

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Trade and Development

Ad Hoc Group on Legal Amendments
to the General Agreement

RECORD OF DISCUSSIONS OF THE MEETING OF THE AD HOC GROUP ON LEGAL AMENDMENTS TO THE GENERAL AGREEMENT HELD 11-15 OCTOBER 1965

1. At the outset of the meeting some members stated that observations made by them in the course of the discussions should not be taken at this stage as reflecting definite views of their governments. A substantial part of the discussion in the Group related to various proposals presented in the course of the meeting. The drafts examined in the context of the discussions on Article XXIII and in respect of the problem of surcharges are reproduced for convenience in Annexes I to V of this note.

Discussion on Article XXIII

2. The Brazilian and Uruguayan delegations introduced the text of a draft decision on Article XXIII which had been circulated to members of the Group in document (COM.TD/F/W/4).¹ They stated that their draft was intended to be a working document and as such they welcomed suggestions for improving it. In explaining the draft they pointed out that they had set out the essence of their original proposals in the form of a draft decision with some modifications, to meet some of the difficulties pointed out at the earlier meeting, in the hope that the proposals would be more acceptable.

3. In reply to a question, the sponsors of the draft decision stated that the procedures contained in the draft related to situations between developed and less-developed contracting parties, and were not intended to deal with cases between less-developed countries. One member of the Group felt that situations could be envisaged where the inequality in bargaining power between two less-developed contracting parties could be as great as that between a less-developed and a developed contracting party.

4. One member of the Group suggested that in considering the draft decision the Group should bear in mind the necessity of making a distinction between cases involving damage caused by illegal action and those where damage was caused by action taken consistent with the GATT.

¹Reproduced in Annex I incorporating amendments made by the Group to paragraphs 1-6 and 8-10.

5. The Group considered that paragraphs 1-6, 8-10 and 13, of the draft decision were mainly of a procedural nature and agreed to discuss these paragraphs as a whole.

6. A member of the Group felt that there could be merit in giving some initiative to the Director-General at the stage in the proceedings provided for in paragraph 4 of the draft decision so as to enable him to convene a panel of experts to help arrive at a determination of the matter instead of being required to place the problem before the CONTRACTING PARTIES as soon as the time-limit provided for conciliation through his own efforts had expired. This would not only assist him in ensuring that all evidence was duly taken into account but would give his actions greater weight and authority. Some members noted that under paragraph 4, if no satisfactory solution were found within two months from the date the matter was brought to the attention of the Director-General, he would be obliged to report the matter to the CONTRACTING PARTIES. These members felt that paragraph 4 should be modified to provide that the Director-General would report the matter to the CONTRACTING PARTIES only if he were requested to do so by one of the parties concerned. They considered that such an amendment would cover the eventuality that for some good reason the contracting parties concerned might not wish the matter to be reported immediately to the CONTRACTING PARTIES, but rather for it to remain in abeyance for some time. An amendment to paragraph 4 suggested in this connexion appears between square brackets in Annex I. One member suggested that the members of the panel should be approved by all parties to the matter at issue. Another member felt that there was no need to spell out such a requirement since, in the normal course, as has indeed been the practice in GATT, members of the panel would be appointed in consultation with the parties concerned.

7. The sponsors of the draft decision stated that paragraph 4 had been drafted with a view to speeding up procedures under Article XXIII. A short time-limit had been deliberately proposed in that paragraph to ensure that if the Director-General were unable to obtain a solution, the matter would be placed before the CONTRACTING PARTIES without further delay. If another stage were introduced for the convening of a panel by the Director-General, this might encourage interested parties to delay proceedings. They were, therefore, in favour of the matter being brought to the attention of the CONTRACTING PARTIES as soon as it appeared that the efforts of the Director-General had not resulted in a solution.

8. One member suggested that paragraph 6 could in a brief and general way make it clear that the panel should do everything feasible to ascertain the nature of the measures taken, and their impact on the economic development of less-developed countries. This would avoid the difficulties and obscurities posed in paragraph 6 as now drafted. For example, it could not be seen how an external body could determine what means a government had available to make good damage inflicted by the application of a particular measure.

9. Commenting on a remark that the meaning of paragraph 6(b) was not clear in relation to paragraph 7, a member of the Group stressed that any attempt to explore what means were available to a country to make good any damage caused by its actions with a view to determining what remedy or compensation could be acceptable, would only involve the Group in extraneous considerations and delay effective action to put an end to the offending measure. Another member indicated that any assessment which might be made for granting financial compensation should not be regarded as cancelling out all the damages caused by an offending measure. For example, any assessment made for financial compensation should take into account the damage already caused by the measure and the compensation should continue to be granted until the measure causing damage is removed.
10. The sponsors of the proposal considered that it was important to ensure that the panel would take into account the fundamental elements covered in paragraph 6 and which in their view were vital in determining the bargaining power of the countries involved. They felt, however, that it might be necessary to give more thought as to how the ideas contained in the paragraph could be more clearly expressed.
11. One member observed that paragraph 13 of the draft as at present formulated did not provide any possibility for bilateral discussions directed towards the solution of problems between the contracting parties concerned before resort was made to the multilateral consultations of paragraph 2 of Article XXIII. Paragraph 1 of Article XXIII envisaged such an initial step and it would be desirable to provide for such a stage of bilateral discussion in the period between consultations under paragraph 2 of Article XXVII and reference to the CONTRACTING PARTIES under paragraph 2 of Article XXIII.
12. One member stated that the proposal for financial compensation in paragraph 7 was an attempt to introduce a new concept in the GATT, and it was not seen how such a provision could be enforced. Several members considered it inconceivable that national legislatures would sanction the use of public funds to meet the terms of an award made by an international body of experts in a trade dispute. Another member who also found the concept of financial compensation unacceptable felt that in any case it would be impossible to assess damage in terms of cash.
13. The sponsors of the draft decision commenting on paragraph 7 explained that the concept of financial compensation was not intended to indemnify illegal action. The intention was that financial compensation should be requested simultaneous with attempts to apply pressure for removal of the measures causing damage. As regards the problem of enforcement, the sponsors felt that the difficulties in this area were not insurmountable. One representative, in supporting this view remarked on the many cases encountered in international relations when, as a result of conflict, governments had passed special legislation to make possible the payment of financial compensation.

14. One member felt that it was not practicable to suggest in paragraph 7 that a country should be punished by a fine and that the fine could be imposed on "mutually satisfactory terms". The sponsors of the draft decision replied that the words "on mutually acceptable terms" had been deliberately used to introduce an element of flexibility. For example, compensation of a financial character need not be limited to cash settlements only; the contracting party causing damage might agree to extend credit on favourable terms or suggest some other such solution to the contracting party suffering damage. The sponsors went on to point out that the general intention behind the proposal was to ensure that Article XXIII could be applied effectively by less-developed countries. By indicating that none of the ways suggested for obtaining compensation from contracting parties would be practicable, those members of the Group which were against the proposals had admitted that nothing could be done to ensure the effective application of Article XXIII by less-developed countries. This meant that less-developed contracting parties could not use Article XXIII for achieving the purposes it was designed to serve. If the proposals on compensation did not appear to the developed countries to be an appropriate solution, the sponsors of the draft were willing to consider alternative solutions as may be proposed by the developed countries.

15. Some members expressed doubts whether it was reasonable to expect that the novel principles and far-reaching aims of the proposals set out in paragraphs 7, 11 and 13 could be introduced in the GATT by way of a decision of the CONTRACTING PARTIES, when clearly what was involved would be an amendment of the provisions of the General Agreement.

16. One representative said that in 1964 his country had experienced an adverse balance of trade vis-à-vis the less-developed countries. The difficulties which his government would face in agreeing to a proposal on financial compensation should be looked at in the light of this fact.

17. The sponsors of the draft decision explained that paragraph 11 of the draft was intended to cover specific cases of nullification or impairment where measures taken by developed contracting parties were contrary to the provisions of the General Agreement, and were impairing the import capacity of a less-developed contracting party. The paragraph was, therefore, not intended to cover the full extent of Article XXIII and did not provide for "other situations". In preparing the draft they had felt that in cases where measures adopted by a contracting party actually resulted in damage to the export opportunities of a less-developed contracting party, the urgent need for the latter to take protective action should be recognized. They had also tried to provide that the country causing the damage would not be a judge in its own case. The sponsors pointed out that the procedures envisaged in paragraph 11 had been introduced to cover a situation where, pending investigation on elements specified in paragraph 6, a contracting party may be able to take emergency action to protect its interests. Such action would also serve to expedite a settlement of the matter. The sponsors felt that the procedures

envisaged in paragraph 11 were nothing more than an attempt to incorporate into Article XXIII the procedures of Article XIX under which, in special circumstances, a country is released from some of its commitments under the General Agreement to protect itself when imports are increased in such a way as to cause, or threaten to cause, injury to domestic producers. In this connexion they recalled their earlier comments regarding the weak position in which less-developed countries found themselves when attempting to ensure that developed countries implemented their obligations.

18. Several members of the Group stated that they could not accept the concept underlying paragraph 11. They felt that such a provision would undermine the whole concept of GATT as a treaty. They failed to see why a less-developed country would need to enter into a consultation if such a provision were approved. One member of the Group replied that if a contracting party felt that any unilateral action taken by a less-developed country under paragraph 11 were unreasonable it could take appropriate action under Article XXIII.

19. Referring to paragraph 12 of the draft decision, one member of the Group observed that there was no mention in the text of the General Agreement of the concept of "collective action", and felt that the idea embodied in that paragraph was contrary to the spirit of GATT. The sponsors of the draft decision explained that paragraph 12 was an attempt to find some additional means of engaging the collective effort of the CONTRACTING PARTIES in support of a settlement. They recalled that in the previous meeting, mention had been made of a boycott; this was not intended, and in fact would not be consistent with the proposals contained in other paragraphs of the draft decision. They pointed out that reference was made in Article XXV:1 of the General Agreement to joint action and it was in the spirit of this Article that paragraph 12 had been drawn up. Perhaps the language of paragraph 12 could be improved to conform more closely with the spirit behind Article XXV:1. The sponsors concluded that what they were seeking was the possibility of invoking the moral sanctions of the CONTRACTING PARTIES in instances where individual contracting parties deliberately flouted decisions or recommendations of the CONTRACTING PARTIES.

20. Several members of the Group said that the concept remained too vague for governments to know beforehand what sort of measures could be applied, and what could happen if such a provision were resorted to. One member suggested the removal of the word "collective" from the draft. Another inquired what safeguards were envisaged to ensure that solutions which required collective action did not operate to the detriment of contracting parties which were not parties to the dispute.

21. One representative suggested that, before the next meeting of the Group, thought should be given to the question of whether "joint action" as referred to in paragraph 1 of Article XXV could involve "collective action" in the sense of paragraph 12 of the draft decision, bearing in mind particularly the last sentence of paragraph 1 of Article XXV.

22. On the basis of their first reading of the draft decision, most members of the Group concluded that paragraphs 1-6, 8-10 and 13 as amended in Annex I, did not involve serious difficulties of substance, and could be regarded as being generally acceptable subject to specific agreement being reached with regard to the matters covered by those parts of the paragraphs appearing in square brackets, and with regard to the specific suggestion for introducing a phase of bilateral discussions on the procedure set out in paragraph 13. On the other hand, most members were of the view that as paragraphs 7 and 11-12 involved matters of substance on which it had not been possible to arrive at any common views, further careful consideration should be given to these paragraphs by governments.

Discussion on the use of surcharges by less-developed contracting parties for balance-of-payments reasons

23. The Group discussed in detail the four points to which attention had been drawn in paragraph 10 of document COM.TD/F/2.

24. One member recalling the arguments which had been made at the previous meeting against the simultaneous use of surcharges and quantitative restrictions stated that while his government could support a proposal for the use of surcharges as an alternative to quantitative restrictions, it was undecided as to whether the simultaneous use of both measures should be authorized. It appeared to his government that these measures had been used simultaneously only on rare occasions. Accordingly the best course would seem to be to authorize the use of surcharges as an alternative to quantitative restrictions. In cases where a country felt it necessary to employ both measures simultaneously, it could however seek an ad hoc decision of the CONTRACTING PARTIES. Another member felt that the simultaneous application of both measures could be authorized provided such simultaneous use was strictly limited to a transitional period which would enable the country concerned to assess whether the surcharge had had the desired effect on the balance of payments and to adjust it if necessary. After this limited transitional period the country should relinquish the use of one or other of the two measures in the light of circumstances. Another member said that his government had not been in favour of authorizing the use of double restrictions but would reconsider the matter. He was nevertheless unable to give a final view at the present meeting.

25. Several members reiterated their support for authorizing the simultaneous use of surcharges and quantitative restrictions for balance-of-payments reasons in less-developed countries. In this connexion it was suggested that any provision in this regard could more appropriately refer to the use of surcharges "in conjunction" with quantitative restrictions, rather than to "the simultaneous use of surcharges and quantitative restrictions".

26. Another member had no fixed ideas on this point but felt that the important consideration was the scope of consultations which would be provided for in respect of surcharges and other measures applied for balance-of-payments reasons. This member considered that in order for those concerned to obtain a full understanding of the nature of the balance-of-payments difficulties and of the total effects of the measures adopted to deal with them, the consultations should be all-embracing.

27. With regard to the scope of the consultations some members pointed out that while they could agree that the consultations should cover the totality of measures applied to deal with balance-of-payments problems, they would have some difficulties if recommendations arising from the consultations in the sense of paragraph 12(b) and 12(c) of Article XVIII could be directed to items not bound in their GATT schedules. They pointed out that the idea behind the current exercise was to provide flexibility for less-developed countries; this purpose would be defeated if the less-developed countries were to lose a right which all contracting parties now enjoyed to act freely with regard to unbound items.

28. Certain members recalled that the intention behind balance-of-payments consultations in the GATT had always been that the consultations should assist the consulting country in dealing with its balance-of-payments difficulties. In this context they felt that any advice which might result from such consultations could hardly be regarded as creating additional legal obligations for the contracting party concerned. They pointed out further that the recommendations or advice which have been so far made by the CONTRACTING PARTIES at the conclusion of balance-of-payments consultations have always been of a general nature. There was no reason therefore to suppose that this practice would not continue with respect to the type of consultations under consideration.

29. One member felt that in assessing whether the surcharges conform to the criteria described in paragraph 9 of Article XVIII and whether they were being applied inconsistently with the conditions, limitations and procedures laid down in paragraphs 10, 11 and 12 of that Article, account should be taken of surcharges imposed both on bound and unbound items. Some amendments were suggested to this end. (See Annex IV.) Certain other suggestions in this respect by the secretariat and by a delegation also appear in the drafts reproduced in Annexes II and III.

30. A suggestion was also made that if a definition on surcharges were attached to a provision on the use of surcharges some of the uncertainties regarding the application of such measures in relation to criteria prescribed in paragraphs 9, 10, 11 and 12 of Article XVIII would disappear. A proposed definition appears in Annex V.

31. In the light of remarks made, some members of the Group suggested that while recommendations in respect of surcharges on unbound items could not be addressed to contracting parties in the sense in which recommendations were provided for in paragraph 12(c) of Article XVIII, it should be possible for the CONTRACTING PARTIES to give advice in regard to the use of surcharges on unbound items under the more general provisions of paragraph 12(b) of that Article. One member advocated that it should be open to the CONTRACTING PARTIES to make recommendations in respect of all surcharges whether they related to bound or unbound items. Some other delegations found it difficult to accept the distinction between recommendations addressed in regard to bound items and those applying to unbound items. They felt that unless the CONTRACTING PARTIES could recommend regarding all measures, an anomalous position would be created regarding those contracting parties which had very few bound items, and consultations would be meaningless unless recommendations and advice on all measures could follow. However formal obligation to follow recommendations might apply only to bound items.

32. Certain members of the Group reiterated that while less-developed countries might be prepared to accept a proposal for consultations in respect of all measures relevant to the balance-of-payments situation they could not accept any obligation to take action on unbound items. They added that even if the conclusions of the consultations led to the directing of a mere advice to a less-developed country regarding an unbound item, the country concerned might not wish to be placed in the position of being unable to accept an advice of the CONTRACTING PARTIES.

33. With reference to the interpretative note in the secretariat draft reproduced in Annex II, the representative of the secretariat explained that what the draft intended to convey was that the additional obligations resulting from the consultations would relate to the authority given to a contracting party to deviate from paragraph 1 of Article II in terms of the draft provision. In view of the difficulties of substance however experienced by members of the Group, the secretariat had not attempted to rephrase their draft.

34. One member emphasized that his government considered that in the general sense surcharges could be an appropriate method of restricting imports to safeguard a contracting party's balance of payments. In this regard the General Agreement should give similar treatment to quantitative restrictions and import surcharges (on bound items) both as regards the circumstances in which they might be imposed

and the measure of control exercised by the CONTRACTING PARTIES. Nevertheless his government would be pleased to see that there had been some progress towards making such measures available to those contracting parties who suffer most acutely from balance-of-payments problems.

35. The Group remained uncertain as to the applicability of the provisions of Articles XIII and XIV to a provision authorizing the use of surcharges for balance-of-payments reasons. Some members thought that these Articles were not applicable or would cause unsurmountable drafting problems. Others, on the other hand, felt that they were relevant and that language could be found to accommodate the contents of these Articles to the proposed amendment. Some members felt that some provision should be made to ensure that the surcharges were not applied in a discriminatory manner. Others felt that the inclusion of such a provision was superfluous. It was pointed out by some members that the objectives of quota restrictions and import surcharges were the same, i.e. the protection of the balance-of-payments position. They could not understand, therefore, why when quota restrictions could be applied in a discriminatory manner under certain conditions, a similar measure of flexibility should not apply to the use of import surcharges.

36. One member of the Group stated that in order to ensure that surcharges were not used to give tariff protection to individual industries, surcharge rates should be uniform across the board. Another member felt that this suggestion failed to take into account the need to vary surcharge rates to favour certain categories of imports; e.g. capital goods needed for economic development.

37. Some members concluded that authority should be granted to less-developed contracting parties to use surcharges in conjunction with quantitative restrictions for balance-of-payments reasons. Most members agreed that the consultations in respect of surcharges should extend to surcharges on both bound and unbound items, and indeed to all factors relevant to the balance-of-payments situation. However, uncertainties remained in regard to the manner in which the effect of these measures could be assessed in the course of the consultations, and in regard to the scope of the recommendations resulting from the consultations. It was therefore agreed that in order to reach a final conclusion at the next meeting, members of the Group would consult amongst themselves regarding the various drafts attached to this note and on the issues explored at the present meeting.

Next meeting of the Group

38. It was the general feeling of the Group that at its next meeting, the Group should be in a position to formulate conclusions, and to draw up a report on the work covered in respect of the proposal on Article XXIII and on the question of surcharges, for submission to the Committee on Trade and Development.

ANNEX I

Draft Decision on Article XXIII

The CONTRACTING PARTIES

Recognizing that the prompt settlement of situations in which a contracting party considers that any benefits accruing to it directly or indirectly from the General Agreement are being impaired by measures taken by another contracting party, is essential to the effective functioning of the General Agreement and the maintenance of a proper balance between the rights and obligations of all contracting parties.

Recognizing further that the existence of such a situation can cause severe damage to the trade and economic development of the less-developed contracting parties.

Affirming their resolve to facilitate the solution of such situations while taking fully into account the need for safeguarding both the present and potential trade of less-developed contracting parties affected by such measures as well as adequate compensation for the damage which these contracting parties may have suffered.

Decide that

1. If consultations between a less-developed contracting party and a developed contracting party in regard to any matter falling under paragraph 1 of Article XXIII do not lead to a satisfactory settlement, the less-developed contracting party complaining of the measure may refer the matter which is the subject of consultations to the Director-General so that, acting in an ex officio capacity, he may use his good offices with a view to facilitating a solution.
2. To this effect the contracting parties concerned shall, at the request of the Director-General, promptly furnish all relevant information.
3. On receipt of this information the Director-General shall consult with the contracting parties concerned and with such other contracting parties or inter-governmental organizations as he considers appropriate with a view to promoting a mutually acceptable solution.

4. If within a period of two months from the commencement of the consultations referred to in paragraph 3 above no mutually satisfactory solution has been reached, the Director-General shall at the request of one of the contracting parties concerned bring the matter to the attention of the CONTRACTING PARTIES or the Council, to whom he shall submit a report on the action taken by him, together with all background information.

5. Upon receipt of the report, the CONTRACTING PARTIES or the Council shall forthwith in consultation with and with the approval of the contracting parties concerned appoint a panel of experts. The members of the panel shall function in a personal capacity.

6. In conducting its examination and having before it all the background information, the panel shall take due account of all the circumstances and considerations relating to the application of the measures complained of and more particularly of the following elements:

- (a) the damage incurred through the incidence of the measures complained of upon the export earnings and economic effort of the less-developed contracting party;
- (b) the means available to the contracting party whose measures are complained of to make good the damage inflicted by their application;
- (c) the relative effects of such remedial measures as the injured contracting party may take in relation to the contracting party whose measures have nullified or impaired the benefits deriving from the General Agreement which the former contracting party is entitled to expect.

and their impact on the trade and economic development of affected contracting parties.

7. In the event that the measures complained of have been applied by a developed contracting party and it is established that they are adversely affecting the trade and the economic prospects of the less-developed contracting party or parties concerned, the panel may recommend, where it is not possible to eliminate the measures complained of or to obtain an adequate commercial remedy, that the damage caused should be compensated by means of an indemnity of a financial character on mutually acceptable terms.

8. The panel shall submit its findings and recommendations to the CONTRACTING PARTIES or to the Council for consideration and decision within a period of sixty days from the date the matter was referred to it. In the latter case the Council

may, in accordance with Rule 8 of the Intersessional Procedures adopted by the CONTRACTING PARTIES at their thirteenth session, address its recommendations directly to the interested contracting parties and concurrently report to the CONTRACTING PARTIES.

9. With a period of ninety days or such extended period as may be necessary from the date of the decision of the CONTRACTING PARTIES or the Council, the contracting party to which a recommendation is directed shall report to the panel Council or the CONTRACTING PARTIES on the action taken by it in pursuance of the decision.

10. If on examination of this report it is found that a contracting party to which a recommendation has been directed has not complied in full with the relevant decision of the CONTRACTING PARTIES, and that any benefit accruing directly or indirectly under the General Agreement continues in consequence to be nullified or impaired, and that the circumstances are serious enough to justify such action, the CONTRACTING PARTIES may authorize the affected contracting party or parties to suspend, in regard to the contracting party causing the damage, application of any concession or any other obligation under the General Agreement whose suspension is considered warranted, taking account of the circumstances.

11. In cases where the import capacity of a less-developed contracting party has been or is being impaired by the maintenance of measures by a developed contracting party or parties which are inconsistent with the provisions of the General Agreement, the Director-General shall, with or without the assistance of a panel of experts as may be considered necessary, forthwith proceed to determine the elements mentioned in (a), (b) and (c) of paragraph 6 above. In such cases the less-developed contracting party shall be released from its obligations under the General Agreement, towards the developed contracting party or parties acting contrary to the provisions of the General Agreement, for the purpose of taking appropriate remedial or retaliatory measures, pending the completion of the report by the Director-General or the panel of experts and its examination by the CONTRACTING PARTIES.

12. Without prejudice to the provisions of the preceding paragraph, and in the event that a recommendation by the CONTRACTING PARTIES is not applied within the time-limit prescribed in paragraph 9, the CONTRACTING PARTIES shall decide what collective measures shall be taken to ensure compliance with the General Agreement.

13. If consultations held under paragraph 2 of Article XXXVII, relate to restrictions for which there is no authority under any other provisions of the General Agreement, any of the parties to the consultations may in the absence of a satisfactory solution request that consultations be carried out by the CONTRACTING PARTIES, pursuant to paragraph 2 of Article XXIII and in accordance with the procedures set out in the present Decision, it being understood that a consultation held under paragraph 2 of Article XXXVII in respect of such restrictions, would be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII.

ANNEX II

Suggested Draft Provisions by the Secretariat to
Permit the Use of Import Surcharges by Less-Developed
Contracting Parties for Balance-of-Payments Reasons

Notwithstanding the provisions of paragraph 1 of Article II, a contracting party which is entitled under the terms of paragraph 9 of this Article to control the general level of its imports may apply, as an alternative to or in conjunction with restrictions applied under this Section, import surcharges affecting products which are the subject of concessions included in the appropriate schedule annexed to this Agreement, and in excess of the rates set forth and provided for therein; subject to the following procedures and conditions:

- (a) the effect of the surcharges, or the combined effect of the surcharges and any restrictions applied under this Section whether or not the surcharges and restrictions are applied to the same products or to different products, shall not exceed the limit prescribed in paragraph 9 above;
- (b) the application of such import surcharges shall be subject to the conditions, limitations and procedures laid down in paragraphs 10, 11 and 12 above relating to the application of restrictions.

Interpretative note

It is the intention that the consultations in respect of such surcharges shall relate to all matters which can be the subject of consultations under paragraph 12 of this Article, it being understood that any recommendations which may arise from the consultations shall not in respect of unbound items result in the creation of obligations for the contracting party subject to the consultations, beyond those obligations already existing under the General Agreement in respect of that contracting party.

¹This draft incorporates two minor amendments suggested by members of the Group without prejudice to their position on the draft as a whole.

ANNEX IIIDraft Provisions to Permit the Use of Import
Surcharges by Less-Developed Contracting Parties
for Balance-of-Payments Reasons Submitted by a Delegation

Notwithstanding the provisions of paragraph 1 of Article II, a contracting party which is entitled under the terms of paragraph 9 of this Article to control the general level of its imports may apply, as an alternative to restrictions applied under this Section, import surcharges affecting products which are the subject of concessions included in the appropriate schedule annexed to this Agreement, which surcharges increase the rates set forth and provided for therein; subject to the following procedures and conditions:

- (a) such surcharges shall be part of a general measure or series of measures which general measure or series of measures shall not exceed the limits prescribed in paragraph 9 above;
- (b) all surcharges shall be imposed in a manner consistent with Article I of this Agreement;
- (c) the application of all import surcharges shall be subject to the conditions, limitations and procedures laid down in paragraphs 10, 11 and 12, sub-paragraphs (a) and (b) above, relating to the application of restrictions;
- (d) if, as a result of the consultations with a contracting party under sub-paragraphs (a) or (b) of paragraph 12 above, the CONTRACTING PARTIES determine that there is, regarding the application of surcharges, an inconsistency with the provisions of this Section, they may make appropriate recommendations for securing conformity with such provisions within a specified period regarding those surcharges affecting products which are the subject of concessions included in the appropriate schedule annexed to this Agreement, and which surcharges increase the rates set forth and provided for therein. If such contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party the trade of which is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the import surcharges as they determine to be appropriate in the circumstances.

ANNEX IV

Draft Provisions to Permit the Use of Import
Surcharges by Less-Developed Contracting Parties
for Balance-of-Payments Reasons

Notwithstanding the provisions of paragraph 1 of Article II, a contracting party which is entitled under the terms of paragraph 9 of this Article to control the general level of its imports may apply, as an alternative to or in conjunction with restrictions applied under this Section, import surcharges at uniform rates, at least as regards extensive categories of products, which when affecting products which are the subject of concessions included in the appropriate schedule annexed to this Agreement may be in excess of the rates set forth and provided for therein; subject to the following procedures and conditions:

- (a) the effect of the surcharges, or the combined effect of the surcharges and any restrictions applied under this Section whether or not the surcharges and restrictions are applied to the same products or to different products, shall not exceed the limit prescribed in paragraph 9 above;
- (b) the application of such import surcharges shall be subject to the conditions, limitations and procedures laid down in paragraphs 10, 11 and 12 above relating to the application of restrictions;
- (c) the simultaneous application of surcharges and quantitative restrictions to the same products shall occur only during a transitional period strictly necessary to permit resort solely to one or other of these two measures.

Interpretative note

It is the intention that the consultations in respect of surcharges shall relate to all matters which can be the subject of consultations under paragraph 12 of this Article, it being understood that any recommendations which may arise from such consultations shall not result in the creation of obligations for the contracting party subject to the consultations beyond those obligations already existing under the General Agreement in respect of that contracting party.

ANNEX V

Interpretative note

The term "surcharges" means a temporary increase of the rates of duty of a customs tariff, with the possible exception of the ones on essentials by a certain percentage or amount, which is uniform for all, or for wide categories of products.