

# 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

### Revision

This document summarizes the various proposals contained in the 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 of report</u>
1	Government Participation in Trade	COM.IND/W/40
2	Customs and Administrative Entry Procedures	COM.IND/W/47
3	Standards Acting as Barriers to Trade	COM.IND/W/41
4	Specific Limitations on Trade	COM.IND/W/49
5	Charges on Imports	COM.IND/W/48

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) Some 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 occurred, 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 3-4)

- (a) Wider acceptance of the obligations contained in Article XVI:4, especially by developed countries, was recommended.
- (b) Measures to ensure improved and continuing implementation of the obligations of Article XVI:4 including:
  - (i) refinement and elaboration of a definition of measures that countries regard as constituting export subsidies presently covered by Article XVI:4;

- (ii) reviving the standstill provisions of Article XVI:4;
- (iii) revision of notification procedures.
- (c) Inclusion within the obligations of paragraph 4 of all export subsidies having trade-diverting effects whether or not resulting in sale for export below the comparable domestic price.
- (d) More comparable treatment as between subsidies on primary and non-primary products.
- (e) In cases where there was an infraction of the prohibition under Article XVI:4, authorization for the importing country to take the measures necessary to offset the trade effects of the subsidy.
- (f) A review of the operation of Article XVI as provided for in paragraph 5 of that Article.

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;
  - (iv) procedural obligations (e.g. notification to the governments and firms concerned);
  - (v) definition of a subsidy.
- (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 6)

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 7-8)

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.

#### 6. Other restrictive practices (page 8)

- (a) Where restrictive practices are actually imposed by governments, the governments concerned should adopt practices generally acceptable internationally.
- (b) In cases of restrictive practices tolerated by governments, where these practices are covered by national legislation the relevant legislation should be applied; where not, appropriate action should be taken.

#### Group 2 - Customs and administrative entry procedures

##### I. Valuation (paragraphs 4-24)

###### 1. The application of Article VII to be improved by all countries accepting the following principles: (paragraph 10)

- (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 15,20):
  - (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 12, 13, 17):
  - (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. An elaboration of more precise interpretations of Article VII as the more practical manner in which to deal with existing problems of valuation; an expert group could be established for this purpose. Specific suggestions include (paragraphs 13, 18-20, 21, 23, 24):

- (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;
- (d) Interpretative Notes to Article VII:2(a) and 2(b) to deal with problems created by minimum value practices;
- (e) amend Article VII:3 as originally proposed in BISD, Third Supplement, page 213.

## II. Anti-dumping duties (paragraphs 25-32)

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 25).

2. Enable developing countries to accede to the Code at an early date (paragraph 29).

## III. Customs classification (paragraphs 33-43)

1. Two main countries not applying the Brussels Tariff Nomenclature should adopt it (paragraph 35).

2. Many countries need further clarity and simplification in their tariff nomenclatures (paragraph 36).

3. Governments which have not yet done so to prepare systematic explanatory notes to their nomenclatures, or at least to those sections where there is an obvious need for guidance to ensure correct classifications. Priority should be given to the more important trade items (paragraph 37).

4. Only essential information should be requested by customs authorities (paragraph 39).

5. Incontrovertible replies to requests for classification (paragraph 39).
6. Impartial body should rapidly settle classification disputes (paragraph 39).
7. Concordance between BTN and other nomenclatures should be established and kept up to date (paragraph 38).

**IV. Consular and customs formalities and documentation (paragraphs 44-49)**

**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 47(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 and harmonizing special declarations inserted in commercial invoices (paragraph 48).

**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 47(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 47(c)).

**V. Samples requirements (paragraph 50)**

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 and the Customs Convention on the ATA Carnet 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 in order to develop truly international standards; 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(v)).
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(vi)).
5. In so far as possible, standards and regulations should be based on performance rather than design (paragraph 18(viii)).
6. New or revised standards should be given adequate publicity prior to implementation so as to ensure ample opportunity for interested parties to comment thereon if necessary (paragraph 18(viii)).
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. Product inspection and testing requirements should be formulated so as to ensure that imported products are not prevented from gaining effective 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, inter alia:
  - (a) adequate publicity of countries' testing requirements;
  - (b) delegation of testing and control operations to the exporting country on the basis of the importing country's specifications;
  - (c) facilities for testing products at designated importation points;
  - (d) inspection of foreign manufacturing facilities, where necessary;
  - (e) acceptance of foreign governments or recognized foreign institutions that products meet the requirements of the importing country;
  - (f) the reciprocal recognition of tests, in part or in whole, when these are similar;
  - (g) the reciprocal recognition of tests, on the basis of reliability guarantees, when the tests are not identical (paragraph 21(i)).
7. Multilateral quality assurance and certification schemes could 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 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 31). Article IX and further elaboration of the 1958 Recommendation should provide the basis for solving the problems arising from marking requirements (paragraph 32).

3. The Recommendation could be placed on a contractual basis (paragraph 32).

#### Group 4 - Specific limitations on trade

##### 1. Quantitative restrictions (paragraphs 9-14)

- (a) An overall programme for elimination of quantitative restrictions of all types maintained by developed countries, whether or not consistent with the GATT, and a target date for removal with the following elements: (paragraph 11)
  - (i) Special attention to be given to discriminatory restrictions, restrictions inconsistent with GATT, and restrictions of special importance to developing countries.
  - (ii) A standstill on quantitative restrictions.

- (iii) A plan and schedule for removal of a maximum proportion of restrictions maintained by countries not invoking Article XII or XVIII:B.
  - (iv) For restrictions included in the programme, progressive quota increases, and introduction of imports for embargoed products.
  - (v) Limited extensions of time for maintenance of restrictions justified on social considerations.
  - (vi) Restrictions not scheduled for removal under the programme to be examined for consistency with GATT and to be subject, if not consistent, to appropriate action under the General Agreement.
- (b) An overall gradual liberalization and elimination of quantitative restrictions by developed countries in step with progress of the CONTRACTING PARTIES in their general programme of trade expansion; contributions by an individual contracting party would be proportionate to the scope of its quantitative restrictions of all types (paragraph 12).
  - (c) A solution, similar to that in (a) above but directed exclusively to illegal import restrictions. Elimination of legal restrictions to be dealt with in negotiations (paragraphs 6 and 10).
  - (d) A sectoral or commodity approach, focussing on obtaining concerted action in sensitive sectors.
2. Discriminatory bilateral agreements (paragraphs 16-21)
- (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 21).
  - (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 16). Notification of all bilateral agreements of a discriminatory nature by an early date (paragraph 16), avoiding duplication with existing notification requirements (paragraph 20).

3. Export restraints (paragraphs 22-26)

- (a) Include removal of export restraints in general solution adopted for quantitative restrictions (paragraph 26).
- (b) Notifications to GATT and multilateral consultation procedures to include such restraints (paragraph 26).

4. Minimum price regulations (paragraphs 27-29)

- (a) Relationship of the problem to anti-dumping suggests solution by wider acceptance of Anti-Dumping Code (paragraph 29).
- (b) Possible modification of individual country regulations (paragraph 28).

5. Licensing (paragraphs 30-42)

- (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 30-32).
- (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 and 42).
- (c) A code of procedures to be followed in operation of any licensing requirement, or possibly a more comprehensive code on import procedures (paragraph 35).
- (d) Review of licensing systems on the basis of a questionnaire, followed by examination by a GATT body.

6. Motion picture restrictions (paragraphs 43-53)

- (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 43, 45, 46).
- (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 48).

- (c) Notification of film subsidies in the form prescribed by the 1960 Panel. Consultation, on request, under Articles XXII and XXIII (paragraph 49).
- (d) Agreement on criteria to avoid trade-distorting effects of film subsidies (paragraph 50).

Group 5 - Charges on imports

1. Prior deposits (paragraphs 13-15)

- (a) Elimination of prior deposits (paragraph 13), 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 (paragraph 14)
- (c) Not prejudging the appropriateness 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 15)
- (d) Await the finalization of studies in progress, before deciding upon the question of guidelines.

2. Credit restrictions for importers (paragraphs 42 and 43)

- (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 17)

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

4. Fiscal adjustments either at the border or otherwise

Notification and consultation procedure as agreed by Working Party on Border Tax Adjustments.

5. Restrictions on foreign wines and spirits

(i) Taxation

- (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 regardless of price (paragraph 29).
- (c) An Interpretative Note defining the expression "like domestic products" (paragraph 27).

(ii) advertising

- (d) 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 terms "offering for sale" and "afford protection to domestic production" (paragraph 24).
- (e) Creation of standards in co-operation with other organizations (paragraph 25).

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 35).
- (b) Maintaining countries favoured harmonization based on fiscal horsepower or cylinder capacity (paragraph 33).

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 (paragraph 51)
- (b) prescribe a maximum upper limit for all fees (paragraph 52)
- (c) refer the suggestions to the Committee on Trade and Development (paragraph 54).

8. Special duties on imports

Guidelines or an Interpretative Note defining some of the criteria in Article XIX (paragraph 58), or overall review of that article (paragraph 59).