations, such as balance-of-payments restrictions covered by GATT Article XII, safeguard restrictions taken under Article XIX and some state trading practices

(d) some developed countries - EEC, Switzerland and the United States - have requested consultations in respect of restrictions maintained by a number of developing countries. From available information it appears that only a few such consultations have been held to date. The developing countries concerned have invariably refused to discuss export restrictions

(e) the consultations have generally failed to establish the justifiability or legitimacy of the restrictions in terms of the importing countries' international obligations under GATT. The reports on the consultations often simply confirm or deny the existence of the restriction in question. Nor have the consultations thrown much light on the prospects of removal or relaxation of individual restrictions.

6. The consultations have served the limited, though useful, purpose of clarifying the facts concerning individual restrictions. For example, in quite a few cases the reports indicate that a notified restriction has already been wholly or partly removed. The notifying countries are sometimes appraised of the purpose of restrictions in force and the modalities of their application.

B. LIBERALIZATION PROGRAMME AND THE NEGOTIATIONS

7. Various proposals for reducing or eliminating quantitative restrictions affecting the trade of developing countries have been under discussion in various GATT organs such as the so-called Action Committee of the early 1960's, Committee III, the Committee on Trade and Development, the Group of Three, the Joint Working Party on Residual Restrictions. During the preparatory stage of the MTN, the subject was entrusted to the Committee on Trade in Industrial Products (CTIP).

8. The discussions of the CTIP resulted in two alternative texts in 1973. Both provided for the adoption of a programme for the elimination of quantitative restrictions which would give priority attention to restrictions affecting exports of developing countries and discriminatory restrictions. They differed on the approach to some key issues, such as the treatment of "illegal" restrictions and "voluntary" export restraints. Reservations on specific issues apart, neither of the two texts has had an enthusiastic reception and there has been no suggestion that they be resuscitated for use as a basis for negotiation.

9. Prolonged discussions in the Sub-Group[1/] have not led to any tangible progress. The difficulties of making progress are not technical, but reflect substantive divergencies which are complex and of long standing. Apart from the controversial issue of whether restrictions not justified under GATT should be treated differently from other restrictions in the negotiations, there has been no agreement

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1/ The Sub-Group has held seven meetings (in April and October/November 1975, March, July and November 1976 and in March and July 1977).

as to which product sectors and which types of restrictions should be covered by the negotiations. One important, and unresolved, issue is whether export restrictions fall within the purview of the MTN.

10. The product coverage issue centres mainly around the overriding and long-standing dispute over the appropriate forum for negotiating all measures relating to agriculture. This has been in the way of making progress in regard to tariffs as well as non-tariff barriers, including quantitative restrictions.1/ With the adoption of new procedures in the Group on Agriculture and the Group on Non-Tariff Measures in later July 1977 this impasse would seem to have been broken.2/ Quantitative restrictions on agricultural as well as on industrial products would henceforth be mainly the subject of product-by-product notification and negotiation; the general liberalization proposals would seem to have been relegated to a secondary status, if not fallen by the wayside.

11. There has also been some confusion as to where to pursue discussion of restrictions on tropical products, although developing countries have generally understood that it belongs to the Tropical Products Group (see paragraph 5 (b) above). Since no meaningful liberalization of Quantitative Restrictions resulted from the negotiations in that Group and since developed countries seem to consider that the tropical products negotiations have been terminated as of the end of 1976, there appeared for a while that the only place left for taking up these restrictions would be the Quantitative Restrictions Sub-Group. The Agriculture and NTM Groups' new procedures however, have recognized that unfulfilled requests on tropical products should be deemed to have been "resubmitted" if so indicated by the developing countries concerned by 1 November.

12. Developed countries consider restrictions on textiles covered by the Multi-fibre Arrangement to be outside the scope of MTN, on the ground that they are governed by existing rules and procedures and have their own forum for negotiation.

13. There are also legitimate difficulties in considering quantitative restrictions independantly from other non-tariff barriers, tariff rates, and such questions as safeguards;3/ few countries are willing to accept commitments in the field of quantitative restrictions until they have a clearer idea of what the future multilateral safeguard system is going to be and what general tariff-cutting formula is to be used. The Framework Group also has competence in regard to quantitative restrictions when they relate to the balance of payments or to the control of exports.

1/ Work in the Agriculture Group has proceeded on the basis of a notification and consultation procedure. In December 1976 the Agriculture Group agreed that summary reports on consultations should be circulated and reviewed by the Group. Information concerning notifications submitted under this procedure is contained in documents MTN/AG/W/8/Rev.4 and MTN/AG/W/11 with addenda. Reports on consultations held to date are reproduced in MTN/AG/W/22 with addenda.

2/ See paragraph 29 et seq. below.

3/ For instance, the proposal put forward by the United States in the Safeguard Group (MTN/SG/W/11) would cover all measures imposed to provide temporary relief from injurious import competition, including "voluntary" export restraints.

Developed countries' positions

14. The United States traditionally taking a "legalistic" approach, supported the second alternative of the CTIP texts, according to which restrictions not sanctioned by GATT should be eliminated forthwith, that is, without negotiation or compensation. The United States has clearly demonstrated its interest in including export restrictions in negotiations and has included various export control measures, such as quantitative restrictions and embargoes, in its notifications of non-tariff measures. In the Sub-Group, the United States has been actively pressing for an agreement on negotiating procedures and, at one stage, put forward a concrete proposal as to how negotiations on existing quantitative restrictions should be conducted.1/ Here the "legal approach" was somewhat attenuated and emphasis was placed on the bilateral consultation mechanism, supplemented by certain multilateral elements, viz: a general undertaking by the participants to eliminate all quantitative restrictions at the end of the negotiations; notification of the restrictions to be from the undertaking, apart from those covered by certain GATT provisions or the textiles agreement (provided the procedures set forth in these agreements were adhered to); a process of confrontation and justification of the exceptions lists which, if not complied with, could justify retaliatory measures. Under both the bilateral and multilateral procedures priority attention would be given to quantitative restrictions affecting the exports of developing countries, and plurilateral consultation can be held with developing countries having common interest in any restrictions.

15. Some developed countries have criticized the a priori exclusion of specific restrictions from the negotiations, and questioned whether similar exclusion should not be extended to other restrictions such as those sanctioned under Article XX (notably health and sanitary restrictions) and Article XXI (national security). Some have reservations with the proposed justification procedure. A number of developed and developing countries objected to the provisions for retaliation, which could be effective only for economically powerful countries and might detract from the objective of trade liberalization.

16. Australia has placed particular emphasis on the removal of quantitative restrictions and variable levies on agricultural products and "illegal" restrictions in general. It considers that negotiations on quantitative restrictions and tariffs should be synchronized so as to ensure balanced concessions in these areas.2/ Apart from suggesting that the existing GATT rules pertaining to quantitative restrictions be reviewed for possible improvements, Australia has proposed a multilateral programme for removal of quantitative import restrictions not justified under GATT provisions,3/ which contains the following elements: a standstill except for actions justified under GATT; a general undertaking to phase out all "illegal" restrictions by a specified date, with priority to restrictions affecting exports of developing countries, subject to a procedure for

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1/ MTN/NTM/W/66.

2/ While in principle opposed to discussing export restrictions, Australia has indicated that its reaction to any proposals to include such restrictions in the negotiations would largely depend on the willingness of other countries to liberalize import restrictions.

3/ MTN/NTM/W/106.

exceptions; suspension of obligations to compensate for the effects of restrictions; binding of phase-out programmes in appropriate GATT schedules of concessions; cataloguing, publication and regular reporting of restrictions; and establishment of agreed rules for the administration of restrictions. The Sub-Group has only had a preliminary exchange of views on the proposal.1/

17. The EEC considers that in principle all quantitative restrictions should be open to negotiation on an equal basis and that consequently no distinction should be made between "legal" and "illegal" restrictions; the fact is that the "legalistic approach" would result in most restrictions of negotiating interest to the Community that are maintained by its major trading partners being taken out of the negotiations.

18. The Community also considers that the negotiations should encompass export restrictions, which in its view clearly fall within the purview of GATT Article XI. On the other hand, as indicated above, the EEC would exclude from the negotiations restrictions on agricultural products (except perhaps in the Agriculture Group) and on textiles covered by the MFA. Restrictions on imports from state-trading countries for which special procedures are provided for in accession protocols should also be excluded.

19. In general, the EEC has shown little enthusiasm for a multilateral approach to negotiations on quantitative restrictions and considers case-by-case negotiations to be more realistic in view of the diversity of the restrictions involved. In any case it considers it premature to formulate general negotiating procedures until further progress has been made in other related areas of the MTN, notably in the Safeguards Group.

20. The position of the Nordic countries and Switzerland appear to be broadly the same as that of the EEC. Switzerland has supported the EEC on the inclusion of export restrictions in the negotiations.

21. Japan considers that priority should be given to the elimination of discriminatory restrictions. Like the EEC and some other countries it is, however, opposed to a negotiating approach based on legal considerations and would favour negotiations on a case-by-case basis.

22. Canada has from the outset favoured product-by-product negotiations on the basis of requests and offers.2/ Like Australia, Canada has adopted the position that the terms of reference of the Sub-Group do not cover export restrictions. Canada would, however be prepared to discuss export restrictions in the context of sector negotiations.

Developing countries' positions

23. Recognizing the seriousness of quantitative restrictions as a trade barrier for their exports developing countries have consistently emphasized the need for differentiated and more favourable treatment and for special negotiating procedures in their favour in this area. Certain proposals made by developing countries

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1/ See the Interregional Project's note on the meeting of the Sub-Group in July 1977, pages 36-41.

2/ cf. MTN/NTM/W/6.

are of long standing and have been under consideration in various fora prior to the opening of the current MTN. The two standing proposals presented by India and Brazil[1] respect of all quantitative restrictions of interest to developing countries, including restrictions on agricultural products and products covered by GSP. The action programme calls for immediate removal of such restrictions on a preferential basis and set out various transitional steps for exceptional cases where immediate removal is not possible (phasing out of restrictions according to an agreed schedule, progressive enlargement of quotas in favour of developing countries, adoption of measures to ensure full utilization of quotas or otherwise to improve and liberalize the control or licensing procedures and removal of all discriminatory aspects of remaining restrictions affecting developing countries).

24. The Brazilian proposal would permit a certain degree of reciprocity from developing countries, in cases where developed countries have granted concessions on a preferential basis, although not for the liberalization of restrictions which are inconsistent with GATT, discriminatory or affecting products covered by the GSP.

25. As in other areas of the MTN, developing countries have taken the position that the question of possible reciprocity from their side should be deferred until there is a clearer view of what the overall benefits of the negotiations for them would be. This consideration has made them reluctant to participate in consultations on their own import restrictions. Like Australia and Canada, developing countries are firm that the Sub-Group's mandate does not cover export restrictions.

26. A more recent proposal by Mexico[2] calls for: the updating of the GATT inventory on NTM's, and especially quantitative restrictions by the adding of restrictions notified in the current consultations; arrangements for an advisory machinery to establish comprehensive lists of quantitative restrictions notified by developing countries against developed countries; joint meetings of developing countries on quantitative restrictions of common interest to them and, joint examination with the applying country of the need for their maintenance; and commitments by developed countries to give priority attention to developing countries' requests. The Sub-Group has been urged to discuss in depth the proposals of Brazil and India and to expedite the setting up of a programme of automatic elimination of quantitative restrictions in favour of developing countries.

27. Mexico has subsequently elaborated on the second point of its proposal and asked for a table based on the available consultation reports giving detailed information, including trade statistics, in respect of restrictions maintained by individual countries. Some developed countries, while not opposing this proposal, have considered that the table might show a biased picture of the existing situation as many consultations are yet to be terminated, and many reports lack detailed information.[3]

1/ cf. COM.TD/W/198 and MTN/3B/18 (India), COM.TD/W/188 (Brazil) and MTN/3B/15 (Synthesis by the GATT secretariat).

2/ MTN/NTM/W/29.

3/ See the Interregional Project's note on the meeting of the Sub-Group in July 1977, pages

28. The antipathy of some participants towards the multilateral liberalization programme idea has effectively prevented a serious discussion of the substance of developing countries' proposals. Some developed countries have, indeed, made it clear that they cannot accept automatic elimination of quantitative restrictions in favour of developing countries. Developing countries have been reaffirming their understanding that agreement on the nature of differentiated treatment and on special negotiating procedures for developing countries would be reached before or at least at the same time as a decision on general negotiating procedures.

C. NEW NEGOTIATING PROGRAMME

29. Owing to the prevailing divergencies, the Sub-Group on Quantitative Restrictions was for a long time unable to take any firm decision, other than to continue the consultation process and to revert to the proposed negotiating formulae and procedures at a later date. Recently, however, the matter seems to have been taken out of the hands of the Sub-Group consequent upon a new turn of events. Following initiatives taken by the United States and with the support of the EEC, a new programme aimed at speeding up the negotiations, complete with deadlines and target dates, have been put into application since late July.

30. In implementation of that programme, the Group on Non-tariff Measures and the Group on Agriculture have each agreed upon a new set of procedures, which follow traditional lines and fall back on traditional methods. Both involve the use of product-by-product lists of requests and offers, the former to be submitted by 1 November 1977 and the latter by 15 January 1978.

31. According to the above agreements, special procedures are provided for developing countries which permit the submission of joint requests. Arrangements will be made for bilateral and plurilateral negotiations between developed and developing countries and developed countries will give priority and special attention to requests made by developing countries in the presentation of offers. Outstanding and unfulfilled requests on tropical products may be re-submitted by interested developing countries, and will maintain their special and priority character. The question of what differential measures will be applied under the new procedures for securing special and more favourable treatment for developing countries remains open. Developing countries have stressed that their acceptance of the work programme in the two Groups would be conditional on satisfactory agreement on such treatment. The Non-Tariff Measures Group has agreed that its Sub-Groups should identify specific ways for providing special and differentiated treatment with the objective of reaching an understanding on these issues before the end of this year.

32. For the Agriculture Group, the new procedures seem to imply case-by-case negotiations on quantitative restrictions affecting agricultural products. While it is stated that participants should exercise restraint in making requests on measures with regard to which multilateral solutions are being sought in the NTM Sub-Groups, there is clearly no intention of precluding requests relating to individual quantitative restrictions; the majority of developed countries evidently hope that the new procedures will be considered sufficient to deal with all quantitative restrictions so as to obviate the need for any multilateral action in this domain. There appears little room for optimism concerning the establishment of a multilateral liberalization programme on quantitative restrictions.

33. Although the developing countries may wish to pursue their original proposals in the Sub-Group on Quantitative Restrictions this should not prevent them from actively pursuing their interests in the context of the new negotiating procedures adopted. In order to avoid the extreme bilateralism experienced during the tropical products negotiations it would seem essential that developing countries should prepare and co-ordinate their positions as far as possible and work towards the submission of joint requests lists in areas of common interest.

(c) SUBSIDIES AND COUNTERVAILING DUTIES

Introduction

1. In December 1975, the Trade Negotiations Committee considered that an agreed approach to negotiations on subsidies and countervailing duties could be expected in the coming year. Since then the Sub-Group on Subsidies and Countervailing Duties 1/ has been presented with a number of proposals by developed and developing countries, including a draft negotiating proposal by Canada, but a common approach to the negotiations in this area is yet to be found.

2. The deliberations in the Sub-Group have been characterized by substantial differences as to the relative emphasis to be accorded to subsidies and countervailing duties in an overall solution. Broadly speaking, two main negotiating approaches can be distinguished. One is that pursued by the United States, which puts the emphasis on an effective prohibition of export subsidies; the other, by EEC and most other developed countries, reflects a preoccupation with finding a solution which would lead to the adoption of meaningful injury criteria in the use of countervailing duties by the United States. While neither of these is devoid of all interest to developing countries, the latter's main preoccupation is with the securing of a contractual recognition of their right to apply export incentives and the adoption of rules which would minimize the risk of countervailing actions being taken by developed countries against their exports. This note, which supplements a previous brief by the Interregional Project on this subject, 2/ briefly outlines the positions of participants on the main issues, and analyses the main points presented in the Canadian "draft arrangement".

Review of the positions of participants on major issues 3/

3. The United States traditionally regards subsidies as a serious trade distorting measure warranting priority attention in trade negotiations, maintaining that an adequate solution to the subsidy problem would have largely resolved the countervailing duty issues. It considers that the main aim of the negotiations in this area should be to strengthen the present GATT rules on subsidies, notably by prohibiting a wider range of export subsidies than GATT's Article XVI:4 does at present, and that subsidies and countervailing duties are inextricably related

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1/ At meetings on 5-6 April, 13 July 1976 and 28 February 1977. See Interregional Project's notes on these meetings in the 'Reference Manual on the Multilateral Trade Negotiations", (UNCTAD/MTN/40/Supp.1, pages 27-31, and pages 17-18 of this document.)

2/ cf. "Reference Manual",(UNCTAD/MTN/40), pages 61-66.

3/ See also Interregional Project's brief on subsidies and countervailing duties in UNCTAD/MTN/40 and GATT document MTN/NTM/W/52/Rev.1 ("Checklist of positions on the various issues in the area of subsidies and countervailing duties").

issues, requiring co-ordinated solutions. Essentially the United States has proposed that a code on subsidies and countervailing duties should specify three categories of subsidies, viz.: (a) subsidies against which counter-measures can be taken without the existence or threat of material injury being demonstrated; (b) subsidies which can be subject to counter measures only under certain circumstances, e.g. if injury has been shown to exist; and (c) a permitted category against which offsetting measures cannot be taken.1/ These rules would apply equally to all products, including those in the agricultural sector. Special provisions might be developed for particularly complex measures such as regional aids or incentives granted within export financing schemes. There could be more effective counter measures against subsidization in third country markets, such as withdrawal of concessions or imposition of import restrictions by the affected supplier against the subsidizing country.

4. As regards the developing countries, the United States has indicated its willingness to negotiate provisions for special and more favourable treatment within its general approach, for instance, by placing certain measures which are included in the first category for developed countries in the second category, for developing countries, or by establishing criteria or limits for certain subsidies for developing countries different from those applying to developed countries. However, such differential treatment should be applicable only to developing countries which are not "internationally competitive" and should be progressively phased out as their economies develop.

5. EEC, which is mainly concerned with the adoption of a meaningful injury test for the imposition of countervailing duties by the United States, has put forward a proposal whose main feature is a set of criteria which taken together bring about a strict definition of the concept of "material injury".2/As regards subsidies, EEC has traditionally supported the present GATT rules and advocates a "pragmatic approach" aimed at ensuring respect for these provisions, notably by establishing improved international procedures for notifications and for consultations, on both bilateral and multilateral levels. Consistantly, the EEC has maintained that problems in this area affecting agricultural products should be dealt with in the Group on Agriculture.

6. Canada, the Nordic countries, Japan and some other developed countries are basically in line with EEC on the need for improved notification and consultation procedures and for strict and uniformly applied criteria regarding material injury in the use of countervailing duties, although the EEC's proposal for a code on

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1/ See MTN/NTM/W/26 and MTN/NTM/W/43/Add.6

2/ See MTN/NTM/W/26/Add.1. According to the EEC proposal, injury examinations should consist of two phases. Under the first, a situation of "market penetration" would have to be demonstrated (based on criteria such as a substantial increase in imports, a substantial price undercutting by the subsidized product as compared with the price of like goods produced in the country of importation and a rapid increase of the market share of the subsidized product). All these criteria would have to be met in order to proceed to the second phase which would include an analysis of the situation of the affected industry, in which factors such as those mentioned in the Anti-Dumping Code and the MFA would be considered.

countervailing duties has not been supported in all its details. These countries are generally more positive as regards subsidies in the sense of favouring greater precision in the definition of "prohibited export subsidies". Canada has, in this as in a number of other areas of MTN, emphasized the need for effective multilateral surveillance and dispute settlement procedures.

7. Australia and New Zealand are mainly concerned with securing improved disciplines on the use of subsidies in agriculture. Australia has, inter alia, called for more stringent rules for subsidization in third country markets.1/

8. While there is a general recognition that possibilities exist for differentiated and more favourable treatment for developing countries in this area, few developed countries have been willing to clarify their position as to how this might be accomplished. Many of them maintain that this question should be settled when the general rules have been drawn up. Some developed countries consider that the adoption of a rigorous test of material injury would have to a large extent enhanced the position of developing countries.

9. Among the developing countries, Brazil, India, Venezuela and Mexico have submitted written proposals. These proposals, reflecting the common sentiments of developing countries, mainly aim at ensuring differentiated and more favourable treatment through a contractual recognition of developing countries' right to apply export incentives (as they are at present entitled de facto by not having subscribed to the provisions of Article XVI:4 of GATT) and through a contractual limitation on developed countries' freedom to resort to countervailing duties against their exports.

10. With regard to subsidies, India, Mexico and Venezuela have proposed that developing countries should have the right in general to apply subsidies, while Brazil is for the adoption of a "positive" list of export incentives which are expressly permitted to apply. Neither of these approaches would a priori limit developing countries' right to use export incentives.

11. In relation to the developing countries' basic idea that their exports should in principle be immune from countervailing actions by developed countries, India and Mexico are willing to accept that deviation from this rule should be permitted where subsidization by a developing country has been proved to cause material injury and no other solutions are found through bilateral and multilateral consultations. Venezuela considers that the exemption for developing countries should be absolute and that developed countries should choose internal adjustment measures instead of countervailing duties even in cases of proved market disruption. For Brazil exemption from countervailing duties for developing countries' exports should be absolute when these benefit from incentives included in the "positive" list. The idea of explicitly linking the subsidy and countervailing duty rules is a common feature of the Brazilian and United States proposals. The "positive" list approach of Brazil is, however, fundamentally different from the "permitted subsidies" idea of the United States. The former could conceivably include all incentives that effectively stimulate exports, including those that would be on the United States "prohibited" list. Even though the United States has shown some willingness to

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1/ MTN/NTM/W/43

compromise on the classification of subsidy practices for developing countries, it does not contemplate any absolute exemption from countervailing duties as proposed by Brazil.

12. Mexico has put forward certain ideas concerning differentiated and more favourable treatment, one of them being that developing countries should not be subject to any measures that developed countries might otherwise be permitted to take under Article VI:6(b) of GATT (the right of developing countries to take action under that provision when subsidized exports from developed countries causing material injury to developing third countries should be maintained) and that procedures for consultations should be established to deal with cases where subsidized exports from a developing country injuriously affect the interests of another developing country.

13. Most of the proposals by developing countries include provisions for prior bilateral and multilateral consultations as a prerequisite for countervailing action.

The Canadian draft arrangement on subsidies and countervailing duties[1/]

14. This was put forward by Canada in February 1977, as it was explained, not so much as a proposal reflecting Canada's own position as a contribution aimed at stimulating the discussion and advancing the negotiating process. In the preliminary discussion of the proposal a number of countries, developed as well as developing, expressed reservations on various points, and no country seemed to be willing to accept the text as the basis for the negotiations. As it represents the first relatively concrete and systematic proposal to date it is thought that it may be of use to examine it in some detail.

15. It should be pointed out at the outset that the Canadian draft text does not lend itself easily to a brief summary owing to its complexity and its multiple alternative or unclear provisions.

16. The proposed arrangement, which is drafted in the form of a self-contained instrument,[2/] interprets, elaborates and, in some respects, significantly broadens the present GATT rules on subsidies and countervailing duties (Articles XVI and VI), lays down elaborate provisions concerning notifications, consultations, surveillance and dispute settlement procedures, domestic administrative proceedings (including judicial review and appeal procedures), and includes certain provisions relating to the rights and obligations of developing countries and some general provisions. The draft contains alternative provisions on a number of key issues where it has not been deemed possible to meet the diverging positions among participants by way of a single text.

1/ MTN/NTM/W/80

2/ The arrangement is drafted on the basis of the "conditional MFN" principle, i.e. the rights and obligations under the arrangement would only apply to signatories.

(a) Provisions relating to subsidies

17. The rules on subsidies (Articles 1-3 of the text) would modify the present structure of GATT Article XVI by differentiating the obligations between three product groups (non-primary products, primary industrial products, and primary fishery and agricultural products). Separate rules are provided for each product category, both with regard to export subsidies and other subsidies. The draft does not define the product coverage of the various categories other than by way of a reference in Articles 2 and 3 to the general definition of "primary products" contained in supplementary note 2 to Article XVI, Section B, of GATT.1/

18. The provisions relating to export subsidies2/ would extend the existing prohibition of such subsidies on non-primary products in Article XVI:4 to cover also primary industrial and some primary fishery and agricultural products.3/ This broadening of the existing prohibition is accomplished by means of a rather radical interpretation of the provisions of GATT Article XVI:3, to the effect that the granting by a signatory of an export subsidy on such products would automatically be deemed to result in that signatory having "more than an equitable share of world trade" in the product concerned.

19. As regards other subsidies ("domestic subsidies"),4/ the draft provides two alternative sets of obligations.5/ None of these alternatives would imply any

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1/ This note defines a "primary product" as "... any product of farm, forest or fishery, or any mineral in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade". Thus, one might assume that the suggested category "primary industrial products" would basically consist of ores and minerals and forestry products such as logs and timber.

2/ The draft envisages three alternative ways of defining export subsidies - either by way of a general definition (cf. article 6A of the draft), or by enumeration of the practices deemed to be export subsidies, or thirdly by a combination of these alternatives.

3/ For the category "primary agricultural and fishery products", the draft would further differentiate the obligations on export subsidies between three subgroups of products, the coverage of which would be a subject for negotiations. For one group of products export subsidies would be prohibited; for a second, existing subsidies would be subject to a standstill undertaking and be phased out progressively; and for a third they would be permitted up to certain (unspecified) levels (cf. Article 3A (a) - (c) of the draft).

4/ The present GATT rules do not deal specifically with "domestic subsidies". Such subsidies are only subject to the notification and consultation requirement in Article XVI:1 (if they operate "directly or indirectly" to increase exports or to decrease imports). Article VI, however, permits countervailing actions against any subsidy granted "directly or indirectly" on the manufacture, production or export (including special transportation subsidies) of a product provided that the subsidization causes or threatens to cause material injury to a domestic industry in the importing country.

5/ The draft contains a general definition of "domestic" subsidies (Article 6B).

specific constraints on the use of such subsidies. The difference between the two is mainly related to the scope for countervailing actions in each case. The first alternative would imply a listing of specified "domestic" subsidy practices and in respect of each practice, determination of acceptable levels of subsidization below which countervailing actions would not be authorized but above which counter measures could be taken if the subsidization had caused or threatened to cause injury. According to the second alternative, signatories would undertake certain general obligations in respect of "domestic subsidies" (e.g. to take all necessary steps to minimize trade diverting or trade distorting effects of such subsidies and endeavour to avoid creating injury to the industries of other signatories). Countervailing actions would under this alternative not be precluded in relation to any particular level of subsidization but would be subject to a more rigorous test of injury.1/ Both alternatives are provided for in respect of non-primary and primary industrial products, whereas only the second would apply to primary fishery and agricultural products.

(b) Provisions relating to countervailing measures

20. The provisions governing the use of countervailing measures are, if possible, even more complex than those on subsidies. In order to understand their implications, several articles of the draft (e.g. articles 4-6) should be read in conjunction. If implemented, these provisions would imply a revision of GATT Article VI in a number of important respects. First of all, it is important to note that the draft's definition of "countervailing measures" (Article 6D) would significantly broaden the scope of application of that Article, as it would permit not only countervailing duties 2/ as a remedy against subsidization but also other counter measures such as increased tariffs, quantitative restrictions and withdrawal of tariff bindings. The draft does not specify the circumstances under which these additional counter measures could be applied. It could, owever, be assume' that they are intended for cases where countervailing duties in the traditional sense might prove inappropriate, for instance against subsidization on third country markets or against subsidization resulting in import replacement.

21. The broadened scope for counter measures is balanced by a set of provisions which would significantly limit the scope for unilateral countervailing action. Thus it would be for a multilateral body to determine whether or not a signatory is in breach of its obligations (e.g. by paying a subsidy inconsistent with the arrangement) and to authorize imposition of a countervailing measure (i.e. in line with the provisions of Article XXIII of GATT). Determinations regarding the existence of injury would be left to the authorities of each signatory, but one could

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1/ A footnote to Articles 1B and 2B of the draft arrangement seems to indicate the possibility of providing for different injury criteria to deal with different situations. However, on closer examination it appears that the same injury criteria (unspecified) would in fact apply for countervailing measures against any type of "domestic" subsidy.

2/ Article VI:3 of GATT defines a "countervailing duty" as a special duty levied for the purpose of offsetting subsidies, not in excess of the estimated bounty or subsidy.

request examination of the consistency of such determinations with the relevant provisions of the arrangement by a multilateral body.

22. In simplification of the GATT provisions, the draft makes no distinctions between the procedures to be followed for countervailing actions against subsidization affecting a domestic industry and subsidization affecting third country interests. With regard to counter measures against export subsidies the draft includes two alternative provisions, reflecting different attitudes concerning the need for injury criteria. According to the first, which reflects the attitude of the United States, prohibited export subsidies would as such be deemed to be injurious and would therefore not require a test of injury for the imposition of countervailing measures (but would still be subject to prior consultations and authorization by a multilateral body). Under the second alternative, countervailing measures to offset the adverse effects of export subsidies would be subject to the same injury requirements as other subsidies.1/

23. The various stages of a countervailing action as envisaged in the draft might be as follows (assuming that the second alternative mentioned above is adopted):

- consultations between the country allegedly granting a subsidy inconsistent with the arrangement and the country which considers its industry injured thereby with a view to reaching agreement as to the facts and how the matter might be resolved;

- if no mutually satisfactory solution has been reached in such consultations within a fixed time period, either country may refer the matter to the multilateral body;2/

- the multilateral body would consider the matter with a view to facilitating a solution. If it decides that the subsidy in question is inconsistent with the arrangement it will authorize the affected country to impose a countervailing measure;

- in case the multilateral body cannot reach a decision within a fixed time period it will, on the request of either country, refer the matter to a panel which shall promptly investigate the matter, make a statement concerning the facts and make appropriate recommendations:

- if the panel determines that the subsidy at issue is inconsistent with the arrangement it shall recommend elimination or modification of the subsidy, compensation for the damage caused by the subsidy, and/or authorization by the multilateral body of imposition of a countervailing measure;

1/ The draft leaves open the question of the degree of "injury" which should exist to motivate countervailing measures (i.e. whether it should be "material", "serious" or subject to any other qualification).

2/ The draft envisages the establishment of a multilateral body to administer the arrangement composed of representatives of all signatories and of a panel consisting of 3-5 "non-governmental persons".

- if a countervailing measure is imposed, the country affected by it may request examination by the multilateral body as to whether the injury determination made is consistent with the provisions of the arrangement and whether the impact of the countervailing measure is greater than required to offset the effect of the subsidy. The procedures to be followed upon such a request include most of the elements described above, i.e. examination by the multilateral body and the panel; and

- the draft also provides for review of the need to maintain countervailing measures imposed and stipulates that a countervailing measure may only remain in force as long as the relevant subsidy remains in effect or as long as it is causing injury.

(c) Definitions, procedural and general provisions

24. Article 6 of the draft contains a number of definitions and provisions relating to domestic administrative procedures. Apart from the definitions of subsidies and countervailing measures mentioned above, it defines the concept of "industry" and specifies certain indices of injury to be considered in injury determination while leaving the basic question of the degree of injury warranting a remedy open to negotiations.1/ It also includes certain guidelines to be followed in domestic investigations relating to subsidization or determination of injury and provides for the institution of judicial, arbitral or administrative tribunals or procedures for reviewal and correction of the imposition of countervailing measures. Most of these provisions are built upon the corresponding Articles of the GATT Anti-Dumping Code. Article 9 contains certain general provisions dealing with the rights and obligations of signatories in respect of measures in critical and emergency situations, provisions relating to retroactivity, etc.

(d) Provisions relating to developing countries

25. The rights and obligations of developing countries are dealt with in one of the final articles (article 7). As regards subsidies, the text implies that specified adhering developing countries would be allowed to grant otherwise prohibited export subsidies but only in respect of some products (a list of which would be drawn up) and only for a limited time period (to be determined) necessary to make those products competitive internationally. While the scope of the obligations is not totally clear from the text, the way it is drafted the article could conceivably be interpreted to mean that some developing countries would have to assume the full obligations of the arrangement as regards export subsidies. There is no special provision for adhering developing countries in respect of the rules governing the use of "domestic" subsidies

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1/ A note to Article 6G of the draft reflects the position of Canada and some other developed countries that the degree of injury should be much more than de minimis or negligible, a concept which has been applied by the United States' authorities in determining injury in anti-dumping cases.

26. As regards countervailing duties the article implies that the developed countries signatory to the arrangement would undertake not to impose countervailing measures against export subsidies granted by developing countries for products falling within the "permitted category", as long as such subsidies were not causing injury.1/ As regards "domestic" subsidies a similar exemption would apply if the subsidy results only in import replacement in respect of products not bound in the developing countries' tariff schedule.2/ This means that a developed country can impose countervailing measures against developing countries' products receiving domestic subsidies which cause export expansion and injury.

27. In discussing the Canadian draft 3/ developing countries have generally reiterated their basic position with regard to special and differentiated treatment and emphasized that provisions for such treatment should be embodied in every relevant provision of an agreement and not be relegated to a single paragraph.

28. The degree of "differential" treatment envisaged in the draft agreement obviously falls substantially short of meeting the objectives of developing countries. Besides, it would obviously be extremely difficult to negotiate the suggested lists of products for which individual developing countries would be allowed to grant export subsidies. Even some developed countries have admitted that there must be less complicated ways of extending special and differentiated treatment for developing countries.

29. Some developed countries, e.g. the United States, have maintained that the more industrially advanced developing countries should undertake certain obligations as regards the use of export subsidies. Even if some developing countries should find it possible to do so, acceptance of such obligations would need substantial inducement in the form of concrete benefits deriving from participation. Here the Canadian draft offers no more than an undertaking that countervailing measures would not be applied on developing countries' exports where the subsidy causes no injury - an obligation which all GATT contracting parties, except the United States, are already bound to respect - and a similarly meaningless obligation to exempt developing countries from countervailing measures against "domestic" subsidies. More interesting benefits for developing countries are needed for them to consider it worthwhile to adhere to this arrangement.

1/ The intention of this provision appears to be to provide for some degree of differentiated treatment in case the first of the alternative solutions discussed in paragraph 22 above would apply, i.e. if countervailing measures could be applied against export subsidies without a test of injury. If the second alternative would apply (i.e. if counter measures against export subsidies would also be subject to an injury test), there would be no special provisions for developing countries regarding counter measures against export subsidies.

2/ The rationale for the reference to unbound items is not further explained in the draft.

3/ See the Interregional Project's note on the meeting of the Sub-Group in February 1977, pages of this document.

30. On the other hand the Canadian proposal is potentially of value to developing countries, if it can be suitably adjusted to meet their requirements. For instance, even without the desired complete exemption for all exports from developing countries, it would be an improvement for them with the establishment of objectives and strict criteria for the imposition of countervailing duties and rules requiring prior bilateral and multilateral consultations. The procedures provided in the Canadian draft (cf. paras. 21-23 above) may be overly rigid but are broadly in line with those suggested by developing countries.1/

31. Much further discussion is obviously needed before all the elements of an injury criterion which adequately takes account of the interests of developing countries are sorted out. The basic question of what degree of injury should exist before countervailing measures could be taken is left open in the Canadian draft. The key elements of developing countries' proposals as regards the injury criteria are that material injury should be caused to an entire industry and not only a few individual production units,2/ and that it results directly from a subsidy. The mere threat of such injury should not be a valid cause of countervailing action against developing countries and due account should be taken of the trade interests of the exporting country (in accordance with the provisions of paragraph 3(c) of Article XXXVII of GATT, and of the adverse impact of the countervailing action on the affected industry and the economy of the exporting country). A further strengthening of these elements might come from a more explicit obligation for developed countries to explore all possibilities of redressing a situation of proven material injury through internal adjustment measures before resorting to countervailing duties (cf. the proposal by Venezuela). The position may also be taken that subsidized exports from developing countries should be subject to a more rigid injury test than those from developed countries (e.g. by providing that in the former case injury should be "serious" in the sense of Article XIX of GATT, i.e. safeguards criteria should apply). This would be particularly important were the scope of Article VI to be broadened so as to allow recourse to other counter measures than countervailing duties as suggested by Canada.

32. Whether subsidies affecting agricultural products are to be dealt with in the specialized Sub-Group or in the Agriculture Group, developing countries would naturally wish to support a solution which would set stricter limitations on the subsidization by developed countries of products which compete directly or indirectly with products of export interest to developing countries.3/

33. It would seem highly undesirable, if not inappropriate, to base an agreement on subsidies and countervailing duties on the "conditional MFN" principle as does the Canadian draft. Even with substantial improvement, it is most unlikely that such an agreement can be accepted by all countries. In the circumstances it would

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1/ cf. for example the Brazilian proposal in MTN/NTM/W/26, paragraph 14.

2/ The Canadian draft defines "industry" in line with the provisions of the Anti-Dumping Code (i.e. meaning all or a substantial part of the producers of the like product).

3/ cf. the Mexican proposal to prohibit export subsidies in developed countries on primary products (MTN/NTM/W/43/Add.3).

be most unfortunate if the benefits are limited to adherents and denied to non-adherents. The abridgement of the unconditional MFN treatment clause would be in breach of the non-reciprocity provisions of Part IV of the GATT and the Tokyo Declaration. A comparison could for instance be made with the GATT Anti-Dumping Code which does not discard MFN application. In fact, some developed countries have argued in the Group on Non-Tariff Measures 1/ that they would be providing special and differentiated treatment to developing countries if they applied the provisions of such codes on an MFN basis.

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cf. pages 10-12.

IV. TECHNICAL NOTE

TROPICAL PRODUCTS: A GENERAL ASSESSMENT OF NEGOTIATIONS TO DATE

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Introduction

1. On 30 December 1976, a GATT press release[1] announced that seven developed participants in the Multilateral Trade Negotiations would put into effect, on 1 January 1977, "trade concessions and contributions on tropical products to developing countries". These countries had met the deadline set by the Trade Negotiations Committee in December 1976. It was expected that three other developed countries would put their concessions or contributions into effect as soon as the necessary domestic procedures had been completed.[2] These actions were described as "the first concrete results of the Tokyo Round Multilateral Trade Negotiations" and it was recalled that the Tokyo Declaration had singled out tropical products for "special and priority" treatment. The last paragraph of the press release, however, stated that "varying assessments were made in the Tropical Products Group of the initial offers made by the developed countries". This paper will attempt to provide one such assessment, including both an evaluation of the offers made as well as an analysis of the conduct of negotiations to date in this "special and priority" sector, with a view to identifying areas where further action is required.

A. BACKGROUND

2. The Tokyo Ministerial Meeting of September 1973 which launched MTN of course was not the first agreement to negotiate on tropical products, nor indeed was it the first time that "priority" was attached to liberalization in this sector. Below is a brief account of various actions taken in GATT, beginning with those relating to developing countries' exports in general, including tropical products, followed by those specifically relating to this sector. The tediousness of this account, it would seem, faithfully reflects the futility of the developing countries' efforts over a long period and their ensuing frustration whose end is unfortunately not yet in sight.

Discussions in GATT

3. Problems of trade in tropical products first received particular attention in GATT in 1957 in the context of the initial examination of the European Economic Community and its association with the "overseas territories". Ten products[3] were identified as candidates for an examination of the possible trade effects on third countries of this association. The following year, largely in response to a report of a panel of experts (the "Haberler Report"), and the consequent general recognition that the "passive" approach adopted up to then[4] was not adequate to meet the needs and objectives of developing countries, GATT established a Programme of Action

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1/ GATT/1190. (The seven were EEC, Sweden, Norway, Finland, Switzerland, Australia and New Zealand.)

2/ These three were Japan, Canada and Austria. The eleventh developed participant, the United States, has presented a preliminary offer, but implementation is awaiting "contributions" on the part of benefitting developing countries.

3/ Cocoa, coffee, bananas, oilseeds and vegetable oils, wood and timber, tobacco, hard fibres, cotton, sugar and tea.

4/ i.e. that of allowing developing countries recourse to restrictive measures and subsidies not permitted for developed countries.

"directed towards the attainment of the objectives of the General Agreement through the further reduction of barriers to the expansion of international trade",[1] which contained among its three principal topics "other obstacles to international trade, with particular reference to the importance of maintaining and expanding the export earnings of the less developed countries". The task of laying down the lines of action to be taken for the carrying out of the co-ordinated programme in this regard was given to a special Committee ("Committee III").

4. Over the three subsequent years, Committee III presented a number of reports to the Contracting Parties identifying the major obstacles to an expansion of the exports of developing countries, including those facing trade in the major tropical products (although they were not identified separately as such). The CONTRACTING PARTIES, meeting at Ministerial level in 1961, adopted a Declaration concerning the "Promotion of the Trade of Less-Developed Countries" in which it was recognized that there was a need for a "conscious and purposeful effort on the part of all governments to promote an expansion in the export earnings of less-developed countries through the adoption of concrete measures to this end."[2] In a parallel Decision, in the "Implementation of Conclusions of Ministers" the CONTRACTING PARTIES agreed that "immediate steps should be taken to establish specific programmes for action, and where feasible, target terminal dates for progressive reduction and elimination of barriers to the exports of less developed countries", and specifically that "it was necessary to bear in mind the view of most Ministers, that the question of duty-free entry for tropical products should be given careful consideration."[3] Pursuant to this Decision, Committee III established in 1962 under its auspices a Special Group on Trade in Tropical Products assigned inter alia to "consider ways of overcoming difficulties confronting less-developed countries exporting these products".[4]

5. In connexion with the reports submitted by Committee III in November 1962, the developing countries members of that Committee put forward a proposed "Programme of Action". The proponents of this Programme noted that no specific programmes had been established following up the conclusions of the Ministerial Meeting which had been expected to "result in concrete measures which would usher in a new era in the trading relationships between the less-developed and industrialized countries". They also expressed their disappointment at "the gap between the performance of the industrialized countries and the Decisions taken at the Ministerial Meeting".[5]

1/ GATT BISD Seventh Supplement, pages 27-29.

2/ Declaration of December 1961 GATT BISD Tenth Supplement, pages 28-32.

3/ Decision of 7 December 1961 GATT BISD Tenth Supplement, pages 32-34.

4/ GATT BISD Eleventh Supplement, pages 174-175.

5/ GATT BISD Eleventh Supplement, pages 204-206.

The Programme included, inter alia, duty-free entry for tropical products into the industrialized countries by 31 December 1963, following up a proposal made two years earlier by Nigeria.

6. The Programme of Action was considered by the Ministerial Meeting which launched the sixth multilateral round of trade negotiations in GATT in May 1963 (the so-called "Kennedy Round"). The Ministers had before them a report from the Special Group on Trade in Tropical Products which contained a set of general recommendations inviting Ministers, inter alia, to endorse the general objective of free access to markets for tropical products and to decide that, where prior action could not be taken on barriers to trade and restraints on consumption of tropical products, these should be dealt with in the context of the forthcoming GATT trade negotiations (i.e. the "Kennedy Round").[1] These general recommendations were accepted by Ministers, other than those of the EEC and the States associated with the Community, who maintained that the main objective should be to organize markets.

7. At the meeting of the Special Group[2] which followed the Ministerial meeting, Nigeria, supported by some other developing countries, suggested that a programme be established for the elimination of barriers to trade in tropical products. Most developed countries, however, (except EEC), suggested that liberalization should be sought in the context of the Kennedy Round. Consequently a liaison mechanism was established between the Special Group and the Trade Negctiations Committee.

Negotiations in the Kennedy Round

8. A meeting of TNC at Ministerial level in 1964 once again reiterated the intention to deal adequately with tropical products in the negotiations. In 1966 the GATT Committee on Trade and Development conducted a review of the implementation of the 1963 Ministerial Conclusions and noted that those in regard to tropical products had not been implemented in all instances as a number of tropical products were still subjected to import restrictions and high fiscal charges, as well as to differential tariffs on their processed and packaged forms. The hope was expressed that it would be possible to achieve full implementation of these conclusions in the course of the Kennedy Round.[3]

9. In 1967, the Committee on Trade and Development set up an Ad Hoc Group to carry out an assessment of the results of the Kennedy Round from the point of view of the interests of developing countries. Among the findings of this Group[4]

1/ GATT BISD 12th Supplement, pages 41-44 and 152-164. Certain individual products were the object of separate recommendations by the Special Group (cocoa, coffee, bananas, tropical oilseeds and oils, tea, tropical timber).

2/ GATT BISD 12th Supplement, pages 162-164.

3/ It might be noted in this context that under Section 213 of the Trade Expansion Act of 1962, the United States was authorized the go beyond the general 50 per cent tariff reduction on certain tropical agricultural and forestry products (defined according to geographic criteria). However, the conditions attached to this authority, including the absence of significant production in the United States, and the taking of equivalent action by EEC, rendered it almost useless in practice, (see Curtis and Vastine, The Kennedy Round and the Future of American Trade, Praeger, New York 1971).

4/ GATT BISD Fifteenth Supplement, pages 148-155.

were that tropical products accounted for 70 per cent of the cases where no reductions were made on tariffs on products of interest to developing countries. Of the almost $2 billion tropical product imports dutiable in developed countries, duties had been removed on about $125 million, i.e. about 6 per cent. It also appeared to the Ad Hoc Group that tariff escalation had been intensified in certain cases, and that there had been hardly any reductions of internal fiscal charges on tropical products. Consequently, the Committee on Trade and Development considered it necessary to reactivate the Special Group on Tropical Products to again examine problems affecting trade in tropical products and to report on ways and means of overcoming those problems.[1] The Ministerial Meeting which concluded the Kennedy Round and launched a new work programme recognized that the results of earlier efforts and the Kennedy Round had left many of the problems of most developing countries unresolved and agreed that a maximum effort was needed in GATT and elsewhere directed towards the expansion of the export earnings of the developing countries and thus, towards the early resolution of their problems.

Preparation for MTN

10. In the period between the initiation of the GATT Work Programme and the decision to embark on MTN (i.e. 1967-72) efforts towards action on tropical products were exerted in several GATT bodies. The Special Group on Tropical Products attempted to take up, on a priority basis, outstanding problems relating to tropical vegetable oils and seeds but this work was soon shifted to the Agriculture Committee. Lack of progress in the latter forum prompted a number of delegations (including Nigeria, Sri Lanka), to express their disappointment that, despite the importance of the matter, instead of urgent and concrete solutions being worked out it had merely been passed from one GATT body to another. As a result the Committee on Trade and Development "appealed to governments to give urgent consideration to the problem of trade in tropical products with a view to finding concrete solutions as early as possible".[2]

11. Another GATT body which dealt with tropical products during this period was the Group of Three[3] which was requested in 1971 to present proposals in regard to the concrete action that might be taken to deal with the trade problems of developing countries. This Group noted the continued maintenance of import duties, including tariff escalation, and internal taxes on tropical products and recommended that these be eliminated.

1/ A more comprehensive and detailed study conducted by UNCTAD in 1968, (TD/6/Rev.1), confirmed the disappointing results for developing countries in the Kennedy Round, noting inter alia that while significant tariff reductions had been made on a limited range of tropical products by individual developed countries, little or no improvement of access was achieved for several products of major export interest to developing countries and, moreover, special fiscal charges and quantitative restrictions were still applied in certain developed country markets.

2/ GATT BISD Seventeenth Supplement, pages 126-127.

3/ Composed of the Chairmen of the Contracting Parties, the Council and the Committee on Trade and Development.

12. In the preparatory work which took place between November 1972, when it was decided that another multilateral round would take place, and the 1973 Tokyo Ministerial meeting which officially launched MTN these objectives were again restated. In the period between the adoption of the Tokyo Declaration and the actual commencement of the negotiations in February 1975 (following the passage of the United States Trade Act) Group 3(f) conducted further studies of "all the pertinent data on trade in tropical products".[1/]

13. The report of Group 3(f) to the Trade Negotiations Committee identified, as had earlier reports, tariffs, tariff escalation, quantitative restrictions, internal taxes and other non-tariff measures. Although some developing countries reiterated the position that price stabilization constituted the major problem facing trade in tropical products, many others considered the removal of trade barriers to have a greater priority.[2/] Group 3(f) informed TNC that it had not been able to complete the work assigned to it in its entirety. The United States made a lengthy statement in which it referred to the possibilities of contributions by developing countries in this context.

B. THE NEGOTIATIONS IN MTN

14. At its first meeting in March 1975 the Tropical Products Group adopted a procedure as well as a date for the submission of requests on a bilateral basis, for the circulation of these requests and the form which they should take.[3/] It was clearly stated in the "Guidelines for the Organization of Negotiations" inter alia that (a) full account would be taken of the relevant provisions of the Tokyo Declaration including the principle of non-reciprocity; (b) negotiations would be initiated without prejudice to what might or might not be considered a tropical product; (c) problems facing trade in tropical products which required multilateral action might be examined by the Group; (d) full account would be taken of the solutions proposed during the work of Group 3(f).

15. Requests were submitted by 44 developing[4/] countries to the eleven developed participants. These requests referred both to tariffs (with both MTN and GSP reductions being selected) as well as to specific non-tariff measures. At the meeting of the Trade Negotiations Committee (TNC) held in December 1975, stress was laid on achieving rapid progress in this sector; TNC agreed that an agreement on tropical products should be achieved in 1976. Offers were made during the spring of 1976 by the developed countries, the United States offer being unique in that it was accompanied by its own request list for contributions by individual developing countries.

16. At the first meeting of the Tropical Products Group after the submission of offers (30 June-1 July 1976) developing countries unanimously expressed their

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1/ See series MTN/3F/3/Add.1-11, MTN/3F/4-12. The extent to which the information contained in these studies was taken into account by the participants in the negotiations is difficult to identify.

2/ MTN/6.

3/ MTN/TP/1.

4/ GATT definition.

disappointment over the scope and content of the offers.[1] Identified among the inadequacies were (a) lack of response to requests for concessions on important items, (b) offers of very minor reductions in tariffs, (c) omission or very minor reductions on processed tropical products, (d) unclear situation regarding bindings, (e) inflexibility of responses to those requests specifying either MFN concessions or GSP contributions, (f) lack of offers on non-tariff measures, and, of course, (g) requests for reciprocal concessions. Developing countries recalled that while they clearly intended to make a contribution to the overall result of MTN, such contribution could only be considered when the objectives and commitments of the Tokyo Declaration in their favour had been adequately fulfilled and when they were convinced that they had secured additional benefits from the negotiations. Developing countries also stressed the need to preserve the multilateral character of the negotiations; the ASEAN countries suggested that the only hope for doing this was to draw up a consolidated request/offer list and to explore in a multilateral context the possibilities for improving these offers, including a discussion of the "compelling reasons" which made it impossible for developed countries to comply with many requests.[2] It was agreed that the consolidated list would be prepared and that at the subsequent meeting of the Group there would be a multilateral discussion of the offers made.

17. At the most recent meeting of the Group (October 1976) such examination did not effectively take place. The consolidated request/offer list had been prepared but was not before the Group as it was classified as "Secret". Developing countries noted that with few exceptions bilateral consultations had not led to any improvements in the offers. Most developed countries announced that their offers represented a maximum effort on their part and that any improvements would have to be discussed in other areas of MTN.[3] On the other hand the United States stressed its willingness to engage in further bilateral consultations but stated that it was not prepared to grant unilateral concessions.

18. On 30 December 1976 a GATT Press Release announced that the trade concessions and contributions to developing countries by Australia, the EEC, Finland, Norway, Sweden and Switzerland would be in effect from 1 January 1977 and that it was expected that Austria, Canada and Japan would do so over the coming months.

1/ See notes prepared by the Interregional Project on the meetings of the Tropical Products Group, held in 1976 (UNCTAD/MTN/40, Supp.1, pages 100-109).

2/ See MTN/TP/W/19.

3/ The "Lettre d'Information du Bureau de Genève" of the EEC stated "The Community considers that implementation of its offer by 1st January 1977 will put an end to negotiations in the tropical products sector..." (Numéro 26, 3 novembre 1976).

C. AN EVALUATION OF THE OFFERS

19. This section examines the results of the negotiations carried out under the auspices of Group "Tropical Products" over the period 1975-76. The "evaluation" does not attempt to draw up a set of overall conclusions but is directed rather towards indicating areas for further action, given the position of developing countries that the negotiations in this area have not terminated. The contributions and concessions offered and/or implemented by developed countries are examined from two points of view (i) the response to the requests submitted by developing countries in the course of the negotiations and (ii) the progress attained and that remaining to be achieved towards the long-standing objective of duty free, barrier free access for tropical products into the markets of developed countries.

20. The results of this evaluation can only be taken as indicative, as it is difficult to assess with any degree of precision the benefits obtained from a negotiation which included so many variables such as (i) eleven tariff schedules of greatly varying structures, (ii) the existence of both MFN and GSP tariff rates complicated by different lists of beneficiaries for these rates, as well as the additional complexities of ceilings and other criteria influencing the degree of, and benefits derived from preferential treatment (iii) unanswered questions as to the degree of permanency and the contractual status of the results achieved.1/

21. A further complicating factor arose from the difference between the United States offer and the other ten, in that (i) it took the form primarily of reductions of MFN rates on items where zero GSP rates already existed, (ii) it has not been implemented. Given the fact that this study is intended mainly as a possible guide to future action rather than a historical record, separate treatment of the United States offer seemed warranted.

1. Summary

22. In the course of the negotiations carried out in Group "Tropical Products" to date, tariff requests on the part of 41 developing countries members of the Group of 77 to eleven developed market economy participants covered 5374 tariff-line items2/ and $ 19.5 billion3/ of imports from the Group of 77 (see Table 1). These tariff

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1/ Although the evaluation attempts to present some "answers", it also brings up a number of questions that can only be clarified by the developed countries themselves in the course of the continuation of the negotiations on tropical products.

2/ This figure excludes requests on 595 tariff lines covering $4.1 billion of imports from the Group of 77 where the MFN rate was already bound at zero; it includes, however, request in respect of tariff lines subject to positive MFN rates where the GSP rate was zero (this would explain, for example, the large number of tariff lines where requests were made but no offer given in the Nordic countries).

3/ Import statistics refer to 1971-1974, the import year differing among the eleven importers: Australia, EEC, Japan and United States, 1974; Sweden and Switzerland, 1972; Austria, Canada, Norway and Finland, 1971. Requests on crude petroleum have not been taken into account.

requests have been met with offers, already implemented or scheduled for implementation in the near future, on the part of ten countries, covering 850 tariff items and roughly $6 billion 1/ of imports from the Group of 77. The United States has presented a preliminary offer covering 147 tariff line items and $721 million of imports from the Group of 77, but implementation of its offer is awaiting "contributions" on the part of benefitting developing countries. Requests for liberalization of non-tariff barriers were received by the eleven participants on 4001 tariff line items, and were met with offers on only a few of these items (four in Japan and two CCCNs in the EEC) plus elimination of the import equalization tax on agricultural items covered by GSP in Finland covering nineteen CCCN categories and "undertakings" of unclear contractual status on the part of four EEC member States in respect of internal specific taxes on certain tropical products. There is thus a large disparity in the coverage of tropical offers by the developed countries in response to requests, with tariff offers made on only 17.2 per cent of the tariff items subject to requests to the ten implementing countries and requests on non-tariff measures virtually ignored.

23. The EEC offer is by far the most significant in terms of the overall value of current imports from the Group of 77 covered by offers, current imports from the Group of 77 covered by offers, even when imports already benefitting from more favourable special preferences are excluded. However, the EEC offer was subject to significant limitations in that (i) it was confined to items in CCCN 1-24, (ii) the average reduction in tariff applicable to imports from the Group of 77 was only 30 per cent, (iii) few offers involved duty-free treatment, and (iv) very few reductions were made in MFN rates, regardless of requests. The single offer of a reduction in the MFN rate on coffee (from 7 to 5 per cent) accounts for over one-third of the value of imports covered by the EEC offer.

2. Examination of the ten implemented offers

24. Of the ten offers which have been, or will shortly be implemented, 50 per cent of requests were met by offers within very few product categories, and thus the goal of duty-free access for tropical products is still far from being reached at this stage of the negotiations. Less than half of the offers provided duty-free entry, and such duty-free offers were almost totally under GSP. Although a few countries made all of their offers on a duty-free basis, as a result of the limited response to requests, the average tariff cut afforded by the offers, taken over all requested items, amounted to only 14.9 per cent.

1/ Excluding imports by the EEC from beneficiaries of more favourable special preferences, the coverage of all offers is $3.3 billion. This figure is still an overestimate, however, of imports which would actually be affected by offers, as imports by Australia, Canada and New Zealand from beneficiaries of more favourable special preferences in those countries are still included in this total.

25. It should be borne in mind that in certain cases, meaningful GSP margins could be eroded by further MFN cuts according to a general formula for tariff reduction, indicating clearly the importance of the choice of items for which special measures will be sought in the context of the work of Group "Tariffs" (the possibility of seeking further MFN reductions in this framework as a last resort, also should not be ruled out).

Coverage of Tariff Offers

26. In order to concentrate the analysis on the most important requests of developing countries, the product groups selected have been those in respect of which the majority of developed countries received requests1/ on the part of at least three developing countries. The examination covers all requested tariff lines within each of these product groups, concentrating largely on the items where the tariff treatment afforded to exports of members of the Group of 77 was not duty free, under either MFN or GSP, before the offer. Focussing on these "dutiable"2/ items facilitates an examination of the increase in market access which will be afforded to developing countries as a result of the tropical product offers.

1/ On dutiable or duty free items. From MTN/TP/W/11/Rev.2

2/ The term "dutiable" is used throughout to mean "not duty free" before the offer, on either an MFN or GSP basis, and is not used in its common sense of "dutiable under MFN" rate. Thus if an item is covered by a duty-free GSP, whether or not subject to a GSP ceiling, the tariff line is not included in the analysis of items dutiable before offers. To the extent that items duty free under the GSP are subject to ceilings (in CCCN 25-99 in EEC and Japan) which have been reached and thus where the MFN rate is applied to imports from beneficiaries, our sample of items to be analyzed is smaller than it would be if the effect of ceilings had been taken into account. Similarly, to the extent that some members of the Group of 77 are not beneficiaries of all GSP schemes and thus the "duty free" GSP products excluded would be "dutiable" for some members of the Group of 77, the product sample is subject to an additional bias in the direction of being too small. As a result the actual extent of duty free treatment provided by developed countries both before and after the offers has been overstated.

Table 1

SUMMARY OF TROPICAL REQUESTS AND OFFERS

Offering country	Number of tariff lines covered by				Imports 2/($ mill.) from the Group of 77 covered by			Nature of offers	Date of implementation	Coverage of CCCN 25-99
	Requests		Offers		tariff 1/ requests	tariff offers	duty-free offers			
	tariff 1/	NTM	tariff	NTM						
Australia	353	117	113	0	303.5 5/	121.7 5/	77.7 5/	MFN: majority duty free, some bound GSP: one third duty free, rest 20-50%	1.1.77 1.7.76	yes
Austria	412	252	60	0	72.7 7/	1.5 7/	0.3 7/	MFN: none GSP: half of offers duty free	1.7.77	no
Canada	328 3/	90 3/	86 3/	0	172.7 7/	46.3 7/	43.5 7/	MFN: mostly free GSP: mostly free	1.4.77	yes
EEC	600	499	155	2 CCCNs	8,993.2 5/ 5,692.6 5/8/	5,294.1 5/ 2,500.0 5/8/	988.2 5/ 419.7 5/8/	MFN: reductions of varying sizes; 10 offers of no reduction, binding to be considered later GSP: some free; frequent reduction of 1-3 tariff points; offers on 19 items duplicate the 1975-6 GSP. On some items certain beneficiaries excluded NTM: undertake not to raise taxes; liberalized QRs on 2 CCCNs	1.1.77	no
Japan	368	330	79	4	3,834.7 5/	380.9 5/	230.1 5/	MFN: free or 30-50% reduction GSP: reductions, some free: 13 offers are solely a continuation of flexible administration of GSP ceiling NTM: **removal of one tariff and three import quotas**	1.4.77	yes
New Zealand	474	460	147	0	21.9 7/	3.5 7/	3.2 7/	MFN: none GSP: reductions of 30-50%, some free	1.7.76	yes
Nordic countries:										
Finland	487	430	24	19 CCCNs	40.4 7/	28.1 7/	3.5 7/	MFN: 2 items reduced GSP: duty free NTM: removal of import equalization tax on GSP in CCCN 1-24	1.1.77	yes
Norway	570	607	20	0	9.5 7/	0.1 7/	0.1 7/	MFN: none GSP: duty free	1.1.77; 6 items 1.6.77	yes
Sweden	563	499	20	0	163.7 6/	120.5 6/	120.5 6/	MFN: duty free, bound GSP: duty free	1.1.77	yes
Switzerland	329	288	146	0	211.9 6/	59.0 6/	38.5 6/	MFN: none GSP: majority duty free; some items reduced and beneficiaries excluded. Offers on 36 items reiterate duty free treatment granted under the GSP in 1974	1.1.77	yes
United States	890 4/	429 4/	147 4/	0	5,713.8 5/	721.6 5/	454.8 5/	MFN: reductions to the maximum authority except jute, coir, leather headgear and wood (16-30% cut) GSP: none	none	yes

1/ Request from Group of 77 only, excluding requests for tariff cuts on items with an MFN rate already bound at zero.

2/ An offer on part of the tariff line has been considered here as covering the whole tariff line, thus systematically overestimating imports from the Group of 77 covered by the offer, the same distortion arises in the figure for imports covered by requests. In some cases further overestimation is due to tariff reclassification which has taken place since the year of import data used.

3/ Canadian tariff items.

4/ TSUS items.

5/ Imports by the developed country in 1974.

6/ Imports by the developed country in 1972.

7/ Imports by the developed country in 1971.

8/ Imports from the members of the Group of 77 not receiving special preferences.

27. Of the 51 product groups chosen for this study, offers covered over 50 per cent of requests on dutiable tariff lines on only fourteen (see the last fourteen products in Table 2).1/ The remaining 37 products, shown in the upper part of Table 2, received a lesser degree of coverage in the offers of the ten implementing countries, and are listed in order of their lack of coverage (column 4).2/

1/ The statistics shown in columns 3 and 5 of Table 2, where the percentage has been calculated on the summation of requests and offers in the ten markets, must not be interpreted as indicative of the average picture over the ten countries. Given the differing number of tariff lines within a given product among countries, these statistics would be a biased indicator of the average over the ten countries, depending heavily on the situation in the country with the largest number of tariff lines in the product. By showing statistics based on simple summations as in columns 3-5, and interpreting each tariff as a barrier to be reduced, the focus is rather on the overall volume of requests and offers. In this sense, the statistics isolate the areas where more attention is needed generally by the offering countries. It should be noted that columns 6-8 of Table 2, however, refer to the average picture of the ten countries, as the tariff averages for each country were combined to form the overall average in these columns. Thus, the information included in these three columns contain no bias due to differing numbers of tariff lines among the countries.

2/ Requests were often made by developing countries on all items of interest to them, regardless of the duty-free status of the product, for several reasons the most important being that: (a) requests were made for MFN reductions on products already subject to a duty-free GSP, either because the requesting country did not benefit from the particular GSP scheme, or because it would prefer MFN reductions; (b) some requests were made at the CCCN heading level, in which case all tariff lines in that CCCN have been included as being subject to the request. We can thus interpret the overall list of requests as indicative of the tropical products of interest to the requesting countries. In order to more accurately assess the lack of coverage of offers in the context of achieving duty-free access in the products of interest to the Group of 77, column 3, in which the requests on dutiable items are presented as a percentage of total requests (on dutiable and duty-free items) received on tariff lines in the product group has been included in Table 2. The number in this column provides an indication of the extent to which items of interest to the requesting countries were afforded duty-free access, either under MFN or GSP, before the offer. For example on honey, where practically all of the requested items are dutiable (from column 3), the fact that 88.9 per cent of the items were not covered by offers is more discouraging, from the point of view of achieving duty-free access in the product, than on perfumery and pharmaceutical plants, where although none of the requests on dutiable items were met by offers, only 24.0 per cent of the requested items were dutiable before the offer was made.

Table 2

COVERAGE OF TROPICAL PRODUCTS OFFERS BY TEN COUNTRIES ON REQUESTED[1] ITEMS

PRODUCT GROUP		Requests[1] (no. of tariff lines[2])	Requests on dutiable items[1] as % of total[3] requests	% of requests[1] not covered by offers	% of offers[4] dutiable	Applicable[5] tariff on requests[1]			No. of countries receiving requests[1]	Countries[6] implementing:		
Description	CCCN					before offer	after offer	% reduction		no offers	dutiable offers	duty free offers
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Oil seeds and flour	1201-2	7	19.4	100.0	-	12.9	12.9	0.0	4	ALA,CND,FIN,JPN	-	-
Perfumery and pharmaceutical plants	1207	6	24.0	100.0	-	10.5	10.5	0.0	2	CND,JPN	ALA*	ALA*,EEC*,SWZ*
Semi-manufactured leather	4102-8,4110, 4302	82	43.9	100.0	-	10.4	10.4	0.0	8	ALA,ATA,CND,EEC, FIN,JPN,NOR,NZ	-	-
Travel goods, handbags and the like	4202	37	46.3	100.0	-	15.4	15.4	0.0	6	ALA,ATA,CND,FIN, JPN,NZ	-	-
Silk yarn, not for retail sale	5004-6	14	53.8	100.0	-	8.0	8.0	0.0	5	ALA,CND,JPN,NZ,SWZ	-	-
Cotton	5501	3	30.0	100.0	-	3.4	3.4	0.0	1	SWZ	-	-
Bed, table, toilet and kitchen linen	6202	167	95.8	99.4	0.0	19.2	17.9	6.8	9	ALA,ATA,FIN,JPN, NOR,NZ,SWD,SWZ	-	CND
Vegetables, fresh or dried	0701,0704-6	217	76.7	90.3	23.8	16.1	11.6	28.0	10	SWD	ALA,EEC,JPN	ALA*,ATA,CND*,EEC, FIN,JPN,NOR,NZ,SWZ
Footwear	6401-5	129	65.5	89.1	64.3	19.6	18.5	5.6	9	ALA,ATA,FIN,JPN, NOR,SWD,SWZ	CND,NZ	CND*,NZ
Honey	0406	9	90.0	88.9	100.0	36.1	36.0	0.3	8	ALA,ATA,CND,FIN, JPN,NOR,SWZ	EEC	-
Silk fabric	5009	26	61.9	88.5	33.3	12.9	12.3	4.7	6	ALA,ATA,JPN,SWZ	CND	NZ
Fish, crustaceans and molluscs, fresh, frozen, etc.	0301-3	174	34.1	82.8	76.7	8.4	6.7	20.2	9	FIN,NOR	EEC,JPN,NZ	ALA*,ATA,CND,EEC*, JPN,SWD*,SWZ
Furniture	9401,9403	32	57.1	81.3	100.0	20.5	16.7	18.5	4	ATA,CND	ALA,JPN*,NZ	JPN*
Sugar	1701	20	64.5	80.0	0.0	25.3	24.3	4.0	7	ALA,CND,FIN,JPN, NZ,SWZ	-	NOR
Manufactured articles of leather	4203-5	49	61.3	79.6	100.0	17.3	15.2	12.1	7	ATA,CND,FIN,JPN, SWD	ALA,NZ	-
Fixed vegetable oils	1507	58	63.7	79.3	100.0	14.1	13.4	5.0	9	ALA,ATA,FIN,JPN, NOR,SWZ	CND,EEC,NZ	EEC*
Rice	1006	9	40.9	77.8	0.0	19.8	18.8	5.1	6	FIN,JPN,NOR	-	CND,SWZ
Alcoholic beverages	2209	22	91.7	77.3	20.0	35.7	34.6	3.1	7	ATA,JPN,NZ,SWZ	ALA*,EEC	ALA,CND
Twine, rope and articles thereof: sacks and bags	5904-6,6203	35	33.3	74.3	55.6	16.8	14.1	16.1	5	ATA,EEC	CND,NZ,SWZ	ALA*,CND,JPN*,SWD*
Fish,crustaceans and molluscs, prepared	1604-5	68	39.1	73.5	33.3	12.0	8.9	25.8	9	ALA,NZ,SWD	EEC	ATA,CND,FIN,JPN, NOR,SWZ*
Vegetables, prepared	2001-2	85	83.3	72.9	43.5	22.6	16.6	26.5	10	-	ALA,CND,EEC,JPN SWZ	ATA,FIN,NZ,NOR, SWD,SWZ
Wood panels	4415	14	40.0	71.4	50.0	22.7	19.5	14.1	5	ALA,ATA,JPN	NZ	CND
Oil cake	2304	10	41.7	70.0	0.0	9.2	1.3	85.7	4	FIN,JPN	-	NZ,SWZ
Rubber articles	4011-14,4016	62	47.3	69.4	63.2	21.5	18.3	14.9	4	CND,FIN	ALA,NZ	JPN*,NZ
Manufactured tobacco	2402	16	100.0	68.8	100.0	82.2	81.8	0.5	7	ALA,CND,FIN,JPN, NOR,SWZ	EEC	-
Fruit, prepared	2001,2003-7	288	86.0	68.1	67.3	25.0	21.5	14.0	10	-	ALA,ATA,CND,EEC, JPN,NZ,SWZ	ATA,CND,FIN,NOR, NZ,SWD,SWZ
Lac and resins	1302	6	42.9	66.7	0.0	15.0	11.7	22.0	3	ATA	JPN*	CND,EEC*,SWZ*
Vegetable saps and extracts	1303	6	46.2	66.7	100.0	14.3	11.2	21.7	3	JPN	EEC	ALA*,EEC*,SWZ*
Molasses	1703	6	60.0	66.7	0.0	54.6	22.5	58.8	3	CND,SWZ	-	JPN
Natural rubber	4001	3	15.8	66.7	0.0	9.0	6.7	25.6	2	NZ	-	ALA,CND*,JPN*
Cut flowers	0603	23	92.0	65.2	50.0	18.3	14.3	21.9	7	NOR,SWD	ATA,CND,EEC	ALA*,ATA,FIN,SWZ
Fruit, fresh, dried	0801-9,0812	109	54.5	64.2	30.8	12.8	10.6	17.2	10	SWD	EEC,JPN,SWZ	ALA*,ATA,CND,EEC, FIN,JPN,NOR*,NZ,SWZ
Carpets	5801-2	47	77.0	61.7	55.6	18.4	15.2	17.4	8	ATA,EEC,FIN	CND,NZ,SWZ	ALA*,CND,JPN,NOR
Fruit, provisionally preserved	0810-11,0813	10	90.9	60.0	50.0	17.0	14.3	15.9	6	ALA,ATA,JPN,SWZ	CND,EEC	CND
Wood articles	4420-28	45	44.1	55.6	80.0	20.7	12.6	39.1	4	ATA,CND	ALA,JPN*,NZ	ALA
Semi-manufactured wood	4405-14, 4416,17,19	44	24.2	54.5	25.0	9.4	6.8	27.7	5	ATA,JPN	ALA,NZ	ALA,CND,NZ
Unmanufactured tobacco	2401	13	52.0	53.8	83.3	128.3	126.4	1.5	5	JPN,NZ	ALA,EEC	ALA*,CND,SWZ*
Jute fabrics	5710	26	74.3	46.2	92.9	14.9	12.9	13.4	7	ATA,EEC,FIN,JPN,SWD	NZ,SWZ	ALA*,NZ
Processed cocoa	1803-5	14	43.8	42.9	100.0	13.0	9.6	26.2	6	ATA	CND,EEC,JPN*,NZ, SWZ**	ALA*,CND*,SWD*,SWZ*
Tea	0902	7	36.8	42.9	50.0	12.7	5.5	56.7	4	NZ	EEC*,JPN	ALA*,ATA,EEC
Sauces, condiments, seasonings	2104	12	70.6	41.7	85.7	17.0	13.0	23.5	6	CND	ALA,ATA,EEC,NZ, SWZ*	ALA,SWZ*
Chocolate products	1806	37	92.7	39.5	59.1	17.0	14.1	17.1	9	ALA,FIN,JPN	CND,EEC,NZ,SWZ	CND,NOR,SWD
Sugar confectionery, not containing cocoa	1704	26	86.7	34.6	94.1	25.2	18.5	26.6	6	ALA,CND,JPN	EEC,NZ	SWZ
Semi-manufactured rubber (unvulcanized)	4005-6	15	39.5	26.7	72.7	16.2	11.7	27.8	4	ATA,CND	ALA,NZ	ALA,JPN*,NZ
Coffee	0901	25	78.1	24.0	68.4	14.5	9.5	34.5	10	ALA	ATA,EEC,FIN,JPN, NZ,SWZ	CND,JPN,NOR,SWD
Spices	0904-10	66	55.0	21.2	78.8	22.7	18.8	17.2	6	-	ATA,EEC,JPN,NZ	ALA*,CND,EEC,JPN,SWZ*
Vegetable textile yarns (excl. hemp)	5706-7	19	70.4	21.1	86.7	7.8	5.9	24.3	6	ATA,EEC,JPN	ALA,CND,SWZ	CND,SWD*
Processed coffee and tea	2102	15	88.2	20.0	50.0	11.5	6.3	45.2	8	-	EEC**,FIN,JPN,NZ, SWZ**	ALA,ATA,JPN,NOR
Glycerine	1511	2	20.0	0.0	0.0	8.0	0.0	100.0	2	-	-	EEC*,NZ,SWZ
Cocoa beans	1801	3	37.5	0.0	66.7	15.1	9.3	38.4	3	-	NZ	ATA,SWZ*
Raw hides and skins	4101	1	2.5	0.0	0.0	24.1	0.0	100.0	1	-	-	ALA

* Offers are all on items already duty free before the offer under MFN or GSP.

** No reduction offered

1/ Excluding requests where the MFN or GSP rate was zero before the offer.

2/ In Canada, the number of tariff lines are counted as CCCN plus national classification. As some items under the national classification appear in several CCCNs, there is some double counting of Canadian tariff items.

3/ Inclusive of requests where the MFN or GSP rate was zero before the offer.

4/ Excluding offers where MFN or GSP rate was already duty-free.

5/ Unweighted average of product averages in countries receiving requests on dutiable tariff lines. The product average is an unweighted average of applicable rates on requested items, excluding tariff lines where the rate was not available. In Australia and New Zealand, 1977 base rates were used.

6/ Not all ten countries may be listed for each product group, as in some cases no requests were received on dutiable items.

Key to country abbreviations:

ALA	Australia	CND	Canada	FIN	Finland	NOR	Norway
ATA	Austria	EEC	European Economic Community	JPN	Japan	NZ	New Zealand
SWD	Sweden						
SWZ	Switzerland						

28. The overall coverage of requests by offers is significantly influenced by the number of countries submitting offers (see columns 10-12 of Table 2).[1] On honey, for example, the low coverage is due to the fact that out of eight countries receiving requests, only one country made an offer. On vegetables, fresh or dried or on fish, crustaceans and molluscs, fresh, frozen etc., however, the majority of requested countries made some offers, but as a result of their lack of comprehensive coverage over 82 per cent of the overall requests on these products were not met with offers.

29. On agricultural products (CCCN 1-24), with few exceptions[2], the average tariff applied on products which were not covered by offers is higher than that existing on items covered by offers,[3] indicating a possible tendency on the part of offering countries to continue high tariff protection on sensitive items and offering reductions largely on products with below-average tariffs.

30. Products on which at least 30 per cent of the requests received duty free offers and upon which some progress toward overall duty free treatment appears to have been made as a result of the tropical products negotiations are oil cake, lacs and resins, molasses, natural rubber, semi-manufactured wood, processed coffee and tea, glycerine, cocoa beans, and raw hides and skins. Most of these items, however, were substantially duty free before the offer, on both a trade and tariff line basis; thus progress has been achieved through the further liberalization in products not previously enjoying a significant degree of tariff protection.

31. However, as a result of lack of comprehensive coverage of tariff offers in response to requests over 50 per cent of items subject to requests (including those items which were already duty free before the offer) will still remain dutiable in the following products: manufactured tobacco, bed and table linen, honey, sugar confectionery, prepared fruit, cut flowers, alcoholic beverages, jute fabrics, fruit provisionally preserved, vegetables, fresh or dried, prepared vegetables, chocolate products, sauces and seasonings, fixed vegetable oils, vegetable textile yarns, footwear, manufactured articles of leather, coffee, silk fabric, furniture, carpets, silk yarn, processed coffee and tea,[4] and sugar.

1/ The fact that a country appears in column 11 or 12 of Table 2 as a result of its submitting an offer does not mean, however, that all the requests to that country were met with offers.

2/ Exceptions are fish, crustaceans, and molluscs, where there is an insignificant difference between covered and non-covered averages, vegetable saps and extracts, sugar, and oil cake.

3/ These averages are not shown separately.

4/ Despite the number of duty free offers on these products, over 50 per cent of the tariff lines subject to requests in the ten tariff schedules will remain dutiable after the offers.

Depth of tariff cuts

32. Only in the cases of Norway and Sweden did all offers involve zero duties. Finland's GSP offers were for duty-free entry, but its MFN offers, (on coffee), involved duty reductions only. The remaining countries offered a mixture of reduction and elimination of duties.

33. Offers of duty reduction were more frequent than offers of duty elimination, and GSP offers were much more numerous than MFN offers. Of the 668 1/ offers on items which were dutiable before the offer, 60.8 per cent of the tariff lines were covered by duty reductions (58.7 per cent covered by the implementation of, or reduction in GSP rates, and 2.1 per cent of the tariff lines accounted for by offers of MFN reductions). The remaining 39.2 per cent of the tariff lines were given duty-free treatment (36.1 per cent under GSP and 3.1 per cent on an MFN basis). The offers involving positive rates cover a larger percentage of imports, however, than the tariff items indicate. Of the $2.8 2/ billion of existing dutiable imports of these ten countries from the Group of 77 subject to offers, 77.1 per cent would be subject to a reduction in duties (40.8 per cent resulting from GSP offers and 36.3 per cent from MFN offers), and 22.9 per cent would benefit from duty elimination (roughly 4.8 per cent on a GSP and 18.1 per cent on an MFN basis). On items subject to offers, the tariff reductions by the "ten" afford an average reduction 3/ in the applicable tariff 4/ of 61.3 per cent. Thus on the relatively limited number of products subject to offers the Group of 77 benefits from a significant reduction in the tariff barriers faced in these markets. However, the average tariff reduction on all items subject to requests was only 14.9 per cent. The scope and depth of tariff reductions varied considerably among offering countries as can be seen from Table 1.

1/ Offers were received on 103 tariff items (13 per cent of the offers) covering $453 million of imports by the ten countries from the Group of 77 (excluding special preference beneficiaries in the EEC) where the existing tariff, either the MFN or GSP rate, was zero before the offer.

2/ Excluding imports by the EEC from special preference beneficiaries.

3/ Average over all offers of the percentage cut on items dutiable before the offer.

4/ In order to facilitate the evaluation of tariff offers, reductions by those ten countries which have implemented their offers have been calculated on the basis of the "applicable" tariff. This term is defined as the rate generally "applicable" to imports from developing countries before the offer, i.e. the GSP rate if the product is covered by a GSP, otherwise the MFN rate. Using the pre-offer rates affects the calculations regarding Australia and New Zealand, as these two countries have reduced their tariffs unilaterally for domestic reasons since 1973.

34. The reduction in the average "applicable" tariff[1] as a result of the offers can be seen by product in Table 2. The large reductions in oil cake, molasses, tea, and processed coffee and tea are due to the fact that the majority of the offers were for duty free treatment, even though many of the requested items were not covered by offers. On glycerine and raw hides and skins the few remaining duties were eliminated. On most products, however, the overall average tariff currently applied on requested items rarely will decline by more than 30 per cent as a result of the offer, and in most cases by much less. Six products received no reduction (see the first six items in Table 2), and on many others the average tariff reduction was less than 10 per cent (bed and table linen, footwear, honey, silk, fabric, sugar, fixed vegetable oils, rice, alcoholic beverages and tobacco, unmanufactured and manufactured).[2]

35. It must be borne in mind that even when duty free treatment was offered the trade liberalization may not yet be complete. Japanese offers of duty free treatment under GSP are still subject to ceilings in CCCN 25-99. Although the administration of some of these ceilings is "flexible", the assurance of duty free treatment is by no means guaranteed for the future. Ceilings also apply to certain offers involving positive rates such as the GSP offers in EEC on cocoa butter, preserved pineapples, soluble coffee, and unmanufactured tobacco. In fact, some[3] of the

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1/ The "applicable" rate both before and after the offer (columns 6 and 7 of Table 2) may be biased for several reasons: (1) the calculations have not taken account of the effect of GSP ceilings (in CCCN 25-99 in Japan on wood, jute, carpets, table linen and footwear) which, when reached, would mean that the applicable rate would become the MFN, and not the GSP, rate (which has been used); (2) it has been assumed that the GSP rate is applied to exports from all members of the Group of 77. As certain countries are not beneficiaries of one or more schemes, the rate applicable to these non-beneficiaries is higher than the GSP rate which we have included; (3) the existence of special preferences in the EEC has been ignored; the applicable rate for beneficiaries of these schemes would be lower in most cases than what we have included here. Despite these caveats, the rate applied to the majority of countries members of the Group of 77 will be the applicable rate as we have defined it above.

2/ The product average of applicable rates in a given country is an unweighted average of applicable tariffs on each item in the product. Unweighted averages have been used, since, as many of the requested items are not yet exported by developing countries to all developed countries, weighting by imports from the Group of 77 would have thus eliminated many important items.

3/ The offers on cocoa butter and soluble coffee would not seem to be offers at all, as the GSP tariff has not been reduced, nor has the GSP ceiling been increased. For preserved pineapples other than in slices, half slices, or spirals the GSP rate has not been reduced, but the ceiling has been increased. A total of nineteen GSP offers by EEC and thirty-six GSP offers by Switzerland offer no duty reduction, and are solely a repetition of the GSP tariff in effect before the offer. Similarly, thirteen of Japan's GSP offers are solely a continuation of the duty free GSP with flexible administration of the GSP ceiling.

items included in the tropical product offer did not seem to involve any effective duty reductions.

36. It must also be noted that some GSP offers (in EEC and Switzerland) do not cover all GSP beneficiaries. Romania is excluded from the EEC offer on honey, gherkins and mixed pickles, and fruit juices, and from the Swiss offer on cut flowers, vegetables, strawberries, and jute yarn, fabrics, and articles. Brazil may be excluded from the Swiss offer on coffee, pending the outcome of further negotiations.

37. Some countries made offers for reductions in the MFN rate on items which were already covered by a GSP, and these offers have not been explicitly analyzed in the above examination where the "applicable" rate in this case was taken as the GSP rate. Offers of MFN reductions on the part of EEC, but not elimination, (in CCCN 1-24 only) and on the part of Canada (on oriental rugs and sisal handbags) reduced the MFN tariff on average by 35.5 per cent1/ and 24.4 per cent respectively. MFN reductions on the part of Finland (on coffee only), Japan, and Australia (CCCN 1-24 only) were larger, where the average percentage MFN cut on offered products was 47 per cent, 50.6 per cent and 46.6 per cent respectively (60.5 per cent in the case of Australia if 1973 base rates were used).

38. The value of these MFN reductions must be examined in light of potential MFN cuts under an across-the-board tariff reduction formulae. Any assessment in this regard would, of course, be a direct function of the depth and coverage of the general formula eventually agreed upon. For example, should the formula call for 60 per cent reductions on all products (CCCN 1-99),2/ then most MFN reductions thus far achieved in the context of tropical products amount to little more than advanced implementation of the first or second stage of the formula reductions. Indeed, the formula cuts would be deeper than those achieved under most tropical offers. (This conclusion does not apply, of course, to offers of MFN elimination.) Should the formula call for much smaller cuts, for example 30 per cent, then the offers of Japan, Finland, and Australia will provide special treatment to the tropical sector beyond that which would be available under formula cuts. Those of EEC and Canada would again amount to little more than advanced implementation. Should the formula cuts not cover CCCN 1-24, then the cuts of EEC, Finland, Australia, and some of Japan's offers will provide a net gain to developing countries resulting from the tropical negotiations (keeping in mind, of course, that there were very few MFN offers, making such a gain only minimal). The offers of Canada and part of Japan's offer will again be only advance implementation of formula cuts. If the products which

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1/ Excluding the six MFN offers of no reductions but eventually to be considered for binding.

2/ A hypothesis which roughly corresponds to the United States proposal, so far as tariffs above 6.67 per cent are concerned.

received MFN offers in the context of tropical products would otherwise be excepted from formula cuts, then the outcome of the tropical products negotiations will have provided a net gain.1/

Tariff escalation

39. One of the stated goals of MTN is to reduce tariff escalation facing the exports of manufactures and semi-manufactures from developed countries. Although there can be no precise method for measuring the extent of tariff escalation2/ over a group of countries with different tariff structures, a comparison of simple tariff averages at different stages of processing (as presented in Table 3) can provide a rough picture of the global changes in levels of tariffs on stages of processing as a result of the offers on tropical products. Two indicators have been used as a rough measure of the extent of the escalation - the absolute difference in the average tariff on two stages of processing, and the relative position of the two averages (the tariff on the higher stage divided by that on the lower stage). A reduction either of these two indicators would demonstrate a decrease in the disparity between rates on different stages of processing, and can thus be taken as some indication of a possible reduction in tariff escalation. If both indicators have decreased, the protection afforded to higher stages of processing has most likely been reduced as a result of the tropical products offer.

40. Following this methodology, it appears from Table 3, that there might have been some reduction, in general3/, in the escalation on semi-manufactured rubber and

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1/ The only other way in which negotiations on tropical products as a special and high priority sector could prove to have achieved deeper MFN reductions than would otherwise have happened would be if the base rate and base data for formula cuts is agreed upon as 1977, i.e. post-tropical product offers. In this case, assuming that CCCN 1-24 is included in formula cuts, deeper than formula reductions could be made on those items of special interest to developing countries which have already been subject to offers. If, for example, the tropical offer reduced MFN by 30 per cent and the tariff formula reduces tariffs by a further 50 per cent, developing countries would obtain a 65 per cent cut on products subject to tropical offers, as opposed to a 50 per cent cut under the tariff formula alone.

2/ The effective rate of protection can be calculated to measure the extent of the protection in a given country afforded to an industry by the tariff structure of its inputs and output. This estimate measures the protection afforded to a product by the tariff structure, including its elements of escalation, but does not measure the escalation itself. The concept of effective protection has been the subject of extensive analyses in recent years, (see articles in Gruebel and Johnson ed. Effective Tariff Protection, GATT, Geneva 1971 and "The Kennedy Round estimated effects on tariff barriers" UNCTAD document TD/6/Rev.1 1968). Its implications for developing countries in MTN has been discussed in detail in UNCTAD/MTN/40/Supp.1,pp. 184-199.

3/ The applicability of this conclusion in the case of a specific importing country can only be determined after further analysis.

Table 3

TARIFF ESCALATION AND THE TROPICAL PRODUCTS OFFERS OF TEN MARKETS

Stage of processing	Product Description	CCCN	Applicable tariff1/ on all requested items		% reduction in average applicable tariff	Change in escalation indicator as a result of offer		
			before offer	after offer		Comparison of stage	absolute difference	relative position
1	Fish, crustaceans and molluscs	0301-3	4.3	3.5	18.6			
2	Fish, crustaceans and molluscs, prepared	1604-5	6.1	5.5	9.8	2 with 1	increased	increased
1	Vegetables, fresh or dried	0701,0704-6	13.3	8.9	33.1			
2	Vegetables, prepared	2001-2	18.8	12.4	34.0	2 with 1	reduced	no change
1	Fruit, fresh, dried	0801-9,0812	6.0	4.8	20.0			
2	Fruit, provisionally preserved	0810-11,0813	14.5	12.2	15.9	2 with 1	reduced	increased
3	Fruit, prepared	2001,2003-7	19.5	16.6	14.9	3 with 1	reduced	increased
1	Coffee	0901	10.0	6.8	32.0			
2	Processed coffee	2102 ex	13.3	9.4	29.3	2 with 1	reduced	increased
1	Cocoa beans	1801	4.2	2.6	38.1			
2	Processed cocoa	1803-5	6.7	4.3	35.8	2 with 1	reduced	no change
3	Chocolate products	1806	15.0	11.8	21.3	3 with 2	reduced	increased
1	Oil seeds and flour	1201-2	2.7	2.7	0.0			
2	Fixed vegetable oils	1507	8.5	8.1	4.7	2 with 1	reduced	reduced
1	Unmanufactured tobacco	2401	56.1	55.8	0.5			
2	Manufactured tobacco	2402	82.2	81.8	0.5	2 with 1	no change	no change
1	Natural rubber	4001	2.8	2.3	17.9			
2	Semi-manufactured rubber (unvulcanized)	4005-6	4.6	2.9	37.0	2 with 1	reduced	reduced
3	Rubber articles	4011-14,4016	7.9	6.7	15.2	3 with 2	reduced	increased
1	Raw hides and skins	4101	1.4	0.0	100.0			
2	Semi-manufactured leather	4102-8,4110, 4302	4.2	4.2	0.0	2 with 1	increased	increased
3	Travel goods, handbags, etc.	4202	8.5	8.5	0.0	3 with 2	no change	no change
4	Manufactured articles of leather	4203-5	9.3	8.2	11.8	4 with 2	reduced	reduced
5	Footwear	6401-5	11.6	10.9	6.0	5 with 2	reduced	reduced
1	Vegetable textiles yarns (excl. hemp)	5706-7	4.0	2.9	27.5			
2	Twine, rope, and articles; sacks and bags	5904-6, 6203	5.6	4.7	16.1	2 with 1	increased	increased
3	Jute fabrics	5710	9.1	8.3	8.8	3 with 1	increased	increased
1	Silk yarn, not for retail sale	5004-6	2.6	2.6	0.0			
2	Silk fabric	5009	5.6	5.3	5.4	2 with 1	reduced	reduced
1	Semi-manufactured wood	4405-14,16,17, 19	2.6	1.8	30.8			
2	Wood panels	4415	10.8	9.2	14.8	2 with 1	reduced	increased
3	Wood articles	4420-28	6.9	4.1	40.6	3 with 1	reduced	reduced
4	Furniture	9401,9403	8.1	6.6	18.5	4 with 1	reduced	increase

1/ Unweighted average of product averages in each market, (unweighted, including duty-free tariff lines, excluding items where the ad valorem tariff is not available).

wood articles, where the decrease in tariffs was larger than the tariff reduction on the preceding stage of processing, and for fixed vegetable oils, manufactured articles of leather, footwear, and silk fabric, where the absence of any reduction in the tariff average on the primary stage of processing would seem to indicate that even the limited reductions on the processed goods could have resulted in some marginal reduction in the tariff escalation. In some cases, however, such as prepared fish,1/ sacks, bags and articles of wine and rope, and jute fabrics, the tariff escalation may have increased, as a result of larger reductions being implemented on tariffs in the primary stage of processing than on the final stages.

41. In the case of prepared fruits and vegetables, processed coffee, processed cocoa, chocolate products, rubber articles, wood panels and furniture, the escalation indicators have moved in opposite directions and thus the direction of change in tariff escalation is unclear. The escalation on manufactured tobacco, travel goods and handbags appears not to have changed as a result of the offers.

MFN bindings

42. Of those six participants which have implemented MFN reductions, only Sweden has indicated an unqualified intention to bind all such concessions. Australia has announced that on those seven items included in its offer list with an unbound zero rate before the offer, the binding will be effective from 1 January 1977, while the binding of MFN rates subject to a reduction will be considered only in the context of the general tariff negotiations. Bindings by EEC and Japan are also made subject to some future conditions; EEC is prepared to implement its MFN duty reductions on a de facto basis, until such time as it may be possible to bind them in the context of the final results of MTN. Japan refers to binding "at some appropriate future stage" and makes a specific exception for wood charcoal, which will not be bound. Finland does not specifically mention binding but indicates its intention to seek parliamentary approval to make its tropical product offer "effective de jure" in domestic legislation. Canada has not addressed itself to the question of bindings.

3. Preliminary offer by the United States

43. The offers put forward by the United States all involved reductions in or elimination of MFN tariffs. The United States stressed that these would take the form of bound concessions. With the exception of a few products (wood panels, 20 per cent cut, some jute yarn, 30 per cent; jute and coir cordage, 30 per cent; and headwear of leather, 16.7 per cent), the tariff reductions were offered up to the limit of the United States tariff cutting authority provided by the Trade Act of 1974,

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1/ The results for the fish sector shown in Table 3 would appear to contradict those shown in Table 2 where, on items dutiable before the offer, prepared fish would receive a larger reduction in overall tariff average as a result of the offers than would fish, fresh or frozen. The result in Table 3 is explained by the fact that the duty free offers of Sweden and Norway on prepared fish, while allowing a 100 per cent reduction in the few remaining duties on that product in those countries, have little effect on the change in overall average shown in Table 3 (on dutiable and duty free items) because of the large number of items in those countries which were already duty free before the offer.

affording 60 per cent reductions on tariffs greater than 5 per cent, and elimination of duties 5 per cent and under. Tariff reductions afforded by the offer are thus the same as could be obtained by application of the United States tariff formula1/ on initial tariffs above 6.67 per cent, but the tropical offers afford deeper cuts than would the United States formula for initial tariffs below 6.67 per cent.

44. While the majority of the tariff items offered involve MFN duty reduction rather than total elimination (61.2 per cent of the tariff lines offered would be subject to reduced duties, and 38.8 per cent would receive duty free treatment under the offer), the trade coverage, of those items which would receive duty free treatment in terms of imports from the Group of 77, is much more significant. Of the $722 million imported from the Group of 77 by the United States in 1974 in tariff items covered by the offer, 63 per cent would receive duty free treatment under the offer, while 37 per cent would still be subject to duties. These facts, mainly indicate, however, that exports of the Group of 77 to the United States were concentrated in the low tariff ranges (5 per cent and below before the offer and therefore eligible for elimination), largely in primary products. The fact that the United States is considering using its maximum tariff cutting authority on these low duty items, however, would provide a deeper MFN cut in respect of these tropical items than would be received under the general United States tariff cutting formula in this range, thereby affording a form of special measure to low-duty tropical products.2/

45. Of the 147 TSUS items in the preliminary offer, 114 are already duty free under GSP. It should be borne in mind in this context, however, that there are a number of developing countries members of the Group of 77 which are not beneficiaries under the United States scheme or which have reached the competitive need limitations on key export items under the United States GSP, and, thus, whose primary interest would seem to be in obtaining MFN concessions.

46. As indicated in the "introductory remarks" to this section, these factors would seem to justify that the United States offer be considered on a somewhat different basis. Table 4 examines the United States preliminary offer solely from the point of view of the MFN rates, concentrating the inquiry on the extent of increased MFN access to the United States market which would be afforded to members of the Group of 77 as a result of implementation of this offer.

1/ $Y = 1.5X+50$, where X is the initial tariff and Y is the percentage cut. Due to the 60 per cent maximum cut possible on the part of the United States, this formula reduces to an across-the-board reduction of 60 per cent for initial tariffs over 6.67 per cent.

2/ The United States' position that the tariff reduction formula it has proposed should be applied across-the-board to all products should be recalled in this context.

Table 4

COVERAGE OF THE PRELIMINARY OFFER BY THE UNITED STATES

Product description	TSUS number	Number of requests 1/	Percentage of requests not covered by offers 1/	Average MFN tariff 2/ on requests		
				Before offer	After offer	per cent reduction in average
	(1)	(2)	(3)	(4)	(5)	(6)
Fish, fresh, chilled, or frozen	11010-70	6	100.0	2.9	-	-
Fish, dried, salted, smoked, etc.	11110-92	13	100.0	3.1	-	-
Hides, skins, and leather	12011-50	1	100.0	2.0	-	-
Rice, whole or milled	13050-55, 13130-37	2	100.0	3.8	-	-
Honey	15570	1	100.0	2.5	-	-
Chocolate	15620-30	2	100.0	2.9	-	-
Unmanufactured tobacco	17001-61	11	100.0	75.1	-	-
Manufactured tobacco	17065-80	4	100.0	26.6	-	-
Oil-bearing vegetable materials	17503-57	1	100.0	2.5	-	-
Cotton, unprocessed	30010-20	3	100.0	2.3	-	-
Silk yarn	30830-90	7	100.0	10.1	-	-
Silk fabrics	33710-90	3	100.0	12.2	-	-
Wearing apparel and accessories	37004-38287	64	100.0	20.0	-	-
Natural rubber	44605-10	1	100.0	5.0	-	-
Footwear	70005-85	21	100.0	11.4	-	-
Luggage and handbags of leather or textile materials	70604-24	9	100.0	12.5	-	-
Articles of rubber or plastic	77203-77470	13	100.0	6.8	-	-
Leather gloves, articles of fur and leather	70535-90 79105-91	46	97.8	22.7	22.5	0.9
Vegetables, fresh, chilled, frozen	13510-13850	22	90.9	18.1	17.0	6.1
Shellfish	11401-55	9	88.9	7.1	6.7	5.6
Fish in airtight containers and other fish products	11201-11360	39	87.2	10.2	9.6	5.9
Vegetables in salt, brine, etc.	14105-81	14	85.7	11.2	10.4	7.1
Leather, partly finished or finished	12110-65	13	84.6	6.0	5.5	8.3
Fruit juices	16515-70	6	83.3	21.7	21.4	1.4
Furniture nspf	72710-55	5	80.0	9.6	8.6	10.4
Vegetables, dried, dessicated, dehydrated	14009-75	14	78.6	11.6	10.8	6.9
Edible nuts	14501-90	18	77.8	10.1	9.6	5.0
Fruits, fresh, prepared or preserved	14610-15050	47	76.6	12.5	10.7	14.4
Spirits, spirituous beverages	16806-90	4	75.0	35.2	32.9	6.5
Lumber, flooring, and mouldings	20203-66	7	71.4	4.0	3.3	17.5
Textile floor coverings	36005-36190	10	70.0	13.0	10.3	20.7
Wood veneers, plywood	24000-24590	33	69.7	11.3	9.7	14.1
Fabrics of vegetable fibres (except cotton)	33540-90	3	66.7	4.8	3.6	25.0
Essential oils	45202-80	3	66.7	5.8	4.8	17.2
Fruit preparations - jams, jellies pastes,etc.	15200-15490	21	61.9	10.5	7.9	24.8
Wooden containers and misc. wood products	20405-20698	13	61.5	10.6	8.6	18.9
Cordage of vegetable fibres	31505-31630	11	54.5	9.9	8.1	18.2
Vegetable oils, crude or refined	17600-90	10	50.0	6.4	4.4	31.3
Sauces	18245-6	2	50.0	6.8	4.5	33.8
Cut flowers	19220, 74825	2	50.0	7.5	5.0	33.3
Bags and sacks of textile materials	38545-50	2	50.0	2.8	1.7	39.3
Bamboo, rattan and basketwork, etc.	22205-64	8	37.5	12.8	7.0	45.3
Spices and spice seeds	16101-16215	20	30.0	6.9	3.7	46.4
Sugar, syrups and molasses	15520-65, 75	4	25.0	5.0	1.5	70.0
Cocoa butter	15635	1	0.0	3.0	0.0	100.0
Yarns of vegetable fibres (except cotton)	30502-50	5	0.0	9.5	0.6	93.7

1/ TSUS items, excluding requests on tariff lines where the MFN rate is zero.

2/ On MFN dutiable requests only.

47. Products where requests were received by the United States on the part of several developing countries are shown in Table 4, in order of lack of coverage by the offers. Of the forty-six products categories selected, on only nine were offers received on at least 50 per cent of the requests, and these products appear in the lower part of the table. It is only on these products that the MFN average on requested items would decline by more than 30 per cent allowing a limited increase in access to the United States market for these products. Over one-third of the products received no offers at all (see the upper part of Table 4) and the only limited reductions in the tariff averages on the remaining products will allow only a slight overall reduction in tariff barriers on these products.

D. GENERAL OBSERVATIONS

48. In light of the evaluation in the preceding pages it can be observed that much remains to be accomplished in regard to the liberalization of trade on tropical products. Especially in light of commitments accepted almost fifteen years ago, the results of the tropical products negotiations to date can only be described as disappointing. This is not to say that there are not a number of positive aspects, one being that liberalization measures in favour of developing countries have actually been put into effect.1/

49. Among other positive aspects are that: (a) Sweden, and to a lesser extent Australia, were prepared to grant bound concessions on an unconditional basis without requesting reciprocity; (b) it also appears that certain countries, perhaps Sweden, Finland and Canada, might have allocated their offers between MFN and GSP with the view of providing the maximum benefit to requesting countries, rather than viewing GSP as simply a means of avoiding a binding commitment; (c) the EEC offer did cover a large amount of trade in overall terms; (d) tariff reductions of considerable depth were provided by several countries, e.g. Switzerland, Japan, Australia and Finland, in certain product categories; (e) most of the initial offer of the United States went to the maximum extent permitted by the Trade Act of 1974. However, in light of the overall objective of negotiations in this area, and especially the possible contribution that could have been made by the developed countries, which provide the major markets for tropical products, these positive aspects do not invalidate the general observation that the results of the negotiations to date in this "special and priority" sector have been much less than had been expected.

50. While there are many factors, economic and political, which can be cited as responsible for the disappointing outcome of the tropical products negotiations to date - the lack of political will on the part of the developed countries genuinely to alleviate the hardship of developing countries, and an unspoken intention of linking the trade negotiations with developing countries to extraneous considerations (e.g. the security of supplies of essential materials), may be among them - the meagre results to date can be largely attributed to two factors directly arising from the conduct of the negotiations: (a) undue bilateralization of the negotiating progress, and (b) lack of a meaningful application of the principle of non-reciprocity in the sense of Article XXXVI:8.

1/ Obviously a major factor which was not examined was the extent to which this duty-free, barrier free access varied between individual countries.

Conduct of the negotiations

51. The decision taken in 1975[1/] to conduct negotiations on a request/offer basis, a retrograde step in itself, was rendered even more disadvantageous for developing countries by the accompanying guidelines which failed to define what the results of the negotiations should be, and consequently what the developed countries were committed to strive to give.[2/] The commitment to treat tropical products as a special and priority sector, in effect, appears to have been taken in the temporal sense only, and the aim seems primarily to have been to get over with these discussions as quickly and painlessly as possible in order to get down to "serious business" on other problems, such as the development of a general tariff formula.

52. The request/offer procedure, and the manner in which it was carried out, also left much to be desired in that:

(a) Operating under the impression that developed countries were prepared to take immediate action, developing countries prepared their requests in considerable haste and made little attempt to co-ordinate their positions. Inevitably certain requests were unclear or mutually contradictory. This enabled developed countries to respond to those requests which best suited their purposes. In contrast, the developed countries took their time to prepare their offer lists, and with much greater care.

(b) There being no prior commitment to duty-free entry as a formal objective, developed countries did not consider themselves obliged to make significantly deep tariff cuts or to present explanations of their inability to do so even where no reduction was made at all. This is in marked contrast to the practice adopted among developed countries under which countries wishing to claim exceptions from the application of a general tariff reduction formula are subjected to a justification procedure.[3/] The argument that such an approach was not warranted because of the non-reciprocal nature of the negotiations would not appear valid. The principle of non-reciprocity would be meaningless if it were maintained that negotiations involving GATT Article XXXVI:8 could not be conducted under the regular procedures but must depend on the "charitable disposition" of the developed countries.[4/]

1/ MTN/TP/1

2/ As has been emphasized in the first part of this paper, duty-free access for tropical products in developed country markets has been a long-standing goal of developing countries recognized by most developed countries. However, this objective was not specifically mentioned in the guidelines to the tropical product negotiations.

3/ The Group's decision not to set any definition of what constituted a tropical product might not have served the purposes of developing countries as it had appeared at first. Agreement upon such a definition by developed countries could have implied, or would have been accompanied by, their acceptance of the goal of duty-free treatment for the products so identified.

4/ Cf. the second interpretative note ad Article XXXVI:8, which was included in anticipation of this kind of interpretation.

53. Developing countries' criticisms of the United States' intention to seek reciprocal contributions from the developing countries seem to be, if anything, understated, when the approach adopted by the United States is examined in detail. For example, the offers presented by the United States to each individual developing country listed a series of products considered to be of trade significance to that developing country, regardless of whether they had been included in its request list. The presentation of these "offers lists", presumed to show the aggregate value of the United States' offer to the country concerned, implied that in considering what contribution it should make in favour of the United States, the developing country should take into account that aggregate value, and not merely those products of which it was a principal, or even a substantial supplier. One might observe that this not only departs from the multilateral principle, but also from the traditional bilateral negotiating technique used in earlier GATT rounds in the course of which reciprocal requests were generally made only to those countries which were principal suppliers of the product.1/ This departure is particularly injurious as most of the few major tropical products are exported by a large number of countries of different sizes. Under the classic approach, smaller countries for which exports of a given commodity were relatively important to their own economies, but which were relatively small suppliers on the world market, would simply benefit from concessions granted in favour of larger suppliers. This benefit accruing to smaller countries has been traditionally highlighted by the United States in its defense of the unconditional most-favoured-nation clause. However, the approach adopted by the United States in the tropical product negotiations in 1975-1976 would entail the nullification of this advantage for the vast majority of developing countries.2/ There are indications, however, that the stand so far taken by the United States may be ameliorated when the negotiations resume later in 1977.

54. Certain other developed countries have been quick to take credit for the fact that they did not seek reciprocity from developing countries in the context of the tropical product negotiations.3/ While this is to be welcomed, the developed countries' offers nevertheless fall short of the objectives of the negotiations as implied in past declarations and in the Tokyo Declaration. The offers of some developed countries took the form entirely of improvements in their respective Generalized Systems of Preferences, while other developed countries have GSP as the largest element in their offers.

1/ See MTN/TP/W/6 and Add.1.

2/ For example, the United States has on this occasion included sugar on its offer lists presented to small sugar-exporting countries which by no stretch of the imagination constitutes even substantial suppliers of this commodity, thereby implying that a reduction of the United States tariff on sugar should be paid for by each and every supplier of sugar and not merely the principal or substantial suppliers to which Article XXXVI:8 would apply.

3/ e.g. see EEC "Lettre d'Information du Bureau de Genève" numéro 26, 3 novembre 1976.

55. It may be recalled that developed countries have themselves agreed to extend GSP on a "generalized, non-reciprocal and non-discriminatory" basis, and have stressed that GSP does not represent a "binding commitment" on their part. But Article XXXVI:8, refers to such contribution being made in respect of "commitments" by developed countries. This being the situation, the fact that the developed countries have not requested contributions from developing countries simply means that they have not asked for compensation for something that is of uncertain value and which the other side is entitled to receive anyway. This uncertainty in value applies equally in the case of unbound MFN offers; as noted above, several countries which have put MFN tariff reductions into effect have announced that the question of including these offers in their schedules of concessions is a matter for future consideration. Before dwelling on the questions of contributions by developing countries, developed countries might reflect and try to recall when and in what context they have themselves ever given a trade concession - call it a contribution if you wish - in compensation for an autonomously introduced, non-binding measure of trade facilitation.

56. Most developing countries do not view the principle of non-reciprocity as simply an excuse for not having to make contributions in the course of trade negotiations. On the contrary, they have continually stressed their willingness to do so, in light of the overall benefits obtained from the negotiations. Their objective is rather to obtain meaningful, genuine, reliable concessions, concessions that are of real benefit to their trade, without themselves being forced to give concessions beyond their capacity.

Multilateralization

57. Insufficient offers, non-application of the non-reciprocity principle, and inordinate bilateralism are interrelated elements of a basic problem which can only be solved by an effective multilateralization of the tropical product negotiations. It was recognized in the guidelines that at a certain point multilateral review and multilateral action would be necessary,1/ but this phase has, for the time being, been brushed aside.

58. A possible approach to effectively multilateralize the negotiations could comprise the following steps:

(a) circulation of the consolidated offer/request lists;

(b) preparation by the GATT secretariat of an official review and assessment of the results of the tropical products negotiations to date. (The experience of the Kennedy Round shows that such reviews should be performed during, not after, the conclusion of negotiations so that they may exert a positive influence on the course of the negotiations instead of merely being of historical interest to posterity or at best a warning for negotiators at the "next round");

1/ See MTN/TP/1. As indicated in paragraph 14 above, this point, i.e. greater multilateralization, has been stressed by developing countries not only in the Tropical Products Group and other TNC bodies, but also at the Ministerial Meeting of the Group of 77 in Manila and UNCTAD IV in Nairobi.

(c) a series of multilateral consultations, at which individual developed countries would be expected to explain their failure to make concessions in regard to specific items;

(d) the formulation of a joint request by developing countries, which might take the form of a list of products for which duty-free access is sought;

(e) final negotiations on the basis of all the above data to determine inter alia a permissible average proportion of exceptions for each developed country, taking account of factors such as the amount of tropical products already entering duty-free, existing and promised bindings, non-tariff measures, timing and mode of application of the concessions, etc.

Non-tariff measures

59. If the tariff offers made by developed countries in the tropical products negotiations have been of limited value, their responses to the requests concerning non-tariff measures could be called virtually non-existent. This is all the more regrettable because a large number of requests have been submitted relating to non-tariff measures constituting effective impediments to trade. A large proportion of the requests, as it may be recalled, are for (a) the removal of quantitative restrictions and (b) the elimination of restrictive effects of health and sanitary standards or other technical regulations.1/

60. The failure to include non-tariff measures in their offer lists has been attributed by developed countries mainly to two factors: (a) that the measures in question are being dealt with elsewhere as part of a multilateral approach so that to take them up simultaneously in these bilateral, item-by-item, tropical products negotiations would cause duplication or confusion, and (b) there are intrinsic difficulties in meeting the requests.

61. By the first of these arguments of the developed countries, quantitative restrictions on tropical products should be left out of tropical product offers in order not to pre-empt the tasks of the Sub-Group on Quantitative Restrictions. But in this Sub-Group, as is generally known, the developed countries seem to be determined to prevent any effective multilateralization of the negotiations or the adoption of any automatic procedures, at least in regard to those restrictions which affect the exports of developing countries.2/ A similar shuffling of responsibilities between the Group on Non-Tariff Measures and the Group on Agriculture has impeded any meaningful discussion of restrictions effecting the exports of developing countries, particularly those tropical products falling within CCCN 1-24.3/

62. This hide-and-seek game is also being played with regard to health and sanitary regulations. Although discussion of technical barriers to trade began

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1/ See MTN/TP/W/11/Rev.2.

2/ See the notes prepared by the Interregional Project on the most recent meetings of the Group UNCTAD/MTN/40/Supp.1, pp.57-66 and pp. 7-9 of this document.

3/ It should be recalled that in this case the "shuffle" arises from problems between developed countries.

as far back as in 1969 and work on the drafting of a Standards Code commenced in earnest as early as 1971, the deliberations have only recently moved to a point where consideration can be given to the question of whether the proposed Standards Code can or cannot be applied to agricultural products. In the preliminary discussion of this question, in the Group on Agriculture towards the end of March 1977, a number of developed countries underlined the complexity of the standards issue and raised doubt as to the suitability of the Code for technical regulations on agricultural products.1/

63. One theme underlying some develcped countries' arguments seems to be that health and sanitary standards are essential to national well-being and consequently are non-negotiable.2/ While some of the requests may have been less precisely worded than they should be, there has been no suggestion that the developing countries want the developed countries to dismantle their health and sanitary regulation systems. If the desire is merely to lessen the unnecessary elements of trade restriction, it would appear to be incumbent on the developed countries at least to enter into earnest discussions with the developing countries, instead of rejecting the requests off-hand. To leave such restriction alone and defer settlement until the Standards Code comes into force, as having apparently been suggested, can only be regarded as an unwarranted alibi based on a misreading of the purposes of the Code. The primary role of this instrument is to provide a contractual framework for the settlement of disputes relating to the trade effects of standards and technical regulations that might arise from time to time. It would only be operative for tropical products when it has been accepted by the major developed countries and agreed by them to be applicable to all products. It is not intended to be an instrument to sweep away the trade barrier effects of such regulations at one go such as MTN have been set up to do. There is, therefore, no valid reason why, at this juncture, non-tariff measures in the "special and priority" sector of tropical products should not be attacked

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1/ See pp. 67-70.

2/ "Negotiations" in this area are not new. Under the Saratoga Convention of 1891 Germany removed sanitary regulations which prohibited the importation of certain meat products from the United States in return for the withdrawal of the United States' threat to apply a surtax against German products, see W. Culbertson, Reciprocity, McGraw Hill, New York 1937.

directly.1/ The commitment in the Tokyo Declaration to treat tropical products as a "special and priority" sector should be taken to be serious enough to justify dealing in the Group on Tropical Products, with all NTMs facing trade in this sector, through a multilateral examination of the compelling reasons for which developed countries were not able to comply with the requests by developing countries to remove specific non-tariff measures affecting their exports of particular tropical products.2/

1/ Although the solution being negotiated in the area of technical barriers to trade takes the form of a multilateral instrument (i.e. the draft "Standards Code"), in its present form it would not, merely through acceptance, require the elimination of any specific measure presently in effect. While differing positions exist as to the retroactive application of the Code, it would appear that in practice the removal of specific measures could only be achieved through the dispute resolution procedures of the Code. If, however, specific regulations on tropical products could be determined by the Tropical Products Group as constituting "unnecessary obstacles to trade" this would obviate the need for a subsequent examination by the proposed "Committee for Preventing Technical Barriers to Trade" and thus, there would appear to be basis for an agreement that if these unnecessary aspects could not be removed immediately, their elimination would coincide with acceptance of the Code by the developed country concerned.

2/ The comments on this section would apply in the large to variable levies, the third major category of non-tariff measures included in the tropical product requests.