

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

CCM.TD/W/177

2 February 1973

Limited Distribution

Committee on Trade and Development
Twenty-Third Session
13 and 14 February 1973

BACKGROUND NOTE FOR DISCUSSION OF THE PRINCIPLE OF NON-RECIPROCIITY

Prepared by the Secretariat

1. When the Declarations on international economic relations were before the Council in March 1972, most delegations representing developing countries stressed the importance they attached to the application of the principle of non-reciprocity in trade negotiations among developed and developing countries, as spelt out in Article XXXVI:8 and its interpretative note. Representatives of these countries also felt that a clear definition of this principle was needed. Proposals made ranged from requests for no reciprocity on the part of developing countries to a suggestion that the question of reciprocity should be considered in the light of varying levels of economic development.
2. Most of the discussion that has since taken place on the subject has been in somewhat general terms. Thus, at the last session of the Committee on Trade and Development representatives of developing countries referred to the importance of non-reciprocity for developing countries which they believed should be adequately reflected in the techniques and modalities for their negotiations. Representatives of some developed countries expressed the view that, while they did not expect full reciprocity from developing countries, it should be possible for these countries, consistently with Part IV, to make contributions to the objectives of the trade negotiations through appropriate actions in the tariff and non-tariff fields. The suggestion was made that concessions could take the form, inter alia, of a simplification of existing import formalities. At the twenty-eighth session, developing countries in general stressed the need for a clear definition of the concept of non-reciprocity on the basis of the relevant provisions of Part IV. At the same time it was stated by one representative speaking on behalf of a group of developed countries that the prior adoption of such principles as non-reciprocity etc., could prevent developing countries from bringing an active influence to bear on the results of the negotiations. While he noted that developing countries could not be required to offer reciprocity in the traditional and conventional sense, this representative also considered that a system of rights and mutual restraints should be sought and set up within which developing countries could play their part in a framework of multilateral economic and trade co-operation.

3. In this connexion, it might be recalled that in its discussion of the implementation of Part IV in early 1968, the Committee on Trade and Development took up the question of non-reciprocity against the background of the procedures that had been adopted for the participation of developing countries in the Kennedy Round. With a view to facilitating discussions aimed at arriving at a more precise interpretation of Article XXXVI:8, the secretariat prepared a note, COM.TD/W/79, dated 14 October 1968. This note and the record of the discussion in the Committee as reflected in its report to the CONTRACTING PARTIES (L/3102) are attached as Annexes 1 and 2.

4. It will be seen from the records of the earlier discussions that the general approach adopted in the Kennedy Round was that the contribution of the less-developed countries to the overall objective of trade liberalization should be considered in the light of the development and trade needs of these countries. It was also recognized that the developing countries themselves must decide what contribution they can make. At the same time the procedures provided for suggestions to these countries as to action which might be taken by them in the tariff and non-tariff field in the context of the negotiations. Document COM.TD/W/79 refers to the specific suggestion made in the Sub-Committee on Participation of Developing Countries that the less-developed countries could, among other things, consider bindings or reductions in their tariffs which were desirable in their own economic interest, it being recognized that considerations of revenue and of the need to protect infant industries would limit what could be done in this connexion. It was also at the same time recognized by the Sub-Committee in a report submitted in March 1965 that the offers made by developing countries need not be confined to offers on tariff reductions but could take other forms. As indicated in this report, the contents of the suggestions made by industrialized countries in the course of the bilateral negotiations were not known to the secretariat. However, the following suggestions were made in regard to the contribution of less-developed countries in general by at least one delegation: (i) the reduction and binding of tariffs when such reductions would stimulate further economic development; (ii) the binding at present levels of the majority of the other tariffs; (iii) the removal of consular fees and documentation; (iv) the elimination of other burdensome import formalities; and (v) the adjustment of certain government purchasing regulations.

5. A general point relevant to the coverage of the proposed negotiations is that in terms of the interpretative note under paragraph 8 of Article XXXVI, the provisions of that paragraph apply not only to negotiations for concessions on tariff and non-tariff barriers under Articles XVIII, XXVIII, XXVIII bis and XXXIII, but also to any other procedures under the General Agreement.

6. Since the question of reciprocity on the part of developing countries has been brought up at the level of broad principles, the discussions that have taken place in the Agriculture Committee and the Committee on Trade in Industrial Products provide few specific suggestions in regard to the possible application of this concept in given situations.

7. In the work on non-tariff barriers, the ideas advanced include the possibility that developing countries might be allowed to delay the implementation of certain rules in the proposed codes of conduct in respect of certain non-tariff barriers. In general it might be noted that, like other contracting parties, developing countries have participated in the work of different Working Groups on non-tariff barriers without, however, any commitment as to their eventual participation in the arrangements that might be worked out. It would appear that participation of developing countries in certain arrangements, such as those relating to valuation, technical barriers to trade and import documentation and customs formalities, could make a significant contribution to the objectives of these arrangements. In particular, any solution relating to the simplification of import documentation or customs formalities is likely to gain considerably in meaning if it covers at least the area of consular formalities which, at the present time, are mainly maintained by developing countries. In this connexion, the following extract from the statement made by the Chairman of Working Group 2, as re-produced at pages 20-21 of L/3756, is of interest: "Members of the Group urged that in accordance with the Recommendations of the CONTRACTING PARTIES of 1952, 1957 and 1962 all remaining consular formalities be abolished. Several members of the Group supported the proposal to adopt the Interpretative Note to Article VIII of the General Agreement contained in document Spec(72)104 on an ad referendum basis and to give credit, in the context of the future multilateral trade negotiations, to those countries which abolished consular formalities. A possible date for the abolition of consular formalities might be 1 January 1975 or no later than the effective date of concessions in the forthcoming negotiations. The representatives of the countries still maintaining consular formalities noted that these formalities did not constitute a violation to Article VIII of the General Agreement and were, in any case, only a minor obstacle to trade."

8. In relation to the discussions in the Agriculture Committee, the secretariat paper COM.AG/W/86, dealing with implications for developing countries of various suggested techniques and modalities for negotiations on agriculture, identifies two areas, among others, where co-operative action by the developing countries could further possible arrangements to deal with certain problems affecting agricultural trade. One of these areas relates to the possible development of arrangements limiting or eliminating the use of export subsidies or providing for the observance of minimum prices. It has been suggested that the acceptance of some provisions for restraint by the developing countries might be necessary if, for instance, the abolition or reduction of export subsidies or the acceptance of minimum price commitments by developed countries is not to be frustrated by unrestrained price competition on the part of other countries. In this connexion a reference might also be made to those parts of document COM.AG/W/86 which deals with obligations of countries within the framework of international stabilization arrangements. The second area relates to the possible action towards the reduction or elimination of quantitative restrictions on agricultural products where it has been suggested that the process of dismantling of particular restrictions might be accelerated if a link were established with corresponding action on export aids. A somewhat related

concept is also involved in one of the suggested techniques for negotiations relating to variable levies according to which a reduced levy could be reserved for exporters who undertook to observe a minimum c.i.f. price. Document COM.AG/W/86 points out that "such a technique exists within the framework of bilateral agreements and it is interesting to note that it implies a certain degree of reciprocity in the very structure of the concession".

9. It is, of course, to be noted that the discussions on techniques and modalities for negotiation in the Committee on Trade in Industrial Products and in the Agriculture Committee have essentially been of an exploratory nature and do not, at the present time, imply any commitment by any delegation to conform to any particular technique in the negotiations including those mentioned above.

10. While the possibilities may vary for individual countries, two factors appear to be important in the examination by developing countries of the question of their contribution to the objectives of the negotiations. First, would such a contribution help to secure additional benefits for their international trade and influence the orientation of the negotiations with respect to the treatment of products and barriers of particular interest to them? Second, the extent to which such a contribution would be in their trade and development interests by serving in particular to reduce the cost of the inputs for their export industries and investment programmes and in general making for a more efficient policy of development.

Annex 1PAST DISCUSSIONS ON THE CONCEPT OF NON-RECIPROCITYNote by the Secretariat dated 14 October 1968 (COM.TD/W/79)

1. At the eleventh session of the Committee on Trade and Development, attention was drawn to paragraph 8 of Article XXXVI and the interpretative note to that paragraph; it was suggested that the secretariat should prepare a background paper outlining past discussions relating to application of the principle of non-reciprocity between developed and developing countries in trade negotiations so that the Committee could have a thorough discussion of the matter at their next session.

2. The following sections contain a collection of references to the principle of non-reciprocity drawn from records and working papers of high-level meetings and sessions of the CONTRACTING PARTIES, the Committee on Legal and Institutional Framework and organs of the Kennedy Round. Section III also contains some additional notes (in paragraph 23) on matters relating to the participation of developing countries in the Kennedy Round.

I. The Ministerial Meetings of 1961 and 1963

3. At the Ministerial meeting in November 1961 the Ministers

"...agreed that, in view of the stage of economic development of the less-developed countries, a more flexible attitude should be taken with respect to the degree of reciprocity to be expected from these countries" (BISD, Tenth Supplement, page 26, section 2).

4. At the Ministerial meeting in May 1963 at which a decision was taken to commence comprehensive trade negotiations it was agreed that:

"in the trade negotiations every effort shall be made to reduce barriers to exports of the less-developed countries, but that the developed countries cannot expect to receive reciprocity from the less-developed countries" (BISD, Twelfth Supplement, page 48).

II. The Committee on Legal and Institutional Framework

5. Early in the discussions in this Committee it was suggested that a new provision should be inserted in the GATT to reflect the Ministerial directives referred to above. One of the proposals was that it should be provided that developing countries should be exempted: "... from the obligation to grant tariff concessions of equal magnitude in tariff negotiations with industrialized countries ..." (Spec(63)280, page 1).

6. Some members of the Committee seem to have been of the view that developing countries should give no reciprocal concessions in negotiations with developed countries and that developed countries were "... not to expect reciprocity in the form of tariff concessions". An explanatory note to the paragraph containing this statement reads: "... As the less-developed countries accept a measure of discipline in their commercial policies through their participation in the General Agreement, it is to be expected that reciprocity for tariff concessions would be expressed in the increased capacity to import, generated by such concessions, rather than through reciprocal tariff concessions by the less-developed countries" (Spec(63)316/Rev.1, pages 4 and 5).

7. This view was, however, not generally accepted. The minutes of the second meeting of the Committee record a suggestion that: "... the element of degree should be worked in, to avoid the implication that less-developed countries had no obligation to offer concessions when such were consistent with or might even promote their development ..." (L/2114, page 5).

8. In February-March 1964 the Committee drew up a draft chapter on trade and development containing alternative formulations on the question of non-reciprocity, viz:

"not to expect less-developed contracting parties to provide full reciprocity in negotiations with developed countries"

"not to expect to receive reciprocity from the less-developed contracting parties".

The wording of a suggested interpretative note in the Committee's draft is identical to that quoted in paragraph 6 above with the following additional sentence:

"The effect of this increased capacity to import on the trade of individual developed contracting parties could be balanced through the exchange of concessions among the developed contracting parties concerned."
(L/2195/Rev.1, page 6)

9. In a discussion on the above-mentioned draft at the twenty-first session of the CONTRACTING PARTIES in March 1964 the Indian representative said that "In finalizing the text of the new chapter, the Committee might consider the inclusion of the concept of the degree of reciprocity expected by developed countries from less-developed countries, etc." (SR.21/11, page 170). On this same point the Canadian representative said that "The most careful thought should be given to what degree of reciprocity was desired, since this could vary as between developing countries and between various items of trade ..." (SR.21/11, page 179).

10. When the Legal Committee resumed its work after the twenty-first session a proposal was circulated which included the following interpretative note:

"In view of their high level of demand for imports for development purposes, it is to be expected that reciprocity for tariff concessions extended to less-developed contracting parties would be expressed in increased imports from other contracting parties and through a consequent expansion of international trade." (INT(64)255)

11. A paper considered by the Committee in October 1964 reads as follows:

"The developed contracting parties should not expect reciprocity for measures taken by them to reduce or remove tariffs and other barriers to the trade of developing contracting parties." (INT(64)552)

The interpretative note to the above paragraph seemed to reflect a view that it was the developing countries themselves which would decide whether any concessions they would wish to offer were consistent with their individual development and needs; the proposed text reads:

"It is understood that the phrase 'should not expect reciprocity' does not mean that the less-developed contracting parties may not make concessions which in their view are consistent with their individual development, financial and trade trends and needs in accordance with the objectives of this chapter." (INT(64)552)

12. A new proposal circulated in the Committee in October 1964 contained a formulation on the "contribution" of the less-developed countries as agreed at the meeting of the Trade Negotiations Committee held at Ministerial level in May 1964.¹ In this paper the developing countries reiterated and elaborated the position which Brazil and Argentina had taken in the meeting of the Trade Negotiations Committee on the necessity to take into account financial and trade needs as well as "past trade developments" in considering the contribution of less-developed countries (INT(64)552/Rev.1). The interpretative note to the provision on non-reciprocity in this paper did not retain the phrase "in their view" which appears in the text quoted in paragraph 11 above. Agreement was eventually reached on the formulation suggested in this revised version and with the exception of minor stylistic improvements appears virtually unchanged in the final report of the Committee (L/2231).

¹See paragraph 15 below.

13. It may be noted that the interpretative note under paragraph 8 of Article XXXVI (Part IV) also indicates that "this paragraph would apply in the event of action under Section A of Article XVIII, Article XXVIII, Article XXVIII bis (Article XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX shall have become effective), Article XXXIII, or any other procedure under this Agreement".

III. The Kennedy Round negotiations

14. At its first meeting, in November 1963, the Sub-Committee on Participation of Developing Countries in the Kennedy Round noted:

"... Ministers had agreed that the developed countries could not expect to receive reciprocity from the less-developed countries. Representatives of some less-developed countries suggested, in this connexion, that the general increase in imports into the less-developed countries of products needed for their development which should result from a successful conclusion of the negotiations, coupled with an assurance by them of a disciplined commercial policy, should be regarded as a measure of reciprocity on their side. It was generally felt that the right approach to this question was to consider what contribution each participating less-developed country could make in the light of its development needs and for the purpose of furthering its trade and economic development. It was suggested that the less-developed countries could, among other things, consider bindings or reductions in their tariffs which were desirable in their own economic interest, it being recognized that considerations of revenue and of the need to protect infant industries would limit what could be done in this connexion. It was suggested that special consideration should be given to the situation of those less-developed countries whose tariffs were already low ..." (TN.64/LDC/1/Rev.2, page 2, paragraph 7).

15. At a meeting at Ministerial level in May 1964, the Trade Negotiations Committee recalled the 1963 Ministerial declaration on this point (see paragraph 4 above) and agreed "... that the contribution of the less-developed countries to the overall objective of trade liberalization should be considered in the light of the development and trade needs of these countries" (BISD, Thirteenth Supplement, page 111, Section D). A footnote to this Resolution indicates that "Argentina and Brazil accepted this paragraph on the understanding that the phrase 'development and trade needs' covers the requirements of the current financial situation".

16. At a meeting of the Trade Negotiations Committee in October 1966, the Chairman said:

"... Ministers had made it clear that reciprocity was not expected of less-developed countries, but the twenty-eight countries following the special procedures for the participation of the less-developed countries had accepted an obligation to offer some contribution to the objectives of the trade negotiations ..." (TN.64/83, paragraph 1).

17. The obligation referred to above relates to the agreement reached at a meeting of the Sub-Committee on 12 March 1965 that developing countries would submit statements of the offers which they would make as a contribution to the objectives of the trade negotiations. (TN.64/41/Rev.1).

18. At the meeting in October 1966 when withdrawal of offers was being discussed the representative of the United States stated that

"His delegation would not withdraw a product of interest to less-developed countries lightly but might be obliged to do so because no effort had been made by the less-developed country concerned. It was agreed that reciprocity would not be required of these countries but his delegation felt that some contribution was necessary so that it could justify the concessions it was itself making." (TN.64/83, paragraph 19)

On that same occasion the representative of Japan expressed disappointment

"at the lack of concrete offers from less-developed participants and had made specific suggestions as to what contribution these countries might make in their own interest" (TN.64/83, paragraph 20).

19. The report of the Chairman of the Sub-Committee on Participation of Less-Developed Countries in the Kennedy Round to the Committee on Trade and Development at its meeting in Punta del Este in January 1967 included the following statement:

"Ministers agreed that reciprocity would not be expected from developing countries. This decision has since been given formal legal expression by incorporation in Part IV of the General Agreement. There will, therefore, be no balancing of concessions granted on products of interest to developing countries by developed participants on the one hand and the contribution which developing participants would make to the objective of trade liberalization on the other and which it is agreed should be considered in the light of the development, financial and trade needs of the developing countries themselves. It is therefore recognized that the developing countries themselves must decide what contribution they can make. Some industrialized participants have, as foreseen in the agreed procedures, made suggestions as to action which might be taken by these countries in the tariff and non-tariff fields in the context of the negotiations." (COM.TD/W/37, paragraph 9).

20. Paragraph 28 of the same report also states that:

"Certain industrialized participants have indicated that they may find difficulty in maintaining existing offers if no effort is made by developing countries. Whilst it is agreed that participating developing countries will make those concessions which are feasible from their own point of view and consistent with their economic, financial and development needs, the fact that such a contribution is made will facilitate the maintenance or improvement of the offers of developed countries on products of interest to developing countries and will provide an important opportunity for developing countries to review their levels of protection in the light of their own interests."

21. At a meeting of the Trade Negotiations Committee on 4 May 1967 the United States representative stated that:

"... There was also considerable pressure on the United States delegation to withdraw certain offers on which developing countries had a direct interest. It had proved difficult to resist this pressure because it had not been possible to demonstrate that the less-developed countries in question had seriously endeavoured to offer contributions in the form of tariff reductions which would be consistent with their development needs. Offers of a specific nature from developing countries benefiting from the American offer, even if made at this late stage, could still be a factor enabling his Government to maintain its offers." (TN.64/100, page 3, paragraph 12)

22. In a meeting of the Committee on 13 June 1967 the representative of Yugoslavia stated that:

"... had believed that the present trade negotiations were to be different from the five previous negotiations in the GATT because reciprocity would not be demanded from less-developed countries... In practice this had not been so, and developed countries had not honoured the obligations they had undertaken in the Ministerial Resolutions in 1963 and 1964 and in Part IV." (TN.64/107, page 4)

23. The following twenty-three countries indicated that they were participating in the trade negotiations under the procedures established for the participation of developing countries:

Argentina	Nicaragua
Brazil	Nigeria
Ceylon	Pakistan
Chile	Peru
Dominican Republic	Portugal (non-European territories)
India	Sierra Leone
Indonesia	Spain
Israel	Trinidad and Tobago
Jamaica	Turkey
Republic of Korea	United Arab Republic
Malawi	Uganda
	Yugoslavia

Of these, fourteen countries (namely: Argentina, Brazil, Chile, Dominican Republic, India, Israel, Jamaica, Korea, Malawi, Peru, Spain, Trinidad and Tobago, Turkey and Yugoslavia) made offers of tariff bindings or concessions that are now embodied in the schedule of concessions attached to the Geneva (1967) Protocol to the General Agreement. A number of countries made "statements of contribution" to the objectives of the trade negotiations referring to recent measures of trade liberalization or forthcoming changes in import systems. Since, however, these were not bound in the GATT schedules, as such they do not form part of the concessions resulting from the negotiations. No specific evaluation has been made up to now of the schedules of concessions made by developing countries. Nor, in view of the confidential character of bilateral negotiations, is any indication available as to whether the schedules of developing countries include any concessions that a developing country was obliged to make, even though it was inconsistent with its individual development, financial and trade needs. Though there were withdrawals from the linear offer by a number of major industrialized countries in the final stages of the negotiations, the records of the multilateral discussions have provided no specific indication as to whether any particular products were withdrawn by an industrialized country from the linear offer because it considered that adequate reciprocity was not forthcoming from one or more developing country with which it had negotiated.

Annex 2

Extract from L/3102¹

14. "In the discussions some members of the Committee referred to their experience in recent negotiations with certain developed countries which showed that different contracting parties seemed to have different concepts as to the contribution that a developing country could be expected to make in trade negotiations, especially those under paragraph 4 of Article XXVIII. In their view some criteria should be worked out to ensure that the requests by developed countries for contributions from developing countries in trade negotiations would be truly in line with the principle laid down in those provisions in relation to the development, trade and financial needs of these countries. At any rate, they considered that it was the developing countries themselves which could best determine the consistency of any contribution demanded of them with those needs. They further suggested that contributions should not be expected which either individually or in their sum total would be inconsistent with these needs and were onerous in either qualitative or quantitative terms. Some members also pointed out that, in assessing the contributions made by developing countries, account should be taken of the acceptance by developing countries of such reductions and adjustments in existing tariff benefits as arose, for example, from loss or elimination of existing margins of preferences.

15. Members of the Committee representing developed countries reaffirmed the full intention of their governments to apply the principle of non-reciprocity as accepted by Ministers and embodied in Part IV of the General Agreement. Some of these members, however, felt that it was not possible to work out a priori rules for the application of this principle, since the situation varied in respect to individual countries and individual products. These members pointed out that the question was one of practical application. In the Kennedy Round, for example, certain developed countries had presented suggestions to certain developing countries as to the contribution they might make, but they had not made the full acceptance of those suggestions a pre-condition for the maintenance of their own offers on items of interest to developing countries. In their view, the provisions of Article XXXVI:8, however did not relieve developing countries from the obligation to make contributions as a counterpart for the benefits received to the fullest extent possible not inconsistent with their development, trade and financial needs. It was pointed out by some members that, in the long run, if the economies of developing countries were to develop more efficiently and competitively, it would be in the interests of these countries periodically to examine their protective policies and to assume some commitments. Even if it were for each developing country to determine whether it could or could not make a particular concession consistently with its development, financial and trade needs, there was nothing in Part IV which would oblige the developed country to conclude a negotiation on terms laid down by the developing country. A pragmatic approach was therefore necessary.

¹Report of the Committee on Trade and Development adopted by the twenty-fifth session of the CONTRACTING PARTIES, November 1968.

16. Some members representing developed countries pointed out that renegotiations under Article XXVIII were fundamentally different from new negotiations under Article XXVIII bis. In the former contracting parties are to endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than those provided in the GATT before such negotiations. The principle of non-reciprocity should not be applied in such a way as to lead to an erosion of the general level of bindings, especially as the tariff concessions bound in the schedule of a developing country were not always the results of a balanced exchange of concessions with developed countries. Furthermore the provisions of Article XXXVI:8 referred only to the contributions to be expected of developing countries and did not affect the rights of contracting parties under paragraphs 3 and 4 of Article XXVIII relating to the compensatory withdrawal of concessions should agreement not be reached in negotiations arising from the modification or withdrawal of concessions. The representatives of certain developing countries observed that the interpretative note to paragraph 8 of Article XXXVI recognized that the principle of non-reciprocity was applicable to Article XXVIII as well as Article XXVIII bis negotiations. Further, developing countries had generally given tariff bindings in pre-Kennedy Round negotiations on the basis of reciprocity and in many cases due to changes in their tariff structure there had been considerable appreciation in the value of concessions originally granted to developed countries. In view of this, a developing country should have the right to adjust its concessions in the light of its development, trade and financial needs and should be expected to restore the original balance of concessions only to the extent not inconsistent with those needs. Any other approach would tend to penalize those developing countries who had acceded to the GATT before the principle of non-reciprocity came to be formally accepted and would invite practical problems for their efforts to achieve a more rational tariff structure.

17. In view of general interest shown by members of the Committee in this matter and considering its importance in relation to the structure of the General Agreement, the Committee agreed that these questions might be further considered at a later stage. Meanwhile, it was to be expected that any difficulties that might arise in actual negotiations would be resolved on a basis of mutual understanding in the light of the exchange of views that have taken place."