

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Trade and Development  
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## THE OPERATION OF PART IV OF THE GENERAL AGREEMENT

### Note by the Secretariat

1. At the twelfth session of the Committee on Trade and Development in November 1968, the Committee considered a suggestion that a working party should be established to discuss the application of Part IV in order to explore how the objectives set out in Article XXXVI could be implemented in a more systematic and more effective manner. At their twenty-fifth session the CONTRACTING PARTIES noted that "the Committee on Trade and Development intends to carry out a detailed examination of the difficulties encountered in the implementation of Part IV of the General Agreement and to recommend measures for securing more effective and systematic implementation and that for this purpose the Committee would establish appropriate machinery".

2. In order to assist the discussions of the Committee on this matter, the secretariat has attempted below, on the basis of GATT reports and documentation, a preliminary summary of the experience of the implementation of Part IV and, where available, comments by contracting parties on the operation of its provisions.

### Article XXXVI

3. Paragraphs 1 to 7 of Article XXXVI set out the principles and objectives of GATT in the field of trade and development. The enumeration of these principles and objectives provides the basis for the operative provisions of the two Articles that follow and which set out the various measures and methods designed to achieve these aims.

4. Paragraph 8 deals with the question of non-reciprocity in trade negotiations involving developing countries. At the last meeting of the Committee the application of the principle of non-reciprocity in trade negotiations between developed and developing countries was discussed following a suggestion by certain members that there was need for a more precise interpretation of the provisions of paragraph 8 of Article XXXVI and of the interpretative note to that paragraph. After discussion the Committee agreed that the matter might be further considered at a later stage.

5. Paragraph 9 states that the adoption of measures to give effect to the principles and objectives elaborated in Article XXXVI should be a matter of conscious and purposeful effort on the part of contracting parties both individually and jointly. It might be observed that the principles and objectives set out in this Article in several ways go beyond the commitments specified in Articles XXXVII and XXXVIII. A judgment as to whether or not contracting parties have been making a conscious and purposeful effort to give effect to these principles and objectives depends on the view taken of the efforts made to translate both these principles and objectives and the specific provisions of Articles XXXVI and XXXVII into action.

Article XXXVII

6. Paragraph 1 of Article XXXVII, subject to the proviso "except when compelling reasons, which may include legal reasons, make it impossible", specifies that developed contracting parties should accord high priority to the reduction and elimination of trade barriers to products of particular export interest to developing countries and establishes a standstill against the introduction or increase in the incidences of trade barriers. It also provides for a standstill on, and for the according of high priority to the reduction and elimination of fiscal measures on raw or processed primary products produced in developing countries.

7. The interpretative note to paragraph 1(a) of Article XXXVII states that the according of high priority to the reduction and elimination of trade barriers to products of particular export interest to less-developed countries would apply in the event of negotiations for reduction or elimination of tariffs or other restrictive regulations of commerce under Articles XXVIII, XXVIII bis and XXXIII, as well as in connexion with other action to effect such reduction or elimination which contracting parties may be able to undertake. During the Kennedy Round negotiations GATT Ministers adopted principles and objectives for the negotiations in relation to the trade interests of developing countries which broadly corresponded to the provisions of Part IV. The results of the negotiations for developing countries were summarized in a GATT study, COM.TD/48/Rev.1.

8. In the course of discussion in a group established by the Committee on Trade and Development to assess the results of the Kennedy Round for developing countries, some members of the group expressed the view that the results of the negotiations taken as a whole afforded substantial benefits for developing countries; that the reductions on exports of developing countries were extensive and substantial, that a broad range of such products were covered and increased access seemed to have been provided for these products to the markets of developed countries; that concessions had been granted especially in the interests of developing countries; that the scope and the magnitude of the concessions on products of interest to developing countries far exceeded any benefits received by such countries from previous negotiations; and that the developed countries had not sought reciprocity from the developing countries. Other members of the group were of the view that these results fell far short of the objectives established for the negotiations; that on many products of particular interest to developing countries no concessions were granted; that on many important products the concessions were notional or tended to fall considerably short of the 50 per cent level adopted as the hypothesis for the negotiations; that it could not be claimed that there had been a bare minimum of exceptions from the rules of linear reduction; that quantitative restrictions had remained practically intact; that there had hardly been any reductions on internal fiscal charges on tropical products and that the protective duties applied by developed countries on processed and manufactured products of particular export interest to developing countries remained disproportionately higher than the rates on the same products in unprocessed form, there being in fact an intensification of tariff escalation in some cases (BISD, Fifteenth Supplement, page 151).

9. The report of the Ad Hoc Group set out a number of reasons for the lack of "fuller action" during the negotiations; these were enumerated under the following headings: fiscal considerations, protection, preferences, problems relating to action in the non-tariff field, joint action, concessions apt to benefit developed countries, problems of reciprocity and negotiating balance and sensitive products (ibid., pages 152 and 153).
10. In relation to the concept of priority for removal of barriers to the trade of developing countries, a reference might also be made to the proposals by developing countries for immediate implementation of tariff concessions negotiated on products of interest to these countries and the action taken in response to these proposals (ibid., pages 143 and 144 and the Conclusions adopted by the CONTRACTING PARTIES at their twenty-fourth and twenty-fifth sessions).
11. At the conclusion of the Kennedy Round negotiations some developing countries suggested that attempts should be made to institute negotiations on important sectors in which developing countries had not benefited sufficiently or at all in the negotiations. Certain developed countries indicated that, in the absence of legal authority, they were unable to reduce duties further or to take other action. The question arises as to whether the absence of legal authority in one country might have the effect of impeding the taking of action by others.
12. The issue has also been raised in connexion with certain recommendations that the Committee on Trade and Development, at its thirteenth session, was requested to consider for the initiation of negotiations in the Special Group on Trade in Tropical Products on certain vegetable oils and oilseeds. The Conclusions adopted by the CONTRACTING PARTIES at their twenty-fifth session envisage the possibility of negotiations, wherever feasible, in the field of both agricultural and industrial products generally. The groundwork for broad or more limited action on tariff and non-tariff barriers affecting exports of developing countries is being prepared, inter alia, through studies of specific tariffs, differential and peak duties affecting such exports and through the identification of non-tariff barriers of more particular concern to these countries.
13. Two other questions have arisen in the practical application of Article XXXVII:1. First, it has been maintained that the commitment to take priority action to eliminate or reduce quantitative restrictions on products of interest to developing countries does not apply to restrictions maintained in terms of national legislation in force on the date of the protocol of provisional application or protocol of accession under which the contracting party concerned applies the General Agreement. On this point, it may be noted that there was a consensus in the Working Party on German Import Restrictions that the qualifying clause relating to existing legislation in the protocols in question is relevant only in respect of laws which mandatorily require the maintenance of the trade barriers, in other words, laws which give the government no discretion but to maintain them.<sup>1</sup> The language of the qualifying clause in Article XXXVII:1 would also suggest that the legal reasons that are invoked for not giving effect to the provisions of the Article must be of a mandatory character.

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<sup>1</sup>Cf. BISD, Seventh Supplement, pages 104-105. See also the Analytical Index to GATT (Second Revision), pages 169 and 170.

14. Secondly, questions have also arisen about the manner in which the standstill provisions under sub-paragraphs 1(b) and 1(c)(i) have been interpreted. For example, could it be expected that, when a country imposes a surcharge or an import deposit scheme for balance-of-payments or related fiscal reasons, products of particular interest to developing countries might be exempted from the surcharge? Similarly, where a country adjusts its taxes as an instrument of fiscal or balance-of-payments policy as in a recent case, would the provisions of sub-paragraph 1(c)(ii) require that it give specially favourable treatment in such adjustments to products of particular interest to these countries? It is perhaps noteworthy that, under sub-paragraph 1(c)(ii), there has been no attempt up to now to review systematically adjustments of fiscal policy in the developed countries with a view to seeing whether these did not provide an opportunity for eliminating or reducing fiscal measures that might affect consumption of products wholly or mainly produced in developing countries.

15. Paragraph 2 of Article XXXVII sets out certain procedures for action when it is considered that effect is not being given to the provisions of Article XXXVII:1. It has been observed by some contracting parties that these consultation procedures have not been used. They have implied that this situation might have arisen because Part IV provides no objective criteria which would permit a judgment to be made as to whether or not a contracting party has fully implemented the provisions of paragraph 1 of Article XXXVII. In this connexion it might also be noted that the special procedures for the invocation of Article XXIII by developing countries<sup>1</sup>, which are designed to facilitate discussions of difficulties arising in the implementation of GATT provisions including Part IV, have not been employed. Developing countries have alluded to certain factors mitigating against the ready resort to these procedures and which, in their view, would seem to require attention and clarification.

16. Paragraph 3(a) relates to situations where governments directly or indirectly determine the resale price of products originating in developing countries. From reports submitted by the governments concerned, it appears that they consider that action taken by them since the adoption of Part IV has been in conformity with this provision.

17. Paragraph 3(b) refers to the adoption of other measures designed to provide greater scope for the development of imports from developing countries, and to collaborating in appropriate international action to this end. In their notifications, developed countries have referred to their participation in trade promotion programmes; contributions to various development finance agencies; action taken or proposed in the field of preferences for developing countries; and measures taken in the field of structural adjustment. The CONTRACTING PARTIES' readiness to take appropriate action in relation to a general non-discriminatory scheme of special tariff treatment for exports of developing countries was reflected in the conclusions adopted at their twenty-fifth session. The Committee on Trade and Development has discussed the

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<sup>1</sup>BISD, Fourteenth Supplement, pages 18-20.

possibilities of greater use of adjustment assistance measures and, on the basis of a recommendation by the Committee, the CONTRACTING PARTIES suggested that the various GATT bodies should consider the use of such measures in dealing with the problems with which they were charged. At its last meeting, the Committee decided that further work should be pursued on this question.

18. Paragraph 3(c) provides that the trade interests of developing countries should be considered in the application of "other measures" to meet particular problems. Some of the questions that have been referred to in paragraph 14 of this note would also appear to arise in relation to this provision. Contracting parties have generally either not referred to paragraph 3(c) in their notifications or have merely stated, without specifying details, that they had taken the trade interests of developing countries into account in applying other measures. On the other hand, developing countries have, in various discussions, referred to the use of government subsidies and other measures of government support by developed countries to deal with particular problems in the agricultural field. It has not been clearly indicated whether in applying these measures special regard has been given to the trade interests of developing countries. There has been at least one case where some developing countries have claimed that the application of government subsidies has affected their trade interests.

19. Paragraph 4 deals with appropriate action by developing countries in the implementation of the provisions of Part IV for their mutual benefit. This provision has been referred to by developing countries in the context of the trade negotiations among developing countries. An examination of action developing countries might take to promote mutual trade has also taken place in the Group on Expansion of Trade among Developing Countries.

20. Paragraph 5 reaffirms the possibilities already existing in the General Agreement for the affording of opportunities for consultations with respect to any difficulties arising in the implementation of paragraphs 1 to 4 of Article XXXVII. Individual governments are best placed to indicate whether they have encountered any difficulties in making representations to other contracting parties. As pointed out earlier, there is no record of the provisions of Articles XXII or XXIII having been used to resolve difficulties connected with the implementation of Article XXXVII.

#### Article XXXVIII

21. Paragraph 1 of this Article provides for joint action to further the objectives spelled out in Article XXXVI within the Agreement and elsewhere. The Committee on Trade and Development provides a continuing forum for work of the CONTRACTING PARTIES in the field of trade and development; problems of developing countries are given increased attention at sessions and in reviews by the CONTRACTING PARTIES.

22. Paragraph 2(a) provides for action through international arrangements in the field of primary products. In this connexion it will be recalled that in November 1956 the CONTRACTING PARTIES adopted a Resolution which authorized

the GATT to make arrangements for joint action in the solution of problems of commodity trade where the CONTRACTING PARTIES were of the opinion that such action could usefully contribute to the solution of such problems, having regard to the competence of the United Nations and of other intergovernmental organizations concerned. It was also understood that such arrangements would only be made where other bodies concerned were unable to make suitable arrangements. The Committee on Trade and Development has set up a Group on Commodity Trade; this Group met once and discussed proposals for action in respect of tariffs and fiscal charges on certain tropical products which have since been taken up in the context of the Special Group on Trade in Tropical Products. An instrument on trade in grains, which led to the conclusion of The Current International Wheat Agreement was negotiated in GATT within the framework of the Kennedy Round and a number of temperate-zone products of interest to developing countries will be taken up in the Agriculture Committee on the basis of a work programme involving consideration of major problems affecting market structure and orientation of domestic production<sup>1</sup>.

23. Paragraph 2(b) relates to collaboration between the CONTRACTING PARTIES and other agencies. The question of appropriate coordination between GATT and other agencies including in particular UNCTAD, has been kept under continuous consideration.

24. Paragraph 2(c) provides for appropriate collaboration with other international organizations and governments in the analysis of development plans and policies of individual less-developed countries. The Committee on Trade and Development has carried out analyses of development plans of Nigeria and Uganda. This work will also be covered in the context of the expanded consultations on balance-of-payments restrictions with developing countries which were mentioned in the programme of work adopted by the CONTRACTING PARTIES at their twenty-fourth session. One such expanded consultation has taken place since that session.

25. Paragraph 2(d) requires that the CONTRACTING PARTIES keep under continuous review the development of world trade with special reference to the growth rate of trade of developing countries and to make appropriate recommendations. Such reviews have been carried out by the Committee on Trade and Development and have formed part of the conclusions and reviews carried out by the CONTRACTING PARTIES at their annual sessions.

26. Paragraph 2(e) provides for collaboration in methods to expand trade through harmonization and adjustment of national policies, etc. The question of the adjustment of national policies has already been referred to in connexion with

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<sup>1</sup> See Proceedings of the Agriculture Committee (COM.AG/11).

adjustment assistance measures. In the field of marketing, etc., mention might be made of the initiative and current activities in the field of trade promotion carried out jointly by GATT and UNCTAD and which reflect efforts to give effect to these provisions.

27. Paragraph 2(f) provides for the establishment of institutional arrangements to further the objectives and give effect to the provisions of Part IV. The establishment of the Committee on Trade and Development has been based on this provision.