

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Trade in Industrial Products

SUMMARY OF PROPOSALS IN REPORTS OF THE FIVE WORKING GROUPS ON NON-TARIFF BARRIERS

This document summarizes the various proposals contained in the first reports of the five Working Groups dealing with parts of the Inventory.

Some suggestions received wider support than others; some supplement one another; elsewhere proposals are alternatives. To facilitate the use of this summary, cross references to the relevant paragraphs of the texts of the reports themselves are provided. The reports are as follows:

<u>Group</u>	<u>Subject</u>	<u>Document number</u> <u>of report</u>
1	Government Participation in Trade	Spec(70)4/Rev.1
2	Customs and Administrative Entry Procedures	Spec(70)35
3	Standards Acting as Barriers to Trade	Spec(70)62
4	Specific Limitations on Trade	Spec(70)65
5	Charges on Imports	Spec(70)67

Group 1 - Government Participation in Trade

1. Trade Diverting Aids (pages 2-3)

- (a) Serious prejudice to trade interests through trade diversion is the basis for GATT attention to domestic aids.
- (b) There is a question whether a clear showing has been made of enough cases of difficulty on serious trade diversion to warrant regarding domestic subsidies as a general problem for GATT; consideration of particular cases might be adequate.
- (c) Others suggested an Interpretative Note or a code of good conduct, building on the existing provisions of Article XVI:1 with a view to providing for:
 - (i) improved notification procedures to cover domestic aids more widely, since investment aids, in particular, are generally not notified;
 - (ii) specific provision for consultations upon request to determine whether serious prejudice to a contracting party's interests had, or was likely to occur;
 - (iii) in the event of such a finding by the CONTRACTING PARTIES, either (i) elimination or reduction of the aid in question, (ii) compensation or failing satisfactory adjustment, (iii) suspension of obligations by the injured party.

Although this solution would be built on the existing provisions of the GATT, the possibility of new commitments was not precluded by advocates of this course, if further discussion indicated that additional obligations would be appropriate.

2. Export subsidies (pages 4-5)

- (a) Wider acceptance of the obligations contained in Article XVI:4, especially by developed countries, was recommended.
- (b) Some suggested a need to develop better information on the question whether export subsidies on industrial products constitute a general problem, possibly through a review of the operation of Article XVI as called for by provisions of Article XVI:5.
- (c) Others considered that there is a demonstrated need for better provision against the use of export subsidies by developed countries and favoured negotiation of an Interpretative Note to Article XVI:4 or a set of guidelines for:
 - (i) clarification of the scope of measures that countries regard as constituting export subsidies presently covered by Article XVI:4;
 - (ii) new procedures including notification and reviews to ensure improved and continuing implementation of the obligations of paragraph 4;
 - (iii) possible extension of existing obligations of paragraph 4 to include: (i) export subsidies having trade-diverting effects whether or not resulting in sale for export below the comparable domestic price, (ii) more comparable treatment as between subsidies on primary and non-primary products.

3. Countervailing duties (pages 5-6)

- (a) A code along the lines of the Anti-Dumping Code which would provide for:
 - (i) determination of injury;
 - (ii) determination of subsidy and the amount;
 - (iii) determination of the trade effects for third countries.
- (b) An extension of existing GATT rules to permit a contracting party suffering injury to its export industries as a result of export subsidization by another country in third country markets, to take direct action by suspending concessions on products of interest to the export subsidizing country.
- (c) Deal with the problem by better provision against use of export subsidies.

4. Government procurement (page 7)

It was considered that a code or set of guidelines should include:

- (i) objectives and principles;
- (ii) definitions;
- (iii) procurement entities;
- (iv) elimination of existing discrimination;
- (v) exceptions;
- (vi) purchasing procedures;
- (vii) publication of government procurement regulations;
- (viii) reporting, review, complaint and confrontation procedures.

The Group noted that work in the OECD on the problem was reaching a fairly advanced stage.

5. State-trading in market economy countries (pages 7-9)

It was considered that a strengthening of the effectiveness of Article XVII would be desirable through:

- (a) an improvement in the quality, frequency and coverage of reports under the Article;
- (b) consultations along the lines of Articles XXII and XXIII;
- (c) negotiation of concessions on State-trade products, including global purchase commitments.

Group 2 - Customs and Administrative Entry Procedures

I. Valuation (paragraphs 4-18)

1. The application of Article VII to be improved by all countries accepting the following principles:

- (a) Valuation systems should be neutral in effect and not be used as a disguised means of protection.
- (b) They should be non-discriminatory between supplying countries.
- (c) They should be simple and not use arbitrary or fictitious values.
- (d) Administration of valuation systems should take into account the need for: (i) advance certainty to traders as to valuation methods, (ii) full publicity to the bases on which value is calculated, (iii) expeditiousness of the procedure, (iv) safeguarding of business secrets, (v) adequate appeals procedure (paragraph 10).

2. An overall solution along the following lines (paragraphs 11, 15, 16):

- (a) valuation systems to be harmonized so that each contracting party uses one single concept of valuation based on economic and commercial realities, on the principles of Article VII and on specific interpretative rules to that Article;
- (b) these interpretative rules to be based on the Brussels Definition, but the f.o.b. system to continue to exist side by side with c.i.f. by the f.o.b. countries accepting the interpretations outlined above and reducing the resulting valuation by the amount of freight and insurance up to the point of importation (to avoid lengthy renegotiations);
- (c) countries applying the Brussels Convention on Valuation but not yet signatories to it, to accede to the Convention;
- (d) countries using valuation methods requiring determination of export values on the internal market of the exporting country to use invoice prices for like products for export to the major market or invoice prices generally obtained for like products.

3. Deal with the problems of valuation on a case-by-case basis. Principles to include (paragraphs 11, 15, 16):

- (a) the concept that duty is based on the price actually paid rather than a notional price;
- (b) facilities for appeal from a determination of value for duty;
- (c) maintenance of existing competitive relationships in any modification of systems, without distortion on account of differences in distances from particular suppliers to points of importation;

- (d) some resulting advantage, as compensation for any changes in systems, in terms of more precision as to price, time, place, quantity, level of trade.

4. In elaboration of more precise interpretations of Article VII as the more practical manner in which to deal with existing problems of valuation. Specific suggestions include (paragraphs 11, 17-18):

- (a) setting aside the f.o.b. - c.i.f. controversy as non-essential;
- (b) elimination of the use by any country of alternative valuation systems involving either domestic prices in the country of import or domestic prices in the country of export;
- (c) use in all cases of invoice prices or if necessary one of the bases outlined in 2(d) above.

II. Anti-dumping duties (paragraphs 19-25)

1. Harmonization of anti-dumping legislation by acceptance of the Code by developed countries which had not done so, use of the Code as a standard for application of Article VI (paragraph 22).
2. Enable developing countries to accede to the Code at an early date (paragraph 23).

III. Customs classification (paragraphs 26-35)

1. Two main countries not applying the Brussels Tariff Nomenclature should adopt it (paragraph 28).
2. Many countries need further clarity and simplification in their tariff nomenclatures (paragraph 29).
3. Governments which have not yet done so to prepare explanatory notes to their nomenclatures, or at least to those sections where there is an obvious need for guidance to ensure correct classifications (paragraph 30).
4. Concordances between BTN and other nomenclatures should be established and kept up to date (paragraph 31).

IV. Consular and customs formalities and documentation (paragraphs 36-41)

1. Consular formalities and fees

The countries not maintaining consular formalities proposed:

- (a) An Interpretative Note to Article VIII requiring the phasing out of the remaining consular formalities and fees in the next five years, and providing that during the interim the cost of the service rendered should not exceed a given maximum at a flat rate (paragraph 39(a));

- (b) a study to recommend appropriate solutions on possible alternative measures to achieve the same purpose as consular formalities without unduly restraining trade, taking into account past recommendations and codes of standard practices, looking to the abolition of customs and consular invoices and limitation on the use of certificates of origin to cases where they are strictly indispensable in line with the Recommendations of the CONTRACTING PARTIES. The study to include ways of simplifying formalities (paragraph 40).

2. Customs clearance documentation

A special sub-committee of customs experts to develop standard forms meeting the import documentation requirements of all customs services throughout the world (paragraph 39(b)).

3. Certificates of origin

Where certificates of origin are required and are provided by properly recognized issuing bodies, no additional requirement for consular endorsement resulting in additional cost to exporters (paragraph 39(c)).

V. Samples requirements (paragraph 42)

The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material signed at Geneva on 7 November 1952 should be taken up for reconsideration in GATT for review and to obtain accession to it by all contracting parties.

Group 3 - Standards

I. General

1. CONTRACTING PARTIES to draw up a set of principles or ground rules on standardization (paragraph 13).
2. The technical development of standards to be left to the competent international standardization bodies (paragraph 4).
3. The distinction was clearly made between compulsory regulations, issued by central governmental authorities, and standards set by local governments or by private organizations (paragraph 5).

II. Development and harmonization of standards

1. An effective contribution should be made to the work of international organizations concerned with standardization; their recommendations should be implemented (paragraph 18(i) (ii)).
2. Encourage international standardization bodies to take into account the need to avoid creating trade barriers (paragraph 18(iii)).
3. Multilateral harmonization schemes to be open for accession to all contracting parties (paragraph 18(i) (ii)).

4. Local authorities and private standardization organizations should be prompted to apply international standards and to resolve trade difficulties resulting from disparities in standards and regulations (paragraph 18(v)).
5. In so far as possible, standards and regulations should be based on performance rather than physical description of the product (paragraph 18(vi)).
6. New or revised standards should be given adequate publicity prior to implementation so as to ensure ample opportunity for consultation if necessary (paragraph 18(vii)).
7. With regard to technical regulations, the contracting parties could encourage:
 - (a) the development of uniform regulations;
 - (b) the optional approach - a choice between a national regulation or an international standard;
 - (c) the "reference to standard" approach (paragraph 19).

III. Enforcement of standards

1. Contracting parties should further efforts to harmonize testing methods and quality assurance procedures on a multilateral basis (paragraph 20(i)).
2. Testing procedures for imported products should be expeditious, and results thereof made available in writing (paragraph 20(ii)).
3. Testing requirements should be formulated so as to ensure that imported products have a realistic access to domestic markets (paragraph 20(iii)).
4. Multilateral quality assurance and certification schemes should be open to foreign participation (paragraph 20(iv)).
5. Account should be taken of measures adopted by developing countries to ensure adequate quality standards for their exports (paragraph 20(v)).
6. The following practical methods of application could be encouraged:
 - (a) delegation of testing and control operations to the exporting country, on the basis of the importing country's specifications;
 - (b) the reciprocal recognition of tests, in part or in whole, when these are similar;
 - (c) the reciprocal recognition of tests, on the basis of reliability guarantees, when the tests are not identical;
 - (d) acceptance of foreign producers' certification that products meet the requirements of the importing country;

- (e) the adequate publicity of countries testing requirements (paragraph 21(i)).

7. Multilateral quality assurance and certification schemes should provide for the testing and acceptance of products from non-participating countries. This could be accomplished by:

- (a) testing and certifying products from non-participants;
- (b) accepting certifications granted by other participants to products from non-participants; or
- (c) accepting the certification of competent organizations in non-participating countries where this can be demonstrated to be equivalent to the requirements of the multilateral scheme (paragraph 21(ii)).

IV. Consultation

1. A GATT Committee might provide the facilities for consultation and complaints concerning trade effects resulting from standardization, and problems arising from packaging, labelling and marking requirements (paragraphs 22, 23). Such machinery should not be a negotiating body nor provide for retaliatory action (paragraph 25).
2. A notification procedure, similar to that provided for in Article XVI:1, could be envisaged and include prior notification of new regulations likely to have trade effects (paragraph 27).

V. Packaging, labelling and marking regulations

1. Close observance of the CONTRACTING PARTIES' Recommendation of 21 November 1958 on Marks of Origin was desirable.
2. The Recommendation would need elaboration and further precision on certain points (paragraph 30). Article IX and further elaboration of the 1958 Recommendation should provide the basis for solving the problems arising from marking requirements.
3. The Recommendation could be placed on a contractual basis (paragraph 31).

Group 4 - Specific Limitations on Trade

1. Quantitative restrictions (paragraphs 9-13)

- (a) An overall elimination of quantitative restrictions maintained by developed countries, whether or not consistent with the provisions of GATT, with a target date of 1 January 1972 for removal (paragraph 10-1).
- (i) Increases in quotas for a period of one to two years beyond the target date for restrictions which cannot be removed by that time, with increases fixed proportionally to domestic production or the internal market (paragraph 10-2).

- (ii) Token imports (paragraph 10-3).
 - (iii) Examination of residuals for consistency with substantive provisions of GATT and a requirement that countries seek waivers or grant compensation for restrictions inconsistent with substantive provisions (paragraph 10-4).
 - (iv) Arrangements concerning reviews and consultations with respect to restrictions under (iii) to be considered by Council and/or Joint Working Group (paragraph 4).
 - (v) A standstill on quantitative restrictions (paragraph 10-6).
- (b) An overall liberalization and elimination of quantitative restrictions by developed countries which would be gradual and in step with progress of the CONTRACTING PARTIES in their general programme of trade expansion and in which contributions by an individual contracting party would be proportionate to the scope of its quantitative restrictions of all types (paragraph 11).
- (c) An overall solution similar to that in (a) above, but directed exclusively to illegal import restrictions (paragraph 6).
- (d) A sectoral or commodity approach, focussing on an effort to obtain concerted action in sensitive sectors. One or more such sectors might be linked, and a target date included as one essential element (paragraph 13).
- (e) Features for inclusion in any of the foregoing solutions (paragraphs 4, 12):
- (i) particular attention to restrictions of interest to less-developed countries (paragraphs 4, 12-1);
 - (ii) procedures for surveying the quantitative restrictions of less-developed countries (paragraph 12-2);
 - (iii) early elimination of discrimination (paragraph 12-3);
 - (iv) examination of relationship of quantitative restrictions to rights and obligations of Articles XI (paragraph 4), XX, XXI (paragraph 12-5), XXIV (paragraph 12-4);
 - (v) a more objective basis for establishment of quotas than the preceding year (paragraph 12-6).

2. Discriminatory bilateral agreements (paragraphs 14-19)

- (a) Elimination of restrictions imposed pursuant to bilateral agreements (or at least agreements by developed countries) in conjunction with general action on quantitative restrictions (paragraph 19).

- (b) Interpretative Note or declaration prohibiting restrictive or discriminatory bilateral agreements, with a target time limit of three years for termination of existing agreements. Consultations with the CONTRACTING PARTIES concerning agreements maintained (paragraph 14). Notification of all bilateral agreements of a discriminatory nature by an early date (1 July 1970 was suggested) (paragraph 14), avoiding duplication with existing notification requirements (paragraph 18).
3. Export restraints (paragraphs 20-24)
- (a) Include removal of export restraints in general solution adopted for quantitative restrictions (paragraph 24).
 - (b) Notifications to GATT and multilateral consultation procedures to include such restraints (paragraph 24).
4. Minimum price regulations (paragraphs 25-27)
- (a) Relationship of the problem to anti-dumping suggests solution by wider acceptance of Anti-Dumping Code (paragraph 27).
 - (b) Possible modification of individual country regulations (paragraph 26).
5. Licensing (paragraphs 28-36)
- (a) Clarification of the extent to which licensing should be regarded as a restriction on imports within the meaning of Article XI, paragraph 1 (paragraphs 29-31, 35).
 - (b) Licensing as such, or those forms agreed to constitute a restriction, to be eliminated within whatever solution is adopted for other quantitative restrictions (paragraphs 34, 36).
 - (c) A code of procedures to be followed in operation of any licensing requirement, or possibly a more comprehensive code on import procedures (paragraphs 32, 33).
6. Motion picture restrictions (paragraphs 37-44)
- (a) Standstill on motion picture restrictions, including not only restrictions on distribution, but discriminatory taxes, printing, sub-titling and dubbing requirements and export subsidies; elimination of existing restrictions by negotiations. Target date for removal and requirement of waiver or compensation thereafter (paragraphs 37-39).
 - (b) Interpretation of the meaning of "mixing regulations" in Article III in reference to screen-time and television-time quotas. Applicability of Article IV (paragraph 40).

- (c) Notification of film subsidies by an early date in the form prescribed by the 1960 Panel and consultation, on request, under Articles XXII and XXIII (paragraph 41).
- (d) Agreement on criteria to avoid trade-distorting effects of film subsidies (paragraph 42).

Group 5 - Charges on Imports

1. Prior deposit (paragraphs 18-20)

- (a) Elimination of prior deposits, or if not possible
- (b) Notification and consultation in GATT for cases of prior deposits, whether along the lines of Articles XII and XVIII:B in the Balance-of-Payments Committee itself, or on a case-by-case basis (paragraphs 18 and 19).
- (c) Not prejudging the appropriations of prior deposits, guidelines including the following:
 - (i) limitation of use to cases of balance-of-payments difficulty;
 - (ii) prior deposits should be of temporary nature;
 - (iii) the rate of deposit should be as low as possible; deposits should not be kept for an unreasonably long period;
 - (iv) prior deposits should be applied without discrimination as to category or origin of goods;
 - (v) products of interest to developing countries should be exempt;
 - (vi) prior deposit schemes should be designed so as to minimize inflationary effects (paragraph 20).
- (d) Await the finalization of studies in progress, before deciding upon the question of guidelines.

2. Credit restrictions for importers (paragraphs 27 and 28)

- (a) Removal or modification of credit restrictions.
- (b) An Interpretative Note indicating that Article III:4 requires that importers get similar access to credit as domestic producers (paragraphs 27 and 28).

3. Variable levies (paragraph 30)

Group 5 recommended that action await the outcome of discussions in the appropriate group of the Agriculture Committee.

4. Fiscal adjustments either at the border or otherwise (paragraph 32)

Group 5 recommended setting this question aside for later discussion possibly towards the end of 1970 when the Working Party on Border Tax Adjustments will probably have completed its work (paragraph 32).

5. Restrictions on foreign wines and spirits

- (a) Maintaining countries to eliminate discriminatory aspects in their taxation systems on a unilateral basis.
- (b) All alcoholic beverages with approximately the same alcoholic content to be regarded as "like domestic products" within the meaning of Article III:2 (paragraph 37), regardless of price (paragraph 41).
- (c) Progressive taxation of spirits (paragraph 35).
- (d) Draft an Interpretative Note defining the expression "like domestic products" (paragraph 42).
- (e) As regards restrictions on advertising, an Interpretative Note to the first sentence of Article III:4 providing for equal rights of advertising, as well as a clear definition of the term "like domestic products" in Article III:2 (paragraph 40).

6. Discriminatory taxes on motor cars

(a) Taxation of motor cars on the basis of value, with a single tax rate for a particular price range and a reasonable spread between upper and lower tax rates; an Interpretative Note to Article III:2, to implement this solution (paragraph 49).

(b) Maintaining countries favoured harmonization based on fiscal horsepower or cylinder capacity (paragraph 47).

7. Statistical and administrative duties

As first steps to obtain strict application of Article VIII,

- (a) Countries to supply data annually of fees levied and services rendered.
- (b) Prescribe a maximum upper limit for all fees.
- (c) Refer the suggestions to the Committee on Trade and Development.

8. Special duties on imports

Guidelines or an Interpretative Note defining some of the criteria in Article XIX (paragraph 59).