

GENERAL AGREEMENT ON TARIFFS AND TRADE

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NON-TARIFF MEASURES AFFECTING TRADE OF DEVELOPING COUNTRIES

Background Note prepared by the Secretariat

INTRODUCTION

1. At the twenty-eighth session, the CONTRACTING PARTIES have reaffirmed that removal of distortions to trade resulting from non-tariff measures would be one of the important elements in the forthcoming multilateral negotiations. To provide a basis for discussion in the Committee on Trade and Development, an attempt has been made in this note to identify those non-tariff measures which are relatively important to developing countries from the point of their restrictive effects on trade, and to briefly review the work being done by other GATT bodies in this field, with particular reference to the problems of these countries.

I. Identification of barriers affecting trade of developing countries

2. The work in GATT in the field of non-tariff measures is based on the notifications made by countries indicating specific problems faced by them. The inventory of non-tariff measures, which has been prepared by the secretariat, summarizing the viewpoints of the notifying countries and of the countries on whom notifications were made, contains about 800 notifications. On the basis of the material contained in the Inventory and subsequent examination, the Committee on Trade in Industrial Products has extracted an illustrative list of twenty-seven categories of non-tariff measures. The list is reproduced in the Annex. It may be noted that the list does not include sanitary regulations. This is mainly because these affect trade in agricultural products and an examination of the problems and solutions in this field is being pursued in the Agriculture Committee.

3. An analysis of the notifications made specifically by developing countries, both to the Committee on Trade in Industrial Products and to the Agriculture Committee, as well as other notifications relating to products in which they have an export interest shows that quantitative restrictions and export restraints have created the most concern. This concern would appear to relate as much to the existence of restrictions as to the manner of their administration. The next in importance from the point of the restrictive effects cited and the range of products covered would appear to be sanitary regulations. The other non-tariff measures which have featured predominantly in the notifications are those relating to valuation for

customs purposes, standards, export subsidies and countervailing duties, import documentation, packaging, labelling and marking requirements, selective taxes, government procurement and import deposits.

4. Though efforts have been made in various studies to make a quantitative assessment of the existing non-tariff barriers on trade, because of the obvious complexities involved, the secretariat has not attempted a quantitative assessment of such barriers on trade of developing countries.

5. It might also be noted that except with respect to sanitary regulations, this paper does not deal specifically with non-tariff barriers in their application to the agricultural sector, as it was felt that this could best be discussed in relation to an examination of problems in that sector generally. However, details of various measures such as variable levies, export aids, packaging and labelling regulations, marketing standards, excise taxes, miscellaneous charges, etc., are to be found in documents COM.AG/W/68 and Addenda, COM.AG/W/71 and COM.AG/W/81. These have also been identified in relation to a group of agricultural products of interest to developing countries in INT(72)125.

6. Further, it might be noted that, while certain types of non-tariff measures such as import restrictions and the manner in which they are applied, health and sanitary regulations, excise taxes, etc., may be related without too much difficulty to individual products or product groups, there are others such as valuation for customs purposes, industrial standards, etc., which tend to have a linear application so that a commodity-by-commodity analysis can give only a very inadequate picture of their effects.

7. In regard to the impact on developing countries of non-tariff measures, a general point made is that they provide a special impediment to their trade, in as much as developing countries tend to be peripheral suppliers, situated at a distance from the importing market and with inadequate facilities to organize compliance with formalities and regulations and adapt supplies to special requirements which result from non-tariff measures. It is also stated that a threat or existence of non-tariff measures tends to act as a more serious deterrent to a developing country which is seeking to penetrate a new market, than to a country which has established itself in the market where such barriers exist.

II. Review of the work done by GATT bodies

8. A separate note has been prepared on the subject of quantitative restrictions and export restraints (COM.TD/W/184). These topics have also been dealt with in document COM/IND/W/99. It needs to be mentioned only that among the products which are subject to export restraints, those of export interest to developing countries include textiles, jute goods, table-ware, bottles, etc.

9. In analyzing and reviewing the work done on other non-tariff measures mentioned above, it is proposed to deal first with valuation procedures, administration of import licensing in respect of which ad referendum solutions have been developed and with standards in respect of which the work on elaborating, on an ad referendum basis, a Code of Conduct for Preventing Technical Barriers to Trade is nearing completion. This is followed by a review of the problems and progress in the work on finding solutions in regard to the remaining non-tariff measures. It should be noted that this brief review of the work done and summary of the various proposals is only intended to provide a broad basis for discussion and general appreciation of the problems that are faced by developing countries. A summary of this nature may not fully reflect the emphasis laid and nuances attached by delegations to the various proposals for solutions made as well as any reservations which may have been expressed by them. For a full account of the points discussed on a particular issue, the context in which the points were made and the precise formulations used, it would be desirable to refer to the relevant reports of the Committee on Trade in Industrial Products and of the Agriculture Committee.

(i) Valuation for customs purposes

10. In their notifications, developing countries have pointed out that problems encountered by them in this field arose because of the existence in some of the countries of special valuation procedures, under which value for customs purposes was determined taking into account domestic prices prevailing in the importing country or current domestic value for the same product in the exporting countries. In particular it has been stated that the system of levying customs duty on the basis of f.o.b. value or current domestic value, whichever was higher, prevalent in some of the countries, made it difficult for exporters to know in advance the amount of duty payable; resulting uncertainty had adverse effects on exports. It has been further stated that these systems acted particularly to their disadvantage as in a large number of cases, because of structural imbalances, supply scarcities and such other factors, the domestic prices in these countries ruled at artificially high levels. In addition, in some cases, goods which were produced by specially established export-oriented industries were not sold in the domestic market, which created special difficulties in ascertaining comparable current domestic value.

11. The ad referendum solutions, which have been evolved by the Working Group consist of a set of draft principles on which valuation systems should be based and a set of interpretative notes to Article VII. The Article lays down that value for customs purposes should be based on "actual value" of the imported merchandise or of like merchandise. Interpretative notes 1 to 6 in the draft text lay down the basis on which actual value is to be calculated in the case of countries which base their values on c.i.f. prices as well as for those which

base their valuation systems on f.o.b. prices and indicate other methods of valuation to calculate the nearest ascertainable equivalent to actual value, in cases where invoice prices are not accepted. Note 7 further states that "the value of imported merchandise for customs purposes should in no case be based on the price of goods of national origin nor on the price of goods in the domestic market of the exporting country nor, in accordance with Article VII paragraph 2(a) on any arbitrary or fictitious values, such as any system of valuation based on the concept of minimum value".

(ii) Administration of import licensing

12. Working Group 4 of the Committee on Trade in Industrial Products has elaborated on an ad referendum basis two texts, one on automatic licensing and the other on licensing to administer import restrictions. In regard to automatic licensing, which covers systems like technical visa requirements, surveillance systems, etc., the text lays down the principles and rules on which such systems should be based. The provisions contained in the draft text on licensing to administer import restrictions are intended to minimize the additional restrictive effects arising from procedures adopted in various countries to administer such restriction and to facilitate full utilization of quotas allotted. In their notifications, some of the developing countries have stated that the systems adopted by the importing countries for allocation and distribution of licences among importers, as well as delays in the issue of licences, result in many cases in quotas not being fully utilized.

13. The provisions in the draft text on this subject, inter alia, state that all useful information concerning formalities for applications should be published as far in advance as possible of any opening date for submission of application for licences. In regard to procedures for distribution of licences it states that licences should not be issued to importers for goods in such small quantities as to make imports uneconomical and that consideration should also be given to ensure a reasonable share of licences to new importers. In order to minimize the restrictive effects of the systems adopted for issue of import licences, it urges that wherever practicable, imports of goods under restrictions, should be allowed on the basis of export permits issued by exporting countries, in accordance with procedures worked out between exporting and importing countries.

(iii) Standards

14. Barriers in the field of standards could, inter alia, arise in cases where there is a significant divergence in the mandatory standards adopted in various countries as well as in cases where methods used for enforcement of such standards are unduly rigorous. In their notifications, developing countries have referred to some of the specific problems faced by them in the area. Some of these countries have pointed out that standards for electrical machinery and

equipment have posed difficulties to their exporters particularly as the procedures adopted for prior testing and inspection are time-consuming and costly in some countries. Other notifications made by them relate to difficulties experienced by them because of certain provisions in the technical regulations regarding product content or processes used in the manufacture of enamel products, pencils, fruit juices, etc.

15. It is difficult to summarize the various complex and technical provisions in the draft Code on Preventing Technical Barriers to Trade, now under discussion in Working Group 3. Even so, a brief description of the main objectives and of some of the more important provisions may be helpful in getting some insight of the type of solutions that are being considered. The basic objective in the Code is to ensure that standards, both mandatory and voluntary, and methods used for their enforcement and for determining conformity, and quality assurance systems, are not formulated or applied in such a way as to constitute an obstacle to international trade. To achieve this objective the Code, inter alia, requires adherents to use as a basis for their standards, existing appropriate international standards. The Code further states that, except in cases where the technical content of the proposed standard is substantially the same as the technical content of an international standard, adherents should take into account any reasonable comments that may be made by other adherents on the draft standards. In cases where adherents require positive assurances that imported products conform to the prescribed standard, the Code lays down that they should wherever possible accept an assurance of conformity provided by regulatory bodies constituted in the territories of other adherents or allow tests to be carried out in the territories of other adherents. In cases, however, where the tests are to be carried out in the importing country, the importing adherent should ensure that the imported product is not accepted for testing under conditions which are less favourable than those accorded to domestic products. The provisions in the draft Code relating to the formulation and participation in international or regional quality assurance systems are intended to ensure that all interested countries are able to participate and benefit from such schemes.

16. The basic objectives and the main principles on which the Code is based have received the general support from developing countries which have been able to follow the work of the Group. They have, however, emphasized that because of technical and other limitations they may not be in a position to derive the same benefits from the rights that were being created under the draft Code; the Code should therefore provide for technical assistance from developed countries to enable developing countries to overcome such limitations. For instance, if developing countries were to benefit from the requirement in the Code that international or regional quality assurance systems should be formulated in such a way as to allow for participation by all adherents, they will have to be assisted in establishing such appropriate regulatory and quality assurance bodies

which could issue assurances of conformity and in whose technical confidence other adherents have confidence. The draft Code which is under examination, contains, inter alia, a separate section on Technical Assistance to other adherents which defines various situations in which adherents, especially the developing countries, may require technical assistance. Further, the terms of reference of the Committee on Preventing Technical Barriers to Trade provide that it should conduct periodical reviews of the operation of the Code including the extent to which it has assisted developing adherents to overcome technical barriers to trade.

(iv) Health and sanitary regulations

17. As has been explained, a significant number of notifications of developing countries relate to the difficulties which their trade encounters as a result of the existence of stringent health and sanitary regulations. The difficulties mentioned vary from problems involved in getting import permits and producing appropriate health certificates to complete prohibition of imports from all or particular sources. The products which are said to be affected cover a range of agricultural products, like meat and meat products, poultry, fish, hides and skins, vegetables, fruits and processed fruit products, etc.

18. As health and sanitary regulations generally apply to agricultural products, substantive discussion on this subject has taken place in the Agriculture Committee. More particularly, the Working Group on Techniques and modalities of that Committee has considered the various approaches that could be adopted for negotiations in this field. Some delegations have suggested that negotiations in this area might take place on the basis of request lists concerning particular products followed by bilateral or multilateral concessions. As an alternative, it has been suggested that a Code or a set of general principles might be drawn up for the formulation and administration of regulations so as to reduce or eliminate as far as possible any harmful trade effects. It may be mentioned in this context that the Group of Three, in its second Report, has recommended that developed countries should provide, if requested, assistance to developing countries in connexion with the specific problems which they may be facing in complying with health and sanitary regulations.

(v) Export subsidies and countervailing duties

19. Working Group 1 has been asked by the Committee on Trade in Industrial Products to pursue, concurrently with its work in the field of export subsidies, examination of the problems relating to countervailing duties, with a view to finding ad referendum solutions.

20. Article XVI:4 contains provisions banning export subsidies on non-primary products when they result in sales for export below the comparable domestic price. Since the paragraph did not contain any date for its entry into force,

the Contracting Parties adopted in 1960 a Declaration giving effect to its provisions. So far the Declaration has been accepted by seventeen developed countries. It may be noted that the Declaration has not been accepted by any developing country.

21. The Group in its work has proceeded on the basis that adoption of the Declaration by the remaining developed countries and further elaboration and refinement of the 1960 indicative list of export subsidies may provide solutions to the problems in this field. At its last meeting, the Group also considered the possibility of adopting general criteria for identifying export subsidies over and above the list of prohibited practices which may be agreed upon.

22. Developing countries would appear to have an interest in seeing that all developed countries undertake not to subsidize their exports and that there is stricter definition of export subsidies. At the same time, it is relevant to note that, as far as these countries are concerned, there is some recognition and acceptance that properly formulated and implemented export incentive schemes have a rôle to play in promotion and development of their exports of manufactures. It has, however, also been pointed out that incentive schemes which result in indiscriminate use of export subsidies may lead to the establishment of uneconomic and inefficient production in developing countries and encourage damaging competition between developing countries in export markets, which could be particularly detrimental to the interest of those countries not in a position to resort to export subsidies to the same extent. One question that seems to arise in this context is whether it would be possible to evolve a set of practices, which though included in the prohibited list for developed countries, may be permitted to be used by developing countries.

23. In regard to countervailing duties, the notifications show that legislations in some of the countries allow or require such duties to be levied on an imported product if it has received a subsidy, even though no material injury has been proved to have been caused to the domestic industry of the importing country in accordance with provisions of Article VI. These legislations are, however, protected by their Protocols of Provisional Accession to GATT. One of the suggestions made for possible solutions in this field relates to adoption of a Code on Countervailing Duties, similar to the one on Anti-Dumping Duties which would, *inter alia*, lay down principles and procedures for determination of the subsidy and its amount and for determination of material injury. Developing countries have pointed out that any such Code would have to take into account their special situation. In the light of the position explained in the preceding

paragraphs, these countries would appear to have a special interest in the solutions which are being considered for problems in this field.¹

(vi) Import documentation and consular formalities

24. In regard to import documentation, Working Group 2 has, at its last meeting, reaffirmed the desirability of simplification and harmonization of import documentation. In order to avoid duplication of the work being conducted by CCC and ECE, the Group has decided that technical work on preparing draft standard forms of all purpose entry document and of an invoice should be done by these organizations and that it should, in due course, prepare ad referendum solutions on the basis of the work done by them. The Group also discussed a proposal to adopt an interpretative note to Article VIII requiring that consular formalities should be abolished by a fixed date and to give credit, in the forthcoming multilateral negotiations, to those countries which abolished these formalities.

(vii) Packaging, labelling and marking requirement

25. The problems in this field are expected to be considered by Working Group 3 when it completes its work on standards. The notifying countries have pointed out that requirements regarding "marks of origin" being displayed on an imported product were in some cases stringent and created practical problems to exporters in complying with them. A number of notifications concern requirements intended to protect interests of consumers, such as the provision of detailed information on labels or maintenance of standard sizes of bottles and other containers. In regard to Marks of Origin one of the suggestions is that the Working Group may consider whether it would be necessary to elaborate GATT provisions in Article IX and in the 1958 Recommendation on Marks of Origin.

¹It may be mentioned in this context that paragraph 3 of Article XXXVII provides that: "The developed contracting parties shall:

- (c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties."

The drafting history of Part IV shows that countervailing duties are among the "measures permitted to meet particular problems" referred to in the subparagraph. (Cf. Note by the secretariat dated 17 March 1970: Incentives for Industrial Exports from Developing Countries, COM.TD/72.)

(viii) Other non-tariff measures of interest to developing countries

26. Among the other non-tariff measures included in the illustrative list in which developing countries have expressed interest through notifications or during discussion, but which have not as yet been taken up for discussion by the Committee on Trade in Industrial Products, would appear to be selective taxes, prior import deposits and government procurement. In regard to selective excise taxes, however, it may be pointed out that products of interest to developing countries, which are subject to such taxes, are mainly tropical products. The problems in this field are being examined in another context. As regards import deposit schemes and such other measures, which are adopted by countries as measures in the trade field to correct adverse balance-of-payments situations, a suggestion has been made that it would be useful to develop guidelines which might establish principles to be followed with a view to reducing the harmful effects of such schemes. In regard to government procurement it was considered that one of the solutions in this field may be formulation of a Code or a set of guidelines that would apply to government procurement operations. As however, when this subject was considered last in Working Group 3, the problems were being examined in another organization, it was considered desirable to follow the developments in the work there.

III. Main points for discussion

27. Three main points of importance to developing countries would appear to emerge from the Reports of the Committee on Trade in Industrial Products on its meetings held in 1972 and more recently in January 1973 (L/3756 and COM/IND/W/96). Firstly in regard to ad referendum solutions which are being evolved, mention has been made of the imbalance that would be created, in legal if not in trade terms, if only a limited number of participants adhered to an international agreement but were obliged to grant benefits of the agreement to all contracting parties under the most-favoured-nation clause. Secondly it has been suggested that preparations for negotiations should not discourage countries from reducing the adverse effects of non-tariff measures unilaterally and that such reductions should be taken into account in the negotiations¹. Thirdly, at its last meeting it was agreed that a review should be carried out of the illustrative list of non-tariff measures, that the inventory should be updated taking into account new notifications and withdrawals

¹It might be recalled that, in its two reports, the Group of Three has made recommendations for review and removal of a number of non-tariff barriers affecting export products from developing countries.

and that each member should establish the relative importance which it attaches to dealing in the forthcoming multilateral trade negotiations with particular non-tariff measures with a view to preparing a common list of priorities.

28. In the context of any discussions in the Committee on Trade and Development, two further points also appear to be of interest (i) new notifications and (ii) acceptance of ad referendum solutions by developing countries.

(i) New notifications

29. The analysis in this background note is based entirely on the material contained in the inventory of non-tariff barriers prepared in the context of the work of the Agriculture Committee and the Committee on Trade in Industrial Products. The notifications made by developing countries are relatively small in number and thus may not cover all aspects of the problems faced by them. The secretariat has given assistance to these countries by providing them with information on those non-tariff measures which, though notified by developed countries, affect trade in products in which developing countries have an export interest. Some field investigations to identify the non-tariff barriers affecting the trade of individual countries appear to have also been undertaken by other organizations. The developing countries may like to take advantage of this opportunity to send in by 1 April 1973 new notifications on specific problems which might have been identified since the last notifications were made.

(ii) Acceptance of ad referendum solutions

30. The ad referendum solutions which have been elaborated on valuation for customs purposes and administration of licensing procedures, have been circulated to administrations for further examination and consideration of any changes that may have to be made in their practices and legislations in accepting them (COM.IND/W/64 and 82). It may be pointed out that in preparing solutions, the Working Groups have paid special attention to the problems of developing countries and the solutions have been worked out in such a way as to facilitate their acceptance by developing countries. The draft texts, which contain draft principles and interpretative notes would gain in significance and have greater beneficial impact, if they were accepted by all countries. Presumably, the texts of these ad referendum solutions are being examined also by the concerned administrative authorities in developing countries. If the scrutiny by governments indicates that there may be any specific problems in accepting obligations which adoption of the solutions may involve, a discussion of this issue in the appropriate group of the Committee on Trade in Industrial Products may be helpful.

ANNEX

ILLUSTRATIVE LIST OF NON-TARIFF BARRIERS

- Group 1 Government participation in trade
- a. Trade diverting aids
 - b. Export subsidies
 - c. Countervailing duties
 - d. Government procurement
 - e. State trading in market-economy countries
 - f. Other restrictive practices
- Group 2 Customs and administrative entry procedures
- a. Valuation
 - b. Anti-dumping duties
 - c. Customs classification
 - d. Consular and customs formalities and documentation
 - (i) consular formalities and fees
 - (ii) customs clearance documentation
 - (iii) certificates of origin
 - e. Samples requirements
- Group 3 Standards
- a. Standards
 - b. Packaging, labelling and marking regulations
- Group 4 Specific limitations on trade
- a. Quantitative restrictions
 - b. Discriminatory bilateral agreements
 - c. Export restraints
 - d. Minimum price regulations
 - e. Licensing
 - f. Motion picture restrictions
- Group 5 Charges on imports
- a. Prior deposits
 - b. Credit restrictions for importers
 - c. Variable levies
 - d. Fiscal adjustments at the border or otherwise
 - e. Restrictions on foreign wines and spirits
 - f. Discriminatory taxes on motor-cars
 - g. Statistical and administrative duties
 - h. Special duties on imports