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GENERAL AGREEMENT ON TARIFFS AND TRADE

Group on Quantitative Restrictions
and Other Non-Tariff Measures

MEETING OF 5-8 DECEMBER 1983

Note by the secretariat

Chairman: Ambassador A. Onkelinx (Belgium)

1. The Group met on 5-8 December 1983.

2. The Chairman recalled that the purpose of the meeting, as set out in GATT/AIR/1970 was "to review existing quantitative restrictions and other non-tariff measures, and in particular the grounds on which these are maintained, and their conformity with the provisions of the General Agreement".

3. In accordance with the procedures agreed at the meeting of October 1983 (NTM/4), the Group first dealt with quantitative restrictions, and then turned to other non-tariff measures. As set out in the airgram convoking the meeting (GATT/AIR/1970), the Group is to take up questions relating to measures affecting agriculture and textiles later in stage II.[1]

I. Quantitative Restrictions

(a) General statements

4. The representative of Yugoslavia, in a written statement circulated to members on an informal basis, stated that the Law on Trade of Goods and Services with Foreign Countries (Official Gazette No. 52/82, Articles 26-38), represented the legal basis for the application of quantitative restrictions in Yugoslavia. In compliance with the Law, a decision passed by the Federal Executive Council had come into force on 1 June 1983 (Official Gazette No. 27/83), pursuant to which exports and imports of some goods were liberalized whilst exports and imports of other goods were effected on the basis of quotas fixed by quantity or value, as well as on the basis of licences. Quotas were applied to protect domestic production with a view to carrying out the development policy set forth in the Social Plan of Yugoslavia for the period 1981-1985. A long-term programme of export and import regulations specified the main objectives and criteria and defined the activities within which exports or imports of certain goods might be carried out on the basis of quotas. The export and import programme was specified by the "social compact" concluded between the Federal Executive Council, the Executive Councils of the Socialist

[1] A detailed account of the discussion on these matters will be found in the note of the October 1983 meeting (NTM/4).

Republics and Socialist Autonomous Provinces, the Chamber of Economy of Yugoslavia, general associations, Community of Interest of Yugoslavia for Economic Relations with Foreign Countries, self-management communities of interest for economic relations between the Republics and Provinces and foreign countries, and the Federal Community for Prices. As a "social compact" had not been concluded within 60 days of the Social Plan, the Federal Executive Council had exercised its authority to specify the programme of regulating exports and imports, which would be applied until the "compact" was concluded. The Decision of the Federal Executive Council on the programme of regulating exports and imports for the period 1982-1985 had been published in the Official Gazette No. 77/82, 32/83 and 38/83. For the purpose of its implementation, manufacturers, consumers, exporters and importers - within general associations of individual production branches - concluded self-management agreements for the period of the medium-term plan. These agreements specified individual products which might be imported and exported within quotas, the amount of quotas and their allocation to individual users, as well as the pace and regional directions of exports and imports. The basis for defining quota amounts were balances of production, consumption, exports and imports. With a view to implementing the programme and the self-management agreement, the Federal Executive Council published in the Official Gazette the list of liberalized goods or goods subjected to quotas or licences, specifying the procedure of control of the application of the list carried out by customs authorities. If the self-management agreement were not concluded in the prescribed period, the Federal Executive Council might, on the basis of prior approval of the competent republican and provincial authorities, provisionally specify a list of goods the export and import of which was subjected to quotas, and prescribe the procedure determining the amount and allocation of quotas. With a view to ensuring the stability of the market, the supply of certain goods and the elimination of major disruption in production or consumption of certain goods, the Federal Executive Council might - as an exception to the self-management procedure - decide that certain goods temporarily be imported or exported within quotas. The amount of quotas as well as the procedure of their allocation was in this case determined by the Federal Secretariat for Foreign Trade, on the proposal of the Federal Secretariat for Market and General Economic Affairs, in agreement with the federal administrative body responsible for the respective field of the economy, and after obtaining the opinion of the respective general association. On the basis of the above, the Federal Executive Council had decided (Official Gazette No. 27/83), inter alia, that exports and imports of certain important agricultural products, oil and oil derivatives, certain iron and steel products, tin and certain products thereof, as well as exports of raw hides and skins and detergents, were temporarily subject to quotas. In terms of the GATT, quantitative restrictions were applied pursuant to Article XVIII:C, taking into account also the Decision on Action for Development Purposes, adopted by the CONTRACTING PARTIES on 28 November 1979. Licenses were applied pursuant to Articles XX:(f) and XX:(h), as well as Article XXI:(b) of the General Agreement.

5. The representative of Japan stated that he hoped the discussions in the Group would throw light on the central problems concerning quantitative restrictions. He had noted that an important number of quantitative restrictions, including those maintained by Japan, had been imposed by virtue of Article XX and XXI which were derogations from the general GATT

rule and which were more or less governed by legal requirements and international treaties. While Japan was ready to explain the reasons for maintaining this type of restriction, it preferred to give priority to other quantitative restrictions. Secondly, concerning quantitative restrictions being or having been made subject to dispute settlement procedures, notably under Article XXIII, the Group's examination should be without prejudice to the positions of contracting parties being engaged in the process of dispute settlement, and without prejudice to recommendations by the Council. Thirdly, Japan considered that quantitative restrictions applied in a discriminatory fashion ought to be examined with particular care, since these represented a long-standing problem which affected the interests of the contracting parties and fundamental GATT principles.

6. The representative of the Republic of Korea stated that his Government announced trade guidelines annually in the Export-Import Terminal Notice. These were applied for twelve months from the second half of each year. In accordance with the notice, all commodities were classified in two groups; the automatic-approval items and the restricted items. The automatic-approval items included most of the imported commodities and could be imported freely without any procedures. In order to import the restricted items a recommendation from a designated government agency or business organization was necessary. The Korean delegation was of the view that this recommendation system was justified by the GATT Article XVIII:B and the other Articles as indicated in document NTM/W/6/Add.1. Korea's exports had been faced with increasing difficulties mainly due to the prolonged stagnation in the world economy. Thus, the growth rate of exports had stood at the worst record in 1982 by marking only 2.8 per cent since its take-off toward industrialization at the beginning of the 1960's. Moreover, the trade balance had never recorded a surplus. The trade deficit had reached US$2.4 billion in 1980, US$4.9 billion in 1981, and US$2.4 billion in 1982. Despite such a chronic trade deficit, the Republic of Korea had continued and would continue to implement its import liberalization program, which had been accelerated since 1978 so as to improve the competitiveness of domestic industries and to develop external trade. The Government would give notice of liberalization on certain items well in advance so as to enable the affected domestic industries to adjust to the expected impact of foreign imports. This pre-notification on certain items might be announced at the end of 1983.

7. The representative of Brazil noted that document NTM/W/6 invariably indicated suspension of licences in the case of measures maintained by Brazil, that it referred to document L/5393 of 3 December 1982 and that it stated that measures had been put in force in the context of Article XVIII:B. He further noted that the economic and financial constraints that had led the Brazilian authorities to apply strict import control measures were well known to all members of the Group, that full balance-of-payments consultations with Brazil were taking place in another GATT forum and that these would provide ample opportunity for a substantive discussion in the light of the relevant background information required. In accordance with the Government's central objective of holding import levels in line with the nation's payment capacity, the list of suspended goods included raw materials, consumer goods, machines, equipment and vehicles. The suspension basically covered raw materials utilized by the chemical, petrochemical and pharmaceutical industries, together with machines,

equipment and their components considered as non-essential because they could be produced within the country. To be admissible for import, goods had to be, in the judgement of the External Trade Department of Banco do Brazil, which was responsible for all licensing procedures and statistical surveillance: (a) strictly necessary, to be imported for their own use by Government bodies, industries, service undertakings or public concessionaries; (b) intended for sports activities, when imported with specific approval by the National Sports Council, by specialized sports organizations; or (c) of interest for Brazil's export policy, as determined at the exclusive discretion of CACEX. Finally, with the aim of preserving to the largest extent possible the country's regional trade bonds with its immediate neighbouring Latin American developing partners, imports of goods originating in or imported from member countries of the Latin American Integration Association were not subject to the suspension of import licences, if the items were included in the lists of concessions negotiated with that Association's member countries.

8. The representative of Pakistan stated that the review to be undertaken in Phase II of the Group's work would be meaningful only if it led to the ultimate objective of eliminating quantitative restrictions which were not in conformity with the General Agreement and liberalization of other quantitative restrictions and other non-tariff measures, particularly those facing the export products of developing countries. Pakistan had faithfully provided all information on its import régime and quantitative restrictions, contributing to the process of transparency in this field. The restrictions maintained by Pakistan were for balance-of-payments reasons and were justified under Article XVIII:B. Pakistan had regularly consulted with the Committee on Balance-of-Payments Restrictions. It had followed a liberal import régime designed to meet to the maximum extent the requirements of its growing economy. Continuous efforts were being made to streamline and simplify this régime with a view to minimizing administrative constraints. In a new import policy for the year 1983-84, operative since July 1983, a very significant step had been taken towards streamlining and simplification. The previous import system had relied on a positive listing of items permitted to be imported, which had at times put a premium on technicalities and in some cases had resulted in inconvenience to the importers. After an in-depth examination, the Government had decided to switch over to a negative list system under which the import of all items not specified in the negative list was permissible from all sources without any restrictions. However, some items were restricted to the public sector or importable exclusively from tied sources under credit, loan and barter. It was hoped that this would make the import régime more comprehensible and would bring it in alignment with well established international practices.

9. The representative of the European Economic Community recalled the basic position which the European Economic Community had adopted and the principles which it had defended through much of the long history of discussion, consultation and negotiation on quantitative restrictions since the early days of the GATT. Member States had maintained a certain number of quantitative restrictions since before the establishment of the European Economic Community and indeed many of these had already been in force at the time the General Agreement had come into effect. These were the so-called "residual restrictions", i.e. measures for which liberalization

could not be achieved either in the OEEC exercise of the 1950's or in subsequent negotiations with the partners directly concerned, such as measures maintained in the context of Article XXXV. A second category were those restrictions which were maintained with regard to state trading countries members of the GATT. These restrictions were based on the relevant provisions of the Protocols of Accession of the countries concerned. All these quantitative restrictions were fully documented in the Community's regulations No. 288/82 and 1765/82, thereby assuring a level of transparency which the European Economic Community believed few contracting parties could match. The European Economic Community had often said, and repeated, that the grounds and the GATT conformity of the quantitative restrictions could only be seen in the full context of GATT history over the last thirty-five years. When the text of the General Agreement had been established in 1947, quantitative restrictions had been general and wide-spread under balance-of-payments provisions. For that reason also, the problem of quantitative restrictions was dealt with in Article XI, i.e. in Part II and not in Part I of the General Agreement. The OEEC programme of liberalization in the beginning of the 1950s had showed clearly that there had been genuine problems for a number of governments in eliminating quantitative restrictions. Therefore, a residual number of these restrictions had remained in force, in some cases justified for balance-of-payments reasons (Article XII), in other cases without invocation of any of the exceptions specifically foreseen in the General Agreement. While document NTM/W/2 traced the subsequent process of examinations, consultations and negotiations in GATT, this document could not show adequately that whenever quantitative restrictions had been examined, underlying economic and social factors had been taken into account. This had occurred in the course of the Working Group on Residual Restrictions in 1965 (product-by-product approach), the Joint Working Group on Import Restrictions in 1970 (consultations to examine nature, need and purpose of quantitative restrictions and their effects on trade), and the Tokyo Round (request and offer procedure). Now, as on past occasions, the Community believed that, in considering the grounds and GATT conformity of quantitative restrictions, due account had to be taken of historical factors as well as the specific economic and social situation in each sector. It would not further the work of the Group if it were to get locked into a sterile debate on the legality or otherwise of a particular quantitative restriction which had existed for many years. The European Economic Community thought it was fair to say that a certain number of quantitative restrictions maintained by different contracting parties had their past GATT justification but were no longer attributable to any particular GATT provision. The Group should have made a genuine contribution if, at the end of its work, its members could - together and in a balanced manner - make progress, notably towards developing countries. If it were not to achieve that, no amount of examination of problems of conformity would have made the exercise worthwhile. To put quantitative restrictions in the Community in perspective, he noted that according to an informal secretariat document and subject to further verification, the value of imports attained in 1982 in products subject to such restrictions (with the sole exception of petroleum products where particular trading conditions applied) represented 3 cent of the total value of imports in that year.

10. The representative of Australia recalled that Australia relied principally on the tariff to provide assistance to its industry, maintaining quantitative restrictions on a very limited range of products, the main ones being certain used, second-hand or disposal items, i.e. tractors and tractor bases (not being agricultural tractors); road rollers and parts of road rollers; earthmoving, excavating and materials handling machinery and equipment and parts thereof; and four-wheel drive vehicles having a gross vehicle weight of less than 10.16 tonnes, excluding public service type passenger vehicles. These quantitative restrictions were administered by means of discretionary licensing controls, and had been in existence for many years. They were designed to protect Australian industry against the potentially damaging competition and threat of serious injury which could occur if importation of used, second-hand and disposals equipment was not restricted as normal tariff barriers were not effective in providing protection because of the low prices at which those goods were often available in other countries. Given the circumstances, discretionary licensing controls remained the best administrative method. In the case of the four-wheel drive vehicles, quantitative restrictions had been introduced in accordance with the provisions of Article XIX. For earthmoving, construction and materials handling machinery and equipment, quantitative restrictions were not related in the notifications concerned to any specific provision of the General Agreement.

11. The representative of Sweden stated that his delegation had submitted comprehensive documentation on remaining quantitative restrictions and other non-tariff measures and that it was prepared to contribute actively in the work of the Group. The review of quantitative restrictions and other non-tariff measures in the Group would no doubt lead to enhanced transparency of such measures, a positive result which would improve the conditions for international trade. As long as other GATT bodies were active on the issue of quantitative restrictions and non-tariff measures in accordance with specific terms of reference it would not be appropriate for this Group to duplicate such work; the prospects for progress should be the same irrespective of which organ under the Council was dealing with a certain issue and it had reasonably to be presumed that the positions of delegations did not alter from one GATT body to another. Over the years, Sweden had made considerable efforts to liberalize imports, which had lead to an important dismantling of restrictions and an access to the Swedish market, characterized by a very large degree of openness, which compared well with that of other markets. As a consequence of this openness, the scope for further liberalization was very limited. However, the Swedish delegation would take the comments it might receive seriously and make all efforts to respond positively.

12. The representative of the United States believed that the work of the Group was important and that any review of measures maintained by contracting parties should be as comprehensive as possible. However, only about forty-five countries (including the EC member States) were actually covered in the detailed tables contained in NTM/W/6. There seemed to be little information regarding the quantitative restrictions of many contracting parties and available information was often based on outdated sources. While the United States was prepared to begin the review the Group should ensure that it would not be limited to those countries for which there was detailed information; it should therefore once again

request countries to submit information on their quantitative restrictions. No final report from the Group should be drafted before every effort had been made to obtain the missing information. In addition, although a variety of quantitative measures were included in the documentation, there had never been a full discussion of what kinds of quantitative measures should be reviewed and reported on. The United States believed that the types of measures reviewed should be as comprehensive as possible and that, as needed, the Group should review in the future those quantitative restrictions which were not presently included in NTM/W/6. In this connection, the United States wondered what the Group's view on tariff quotas was. As to most of the quantitative restrictions reported for the United States, GATT justification fell into three basic categories: (1) those measures which were covered by the United States Section 22 waiver which was reported on annually to the Contracting Parties and discussed within that context (e.g. CCCN 55.01-03, cotton and cotton wastes); (2) those which were textile-related (not in Chapters 50-62) and were covered by various bilateral arrangements under the provisions of the Multifibre Arrangement (i.e. CCCN 65.01-07, hat-shapes and forms of cotton; 70.20, glass fibre, yarns and articles made therefrom; 94.04, cotton bed-linen articles; 97.06, cotton appliances and requisites for gymnastics); the United States would be prepared to discuss these measures when the Group addressed textiles restrictions; (3) those which were covered under the Protocol of Provisional Application (i.e. CCCN 89.01-03, ships and vessels) or were covered under the general or national security exceptions provisions, Articles XX and XXI (i.e. CCCN 93.02, revolvers and pistols).

13. The representative of Hungary stated that quantitative restrictions applied by Hungary in the form of global quotas on consumer goods and temporary import quotas served balance-of-payments purposes and had been subject to a thorough examination in the Committee on Balance-of-Payments Restrictions, whose report on the 1983 consultations had recognized that Hungary had serious balance-of-payments problems which had led to the invocation of Article XII. Thus, these measures were justified under the terms of the General Agreement and their grounds and GATT conformity could not be questioned. On the other hand, the delegation was ready to furnish any additional information or explanation members of the Group might wish to seek. Referring to the notification and statement of the EEC he stressed that his country's Protocol of Accession qualified the quantitative restrictions in question as not being in conformity with the provisions of the General Agreement. Therefore, Hungary's approach was and would be based on this qualification, accepted more than ten years ago by the Contracting Parties.

14. The representative of Canada attached importance to the Group's exercise, not only because it was an integral part of the GATT work programme, but also because the problem of quantitative restrictions and other non-tariff measures was as old, indeed older, than the General Agreement itself. While some progress had been made over the years in reducing certain barriers to trade, considerable work remained to be done if progress were to be achieved in liberalizing trade in the products affected by these measures. Canada considered that emphasis should be placed on achieving maximum transparency regarding quantitative restrictions in force and on gaining a better appreciation of their nature and the basis on which they were maintained in terms of the provisions of the General Agreement. The Canadian authorities had had some difficulty

from an administrative perspective in analyzing the volume of documentation and were even more convinced than before that the development of information on a country-by-country basis, rather than product-by-product, would be useful. Secondly, from a preliminary examination of the material, there appeared still to be a need for some countries to notify, or at least to update, lists of quantitative restrictions, including prohibited imports and/or exports, currently in force. Canada hoped it would be possible to remedy the deficiencies so that in subsequent stages of the work the Group would be in a position to develop appropriate conclusions as a basis for fulfilling the Ministerial mandate in this area. Canada itself maintained an open trading system and had relatively few quantitative restrictions in effect, primarily related to domestic agricultural programmes in accordance with Article XI; to measures taken to safeguard domestic producers against injurious imports pursuant to either Article XIX in the case of footwear or the MFA in the case of textiles and clothing products; to measures taken in connection with international agreements in accordance with Article XX with respect to such products as narcotics and endangered species of fauna and flora; to measures intended to protect public morals, health or safety in accordance with Article XX such as with respect to hazardous products or for the conservation of exhaustible natural resources; or to measures maintained under the Protocol of Provisional Application.

15. The representative of Norway stated that the Norwegian measures in the chapters under consideration fell into three categories: (1) certain measures which applied to only one or a very limited number of contracting parties, based on bilateral agreements under which the restrictions were subject to negotiations annually unless the parties agreed to prolong them without negotiations; (2) state trading; i.e. the existence of the Norwegian Medical Import Centre, as indicated under CCCN chapters 29 and 30, whose activity was covered by Article XVII. The Norwegian delegation was in doubt as to whether this should have been included in its notification as state trading was a measure which probably fell outside the scope of NTM/W/6; and (3) measures which could probably have been left out, i.e. automatic licensing which did not imply quantitative or other import restrictions and the few items which were indicated as being under liberal licensing where, again, all licence applications were granted. The Norwegian authorities intended to reduce the number of items subject to automatic licensing very considerably as of 1 January 1984. In conclusion, there were few Norwegian measures in the list, especially if the category automatic licensing was excluded.

16. The representative of New Zealand stated that the origin of New Zealand's import licensing went back to 1938, when the scheme had first been introduced as part of a move to diversify a weak economy and for balance-of-payments reasons. New Zealand had not given consideration to specifying GATT Article cover for these quantitative restrictions and had set aside for the moment the question of general GATT compatibility. Although many quantitative restrictions were listed against New Zealand in NTM/W/6, only 22 per cent of its total imports by value were currently subject to licensing. New Zealand had persisted with a strategy and programme of trade liberalization and adjustment, and the Government was committed to move away from an import régime based on licensing to a régime based on the tariff. A variety of concrete steps had been taken in that direction. These moves (the Import Licence Tendering Scheme and the

Industries Studies Programme) had been discussed in other GATT bodies. The Industries Studies plans were detailed industry-specific programmes, many containing as a significant feature the gradual replacement of import licensing by appropriate tariff rates. Annual notifications relating to the implementation of Part IV illustrated this policy with regard to industry plans. Specific sectors covered by industry plans were the plastics industry, general rubber goods, the tyre industry, ceramic industry, glassware industry, motor vehicle industry, electronics industry, ship building industry and writing instruments. For goods not yet covered by the Industries Studies Programme, some further liberalization had been announced recently by the Minister of Trade and Industry. A phase-out formula had not been finalized but in the first import licensing year an additional allocation equal to 5 per cent of the domestic market would be made available through the import license tendering scheme. In subsequent years additional allocations of between 2.5 per cent and 5 per cent would be issued depending on circumstances.

17. The representative of Spain stated that since his country had embarked on an outward-looking policy and joined international organizations in the years 1959-1960, and since its accession to GATT, it had been making great efforts to liberalize its trade and by 1973 had already liberalized 87 per cent of its imports in terms of value. It had then reached a critical area in which further progress was very difficult. That situation had been compounded by two oil crises and the general economic recession which had then developed. Nevertheless, the efforts had been continued. Out of 5,500 sub-headings in chapters 25 to 99 of the Spanish tariff, restrictions were still maintained on only less than 6 per cent, they were not discriminatory and consisted of four types: (i) global quotas, of which there were at present twenty-three affecting only thirty-nine tariff headings and/or items; (ii) discretionary licensing, operated with no discrimination by country and with account being taken only of the market situation. In reality, only four groups of products were affected; (iii) state-trading, explained in detail in L/5445/Add.7 and basically concerning only two groups of industrial products; and (iv) other restrictions ("R"), which were in fact not really quantitative restrictions since the system was very similar to liberalization; they constituted an exception to the general system of licensing, in accordance with Spain's administrative legislation which allowed retention for a longer period than normal for examination of factors such as payment deadline, delivery date, financing conditions, solvency of the importer, quality, any links existing between undertakings, prices, etc. In general these concerned industrial consumer goods or intermediate products, all of which had already been covered by the system prior to Spain's accession to the GATT; accordingly their justification was Spain's Protocol of Accession. These restrictions affected only 5 per cent of industrial headings in Spain's customs tariff, and the administrative procedure was as follows: after submission of an import declaration authorization was normally granted automatically by computer within forty-eight hours. Where the particulars in respect of such products were detected not to correspond to those characteristic of normal operations any such discrepancies would be examined by the appropriate services which would request further details and clarifications regarding the relevant operations. In this case the processing period was longer and authorization could be refused if, in the view of the administrative bodies concerned the normal conditions were not fulfilled.

These restrictions were part of the old system and corresponded to products that were in the critical area of the liberalization process which had been reached by 1973, and they were not attributable to the protectionist trend that had developed from the present economic recession. It was a constant concern of the Spanish authorities to be able to progress to more open systems, and this trend would undoubtedly accelerate in the context of the path Spain was taking with a view to its accession to larger economic groupings. After having pointed out certain amendments to document NTM/W/6, Spain went on to explain that all the restrictions mentioned in this document had their justification in the Protocol of Accession of Spain since they had already been in force on 1 July 1963. The system of restrictions existing at that time had been described in document L/1401 which covered the situation examined by the Working Party set up by the Contracting Parties to examine the matter at that time.

18. The representative of South Africa stated that South Africa had, since its disinvocation some ten years ago of the provisions of Article XII, progressively dismantled its import restrictions and on 1 January 1980 all remaining quota restrictions on imports into South Africa had been terminated. A relatively small number of items, compared to the number of items which had already been completely derestricted, did, however, remain under import control. These existing control measures were considered necessary and were being maintained for surveillance purposes, particularly in order to monitor imports of certain sensitive commodities. In its present form, almost all the products for which licences were required, appeared in paragraph 2 of South Africa's import licensing measures, for which permits were granted to meet the full reasonable requirements of bona fide merchants and manufacturers. In respect of the remaining relatively few items which appeared in paragraph 3 of South Africa's import licensing list, licences were issued to meet the specific requirements of individual importers. Details of South Africa's import control system were regularly reported to the Committee on Import Licensing Procedures, including details of the on-going scaling-down measures taken by South Africa in accordance with its undertakings in the GATT. Although details of the foregoing were available in document COM.IND/W/55/Add.36 and its revisions, the South African authorities were nevertheless still making every effort to submit the data in the format decided by this Group.

19. The representative of Chile emphasized that the Group's work should not concentrate on increasing transparency since its main task was to consider to what degree trade could be liberalized. While it was important to bear in mind industrial and economic factors, these did not provide GATT justification for the maintenance of quantitative restrictions. While it was important to avoid duplication, the Group would at the appropriate time have to deal with agriculture and textiles as provided for in the Ministerial mandate. In Chile automatic licensing was required for all imports but this did not amount to quantitative restrictions. Therefore, automatic licensing ought not to appear in the documentation. Finally, the argument that quantitative restrictions affected a relatively low value of trade was not decisive in the context of the Group's work since the absence of restrictions would presumably have lead to very different trade figures.

20. The representative of Switzerland pointed out that the majority of the Swiss measures consisted of liberal or automatic licensing which were not quantitative restrictions but instituted either to administer stockpiling

obligations, or were taken in pursuance of international agreements relating to narcotics, arms, animal protection, etc. Therefore, a large number of the measures contained in NTM/W/6 with respect to Switzerland could in its view be deleted.

21. The representative of India stated that India's quantitative restrictions had an in-built justification under Article XVIII of the GATT. According to the terms of reference of the Group the focus should be on examining the conformity of existing measures with the General Agreement with a view to achieving the ultimate elimination of measures inconsistent with the GATT. Transparency, however important, was not progress in itself. In this connection India recalled the conclusions of the Ministerial meeting held in May 1963 on the elimination of quantitative restrictions inconsistent with the provisions of the GATT within a period of one or two years from then (BISD 12S/36-37). Therefore, it was a cause of concern that some delegations sought to justify measures on the basis of their being long-standing. Stage III of the work could not be meaningfully undertaken if stage II did not base itself on the grounds and GATT justifications; historical, social and economic reasons outside of the GATT itself, however interesting, could not become a substitute for the mandate. India welcomed, however, the EEC's suggestion concerning liberalization of measures affecting exports of developing countries; this might be the starting point leading to best progress. For instance a declaration of intent concerning such liberalization would be a right signal to the trading world.

(b) Review of quantitative restrictions

22. Opportunity was given to delegations to make general statements or provide additional information concerning the grounds and GATT conformity of the quantitative restrictions they maintained and to other members to ask questions or make comments. The additional information and amendments so provided are included in NTM/W/6/Rev.1.

23. The Group then examined the table in the NTM/W/6 documentation on quantitative restrictions, proceeding by sections in the CCCN classification and beginning with Section V (minerals). Additional information provided by delegations maintaining the measures will be included in NTM/W/6/Rev.1. A number of more general issues were raised in the course of the detailed examination of the table.

24. The Chairman suggested that delegations give particular attention to providing grounds and justifications for the measures they maintain on products of export interest to developing countries.

25. A number of delegations suggested that measures which do not have a restrictive effect, such as automatic licensing and certain instances of liberal licensing and state trading, should not be included in the documentation. However, since such measures would have to be examined on a case-by-case basis, it was agreed that they remain in the documentation with an indication, where required, that the maintaining country did not consider them to have a restrictive effect. It was also stated that tariff quotas were purely tariff measures and therefore did not fall within the competence of the Group. It was agreed to revert to this later in the meeting in the context of the examination of other non-tariff measures.

26. The Chairman recalled that the main purpose of the meeting was to obtain any further details necessary on the grounds on which quantitative restrictions were maintained and their conformity with the General Agreement. Some delegations argued that a measure had to be presumed not to be in conformity if no justification was given for its maintenance, and that this should be recorded accordingly. Other delegations pointed to differences of opinion as to what constituted legality and suggested that the current review exercise was not the place for a lengthy debate on this aspect and that as much information as possible should be gathered at this stage without judgement being passed. After some further discussion the Group agreed that, in cases where no justification was given in terms of the GATT, the following mention should appear against the measure in the NTM/W/6 documentation: "No GATT Article/Provision cited". Comments on the grounds for the measures would also appear in the NTM/W/6 documentation. These indications, by the maintaining country, on grounds and GATT conformity would not prejudice the position of other contracting parties.

27. During the discussion, a number of comments were made on certain notifications put forward by some delegations. Some delegations said that safeguard action taken under Article XIX must be of a temporary nature and questioned the continued justification under that Article of a restriction on imports of hard coal which had been in force since 1958. A group of delegations contested one contracting party's use of Article XIX to justify its quantitative restrictions on specialty steel. One delegation reminded members of the Group that measures under Article XX(g) (relating to the conservation of exhaustible natural resources) must be taken in conjunction with restrictions on domestic production or consumption. The request was made that if Article XXI (security exceptions) was invoked, the specific paragraph of the Article be indicated, in order to avoid misuse of this important and delicate provision of the GATT. Some delegations also wondered how a discriminatory restriction, such as that imposed by one contracting party on imports of footwear, could be compatible with the provisions of Article XXI. A group of delegations questioned the applicability of the Protocol of Provisional Application after thirty-five years. With regard to the invocation of the grandfather clause in respect of pre-existing legislation, one delegation stressed that, for the justification to be valid, such legislation had to be mandatory.

28. The Group also had a general discussion on the information contained in the country notes of the NTM/W/6 documentation. During this discussion concern was expressed because: (i) for a large number of countries, the only information available was contained in the country notes and was ten or more years out of date; (ii) a number of countries justified the measures they maintained on balance-of-payments grounds but did not consult in the Committee on Balance-of-Payments Restrictions; and (iii) a number of countries indicated development and infant-industry reasons for their measures without having followed the procedures laid down in Article XVIII:C of the General Agreement.

29. With respect to the first point, it was suggested that the secretariat might seek further information from countries with respect to which no up-to-date information was available. The Group agreed that more up-to-date information should be sought and that the document should remain open-ended for up-dating.

30. On the question of balance-of-payments consultations, the representative of the secretariat mentioned that, while these were normally undertaken at the request of the countries concerned, the Committee on Balance-of-Payments Restrictions had recently taken the initiative in the case of one contracting party. The Group might consider the appropriateness of drawing to the attention of that Committee the cases of contracting parties who invoked balance-of-payments reasons without seeking a consultation under Articles XII or XVIII:B of the General Agreement. Article XVIII:C procedures provided that contracting parties invoking development or infant-industry reasons for their restrictions should notify these to the contracting parties and normally allow one month for consultations if these were requested by another contracting party. A number of delegations expressed the view that it was not of the competence of the Group either to intervene in the procedures laid down for other bodies of the GATT or to undertake an examination of restrictions which were of the competence of other GATT bodies. One delegation felt it was not of the competence of the Group but of the Council to make recommendations to the Committee on Balance-of-Payments Restrictions. One delegation interpreted the Group's mandate to require it to ensure that all restrictions be reviewed, whether in the Group or in other bodies of the GATT. The Group then agreed with a proposal by the Chairman that its next progress report to the Council should reflect the Group's concern about justifications which were invoked without the appropriate procedures being followed.

31. Several delegations, both from developed and developing countries, expressed an interest in the restrictions maintained by one contracting party on leather and leather products. The representative of a developing country noted that the situation of the domestic producers, which had been adduced by the maintaining country as ground for maintenance of the import restrictions, was identical to the situation of his country's producers. A number of delegations considered, however, that the Group should not examine in any great detail restrictions which were the subject of litigation in other bodies of the GATT.

32. The Group further agreed that a detailed examination of the country notes was not now necessary. One delegation, however, requested that the country note for one contracting party be amended to justify the invocation of the Protocol of Accession by referring to the pre-existing legislation. One delegation stated that an amendment to its note would be submitted to the secretariat.

II. Other Non-Tariff Measures

33. The Group undertook its work on non-tariff measures other than quantitative restrictions under three headings:

(a) general statements;

(b) review of other non-tariff measures, based on information contained in the Inventory of Non-Tariff Measures (Industrial Products) - documents NTM/INV/I-V and Addenda; and

(c) priorities for the purposes of stage III of the Group's work.

(a) General statements

34. The representative of the European Communities said that the establishment of this Group to work on quantitative restrictions in conjunction with other non-tariff measures reflected a realization that the problem of non-tariff restrictions had to be seen as a whole. Non-tariff restrictions had, over the years, proliferated not only in their number but also in their guises, so that the classical quantitative restriction was now only one facet of a many-sided problem. Quantitative restrictions were not necessarily the main obstacles confronting exporters in the 1980's; the hindrance to international trade as a consequence of the existence of other non-tariff measures was probably greater than that due to classical quantitative restrictions - at least as far as exports to developed countries were concerned. The European Communities recognized that other non-tariff measures might be a more difficult problem to treat by the Group than quantitative restrictions. But it was the view of the Community that any progress in the area of quantitative restrictions should be matched by a parallel effort in the field of other non-tariff measures. For its part, the Community had experienced major problems in a number of export markets on account of the existence of other non-tariff measures. Certain countries which may have few, if any, quantitative restrictions had nonetheless been virtually inaccessible to certain types of exports as a result of the operation of particular non-tariff measures other than quantitative restrictions. Some of these non-tariff measures could be clearly identified. Some, however, could only be suspected and needed to be more fully explored. He noted that the Inventory of Non-Tariff Measures covered both measures which might fall within the scope of a particular GATT Code as well as other non-tariff measures. The Communities had no doubt that the detailed examination of measures as to their conformity with a particular Code was not a matter for this Group. Nevertheless, in so far as measures falling within the scope of a Code constituted significant obstacles to international trade, the Group would not be able to avoid reviewing them and later considering them in conjunction with quantitative restrictions under stage III of its work programme.

35. The representative of the United States said that her delegation found the information in the Inventory useful and supported its continued updating. Her delegation had recently supplied to the secretariat updated material in respect of a number of notifications for incorporation in the Inventory. Turning to the question of priorities for the purposes of stage III of the Group's work on other non-tariff measures, she said that her delegation considered that a number of sections in Part IV of the Inventory were of greatest importance.

36. The representative of Chile expressed doubts about the desirability of linking progress on quantitative restrictions with that on other non-tariff measures. Action was required in both areas, but each area was susceptible to separate action. Moreover, quantitative restrictions that had not been justified in GATT terms had to be treated separately from other quantitative restrictions and non-tariff measures that could be justified under the GATT.

37. The representative of India said that his delegation could agree that some "other non-tariff measures" had effects on trade as harmful as those of quantitative restrictions, and also that some "other non-tariff

measures" were more difficult to deal with. However, a clear distinction had to be made between restrictions that were not justifiable under the GATT and those measures that were imposed in accordance with GATT provisions or instruments. He said that in recent years there had been a growth in new forms of protective devices, some of which resulted from the misuse of permissible measures such as anti-dumping and countervailing duties. While the Group could not examine in detail the new forms of protection that had arisen, he believed that the Group should consider them in its work.

38. The representative of Austria said that certain measures or practices could fall outside the General Agreement and therefore could not be regarded as either consistent or inconsistent with the GATT.

39. The representative of the European Communities said that he could not agree that there was a qualitative difference between quantitative restrictions and other non-tariff measures in terms of GATT consistency. Other non-tariff measures could be as inconsistent with the GATT as quantitative restrictions. In this regard, he referred to various Articles in Part II of the General Agreement that regulated the use of other non-tariff measures and also to the text of Article XI:1 which forbade the institution or maintenance of prohibitions or restrictions (other than duties, taxes or other charges) whether made effective through quotas, import or export licences or "other measures". Article XI thus dealt with restrictions on trade made effective through "other non-tariff measures" as well as through quantitative restrictions.

40. The representative of Chile agreed with the views expressed in the previous paragraph. He considered that this underlined the need for multilateral action to ensure that countries applying quantitative restrictions or other measures inconsistent with Article XI and not justifiable under the GATT in some other way ceased to do so.

(b) Review of other non-tariff measures

41. In the course of the Group's review of other non-tariff measures, comments were made on a number of measures, either already in the Inventory or to be notified for inclusion in it. Some delegations referred to measures of particular concern to them applied by other countries, and indicated their intention to provide information updating existing notifications, to make new notifications or withdraw existing notifications. Clarifications and comments were sought from countries maintaining certain measures, for inclusion under the relevant heading in the Inventory. Some countries applying certain measures included in the Inventory provided additional information updating material in the Inventory and clarifying certain points, and in certain cases sought the withdrawal of notifications in respect of measures applied by them. The Group agreed that the additional and revised information regarding specific measures would be included in the Inventory in accordance with established procedures (BISD, 27S/18) and to this end should be communicated to the secretariat in writing as required by those procedures.

42. A number of more general comments were made regarding the scope of the Group's work on other non-tariff measures and the type of notifications appropriate for inclusion in the Inventory. Some delegations said that in their view it would not be appropriate to include in the Inventory

notifications of alleged non-conformity with the GATT Codes and that such questions should not be considered by the Group. Some other delegations considered that, while the Group should not examine in detail questions of conformity with the Codes, the Group could deal with matters covered by the Codes and notifications on these matters could be made, if any substantive trade problems arose. Moreover, it had to be recalled that not all contracting parties were members of the Codes. Another point discussed was whether tariff quotas should be included in the Inventory. In regard to both these points, it was generally recognized that all contracting parties had the right to notify for inclusion in the Inventory measures taken by their trading partners which they considered to be trade restrictive and to constitute non-tariff measures. Similarly, the countries so notified against had the right to include in the Inventory their comments, including, if such was their view, that a notification was inappropriate.

43. A delegation said that, in respect of both quantitative restrictions and other non-tariff measures, non-GATT grounds for their maintenance - social, political, historical reasons etc - were not relevant to the work of the Group and should not be considered by it. This delegation also suggested that delegations should be invited by the Group to give a GATT justification for all measures maintained by them included in the Inventory, and that where no GATT justifications for the maintenance of a measure had been given, this should be recorded in the Inventory. Some delegations said that where a measure had already been qualified elsewhere in the GATT as being inconsistent with the General Agreement, it did not belong to this Group to re-open the issue. Some delegations said that other non-tariff measures in the field of agriculture, although not presently being examined by the Group, also fell within the scope of its work. Both the agricultural and industrial products inventories should be considered parts of the Group's data base.

(c) Priorities for the purposes of stage III of the Group's work

44. It was noted that the Group was discussing at this meeting priorities among other non-tariff measures in areas other than agriculture and textiles.

45. The Group had agreed that the treatment of measures in the agricultural and textiles areas would be re-examined at a date to be agreed in the light of developments in the work being undertaken elsewhere in the GATT in these areas.

46. The representative of a group of countries circulated to the Group a list of existing, new and amended notifications that his delegation suggested for priority discussion in stage III of the Group's work. Another representative suggested that Sections A, B, G and H of Part IV of the Inventory should be given priority treatment. A further representative said that his government was studying the question of priorities, and in this context was considering areas such as domestic content requirements and counter-trade, but had not yet taken a position on the matter.

47. A number of general considerations regarding the selection of priority areas were raised. In regard to the Codes, a representative raised the question of whether measures maintained by members of a Code and falling

within the scope of that Code should not be discussed in the context of the Code rather than in the Group with a view to achieving the objectives of the Group. Another representative said that it had to be recognized that not all members of the Group were members of the Codes and that in certain cases the Codes had introduced new forms of discrimination. A further representative said that there might nevertheless be a case for initiating work in the Group in those areas where less international discipline presently existed such as tariff quotas, border tax adjustments, prior import deposits, surcharges, statistical taxes and state-trading. Some delegations said that priority attention should be given to measures affecting products of export interest to developing countries, and in this regard referred to the Group's mandate and to documents NTM/W/4 and Revisions listing such products. Another point raised was whether priorities should be conceived of in terms of particular measures or in terms of categories of measures.

48. In concluding the discussion, the Chairman noted that a number of specific suggestions had been made and a number of criteria for selection of priorities had been put forward. The discussion had been a first exchange of views on the question of priorities, to be pursued at the next meeting of the Group on the basis of further reflection and consultations to be held in the meantime. In this regard, he urged more delegations to put forward specific suggestions for priorities.

III. Further work

49. The Group tentatively agreed to set aside the week of 27 February 1984 for the continuation of Stage II of its work.