

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

AG/W/14

22 October 1985

Special Distribution

Committee on Trade in Agriculture

SUMMARY OF POINTS RAISED DURING THE MEETING OF THE COMMITTEE HELD ON 17-19 SEPTEMBER 1985

Note by the Secretariat

1. At its meeting of 17-19 September, the Committee undertook an in-depth examination of the approaches embodied in the Recommendations adopted at the 40th Session of the CONTRACTING PARTIES (L/5753) on the basis, inter alia, of the Draft Elaboration (AG/W/9/Rev.1) prepared by the secretariat in consultation with the Chairman. The present note summarizes the main points raised in the course of the Committee's consideration of the Draft Elaboration.

General Observations

2. In a number of the views expressed, the Draft Elaboration (AG/W/9/Rev.1) was regarded as a detailed and useful contribution to the further work of the Committee, but not as an exclusive or necessarily agreed-upon approach. It was indicated that some of the suggestions put forward at earlier meetings of the Committee, particularly the suggestion that the Article XI agricultural exceptions should be eliminated and that tariffs should be the principal form of protection did not appear to be adequately covered in the present document. It was also pointed out that previous rounds of trade negotiations had failed to liberalize trade in agriculture and that it was now essential that agriculture should be dealt with in reference to the standards applied to other sectors of international trade. In this respect, the Draft Elaboration was seen as an attempt to identify practical, although perhaps sub optimal, solutions to the problems at hand, rather than ideal solutions. The concern was also raised that insufficient treatment was given to the problems of the existing imbalance of rights and obligations, and to the differences in levels of economic and social developments, notably in the agricultural sector.

3. In several of the views expressed, it was considered that the concept of the specificity of agriculture should be more fully developed in the Draft Elaboration, since the concept of liberalization as applied to industry was not realistically applicable to agriculture. The legitimacy of certain goals of national agricultural policies had to be recognized, as well as the autonomous nature of national measures to carry out these goals, and there needed to be a balance between national policy objectives and the interest of trade.

4. It was suggested that the rules relating to access needed to be made more operationally effective while recognizing the needs of agricultural policies. It would be necessary to envisage standards concerning access conditions, and to determine how these standards could be integrated at the individual country level. In this respect, responsible production policies were seen to be a key element.

Import Access

5. It was suggested that the option raised at a previous meeting of the Committee to modify Article XI by eliminating altogether its second paragraph and, thereby, any special provisions for agriculture, should be included in the document as a further option for future consideration. In this respect, the view was expressed that the special exceptions created for agriculture in the General Agreement lay at the root of the problems of trade in agriculture. It was argued that agricultural trade needed to be made more responsive to market forces. It was noted that this option was also dealt with in paragraphs 32 to 34 of the Draft Elaboration.

6. Another view was that Article XI:2(c) had not been used frequently in the past because it was too rigid. In this regard, the point was made that one basic national policy objective was to maintain a capacity to produce a certain quantity of certain products under all circumstances. In line with this reasoning, food security objectives, along with regional development objectives, should be included as elements in the criteria for imposing import restrictions.

7. An alternative approach included in the Draft Elaboration was to modify Article XI:2(c) so that existing import restrictions could be maintained only if there were effective regulation of domestic production, and a minimum access commitment. In a number of views, such a relaxation of Article XI:2(c) could have the benefit of bringing a wide range of non-conforming measures, including those maintained under waivers and protocols of accession (as well as minimum import price arrangements) under some improved GATT discipline and would guarantee a minimum access. It was noted that new quantitative restrictions would have to meet the more rigid criteria of limitation of domestic production, as well as a minimum access commitment.

8. In this context, the view was expressed that a differentiation between existing and new quantitative restrictions would not necessarily advance the liberalization of agricultural trade. Quantitative restrictions should be considered as rather draconian trade measures and the criteria for their use should not be relaxed. Countries applying quantitative restrictions should have to demonstrate conclusively that domestic production was in fact being effectively restricted.

9. In several of the views expressed, it was considered that it would be a positive step toward the liberalization of trade if the use of quantitative restrictions were to be conditional on the introduction or maintenance of measures to effectively regulate production. Questions were raised regarding the definition of effective regulation of

production, and as to how the observance of this condition could be monitored. It was observed that agricultural production could not be precisely controlled, that the reduction of acreage or other measures did not necessarily result in a reduction of production, and that some flexibility as to what constituted effective regulation of production would be necessary. It was further pointed out that national policies were within the autonomy of individual countries and multilateral efforts to monitor their operation would be problematical. It was noted that many of the current problems of trade in agriculture stemmed from policies that unduly stimulated production, and that the maintenance or continued expansion of import access was more likely to be assured in an environment in which domestic production was effectively controlled.

10. It was regarded as necessary to clarify the criteria governing eligibility to invoke Article XI:2(c)(i) and the obligations linking its use to market access requirements. The view was expressed that reducing prices was the most effective way to control production, but was not a politically acceptable alternative for many governments. It was pointed out that production control could imply the freezing of current levels, reduction of production, or limitation of its growth relative to factors such as domestic consumption.

11. Interest was expressed in the possibility of drawing up an illustrative list of governmental measures to control production. In this context, it was observed that the restriction of production requirement had long existed within the GATT and had been accepted by all contracting parties, and that it would be difficult to arrive at a more clear-cut definition than currently existed. The view was expressed that national measures should be judged by their results, rather than by the methods employed to achieve these results. Quantitative restrictions should only be used to enforce government measures with well-defined and recognized objectives. Furthermore, domestic production or marketing controls should keep production levels below those which would have been attained in the absence of the regulatory measures. It was suggested that an objective examination of the results of governmental policies to control production could be undertaken, perhaps in the context of the review and examination procedures called for under paragraph 3 of the Recommendations.

12. The following comments or suggestions were made with respect to the concept of a minimum access commitment (MAC) being expressed as a percentage of domestic production or as the existing ratio of imports to domestic production, whichever is the higher:

- (a) the MAC concept is not new to GATT; the ideas contained in the Draft Elaboration are an attempt to make it more operational;
- (b) the MAC would apply only in those situations where quantitative restrictions are invoked under Article XI;
- (c) the MAC ratio should take into account trade patterns during a previous representative period;

- (d) a fixed, across-the-board MAC ratio could provide a useful negotiating basis in those cases where trade has been distorted for so long that it is difficult to determine what the trade would have been in the absence of restrictions;
- (e) the MAC should be bound in a country's schedule, yet subject to periodic review to reflect changes in the relationship between imports and domestic production;
- (f) in some views, the concept of a MAC was acceptable only in conjunction with the requirement of effective regulation of domestic production, and if the MAC were bound;
- (g) another approach would be to apply the MAC requirement only in situations where the country applying a quantitative restriction did not fulfil the effective regulation of production criterion;
- (h) the requirement of a MAC on an individual product basis might lead to "managed trade" and a freezing of trade patterns;
- (i) the concept of a MAC on an individual product basis was too rigid and ignored some of the specific characteristics of agriculture. A MAC concept which applied to the totality of agricultural trade with a country could be justified;
- (j) in practice, the MAC would become a maximum access level as governments would not increase imports beyond this level without some form of concession;
- (k) a MAC could have detrimental price effects if extremely low-priced imports had to be permitted;
- (l) the MAC could be seen as essentially a tariff rate quota. In those cases where a country could not use only a bound tariff to regulate imports, the MAC would ensure that this basic GATT intent was applied to at least a certain percentage of imports;
- (m) the duty on products entering under the MAC should not be prohibitive; perhaps a maximum level of 35 per cent ad valorem should be considered;
- (n) for products from developing countries, the duty under the MAC should be zero, at least for an initial period of time;
- (o) provisions must be made for new importers in the establishment and administration of MACs;
- (p) both the MAC and the effective regulation of production requirement should encompass all directly competitive or substitutable products, in order to avoid restrictions on the importation of a broad range of competitive products when only one product was subject to domestic production controls;

- (q) a MAC at a relatively low, fixed level would not be incompatible with a country's food security needs;
- (r) it must be assumed that the combination of domestic marketing restraints and a MAC would not result in the transfer of over-production to external markets;
- (s) the MAC concept might have a very practical application in the case of "grey area" measures and in the case of products subject to excessively high tariffs.

13. Reference was made to the need to give some precision to the term "the specificity of agriculture" in order to reflect the fact that agricultural production cannot be precisely controlled. It was observed that quantitative restrictions were only one aspect of overall access problems, and that it was difficult to discuss these separately from other measures. The existing imbalance of rights and obligations was also referred to, as well as the fact that some countries had paid for exceptions to the requirements of Article XI. One view expressed was that it would first be necessary to restore a balance of rights and obligations before further liberalization could be pursued.

14. It was noted that maximum transparency was necessary with regard to the use of quantitative restrictions, as were procedures for periodic consultations on the effects of the restrictions. It was observed that some limitations were necessary to ensure that restrictions based on the Article XI:2(c)(ii) "temporary surplus" exception were not used to circumvent the requirements of Article XI:2(c)(i). It was emphasized that the introduction of new quantitative restrictions should be avoided. In this regard it was observed that a standstill on new restrictions should precede any future negotiations, and that provision should be made for the payment of compensation in order to dissuade countries from having recourse to new restrictions. The view was expressed that transitional or ad hoc exceptions should be balanced by compensation or by improved access in respect of other products.

15. Reference was also made to the need to prevent the accumulation of restrictive measures on any one product and to the need to further clarify and reinforce the requirements of Article XIII with respect to the non-discriminatory administration of quantitative import restrictions.

16. The view was expressed that a prohibition of imports was sometimes justified and was not necessarily a negative factor in the context of a country's overall trade. It was observed that at times quantitative restrictions on processed products were necessary in order to align the domestic policy with regard to basic commodity production.

State Trading and Other Related Enterprises

17. Several views were expressed that state trading constituted a potential source of interference with liberal trade. The notion embodied in Article XVII, it was observed, related not only to state-trading enterprises in the strict sense but also to boards or any other enterprises benefiting, formally or in effect, from exclusive or special privileges. It was stressed that past experiences indicated that improved disciplines were required, notably with respect to increased transparency in the import area. In particular, the methods adopted in conducting tendering and purchasing operations should be more extensively notified.

18. It was also suggested that further consideration should be given to the modalities under which national treatment and non-discrimination requirements should be applied to the operation of state trading and other related enterprises. In this regard, however, it was stressed that the possibility of improving the disciplines in this field should be examined with respect to all enterprises whether or not they were government related.

19. The observation was made that the operations of state-trading enterprises could not be regarded as constituting quantitative restrictions so long as their operations were based on commercial considerations. Therefore, minimum access commitments should not automatically be applied to state trading. In several other views expressed it was noted, however, that although state trading per se was not included under Article XI and could not be subjected to exactly the same disciplines, in cases where state trading had the effect of restricting imports, the application of an equivalent minimum access commitment would be appropriate and in accordance with the interpretative notes to Article XI.

20. In another view expressed, it was noted that Article XVII:3 already required that negotiations of some sort of minimum access in the case of state-trading enterprises should be undertaken. Although these provisions had not always been applied, the preference was expressed for making Article XVII:3 more effective rather than subjecting state trading to the domestic production controls which would be required under Article XI.

21. The fact that state-trading enterprises were more active in agricultural trade than in the industrial sector was perceived by some as an indication of the specificity of agriculture, and as further reason to recognize this concept.

Tariffs as the Principal Form of Protection

22. With regard to paragraphs 32 to 34 of the Draft Elaboration, the view was expressed that it would not be realistic to convert all quantitative restrictions and other measures into tariffs. Non-tariff measures existed because of problems arising from the specific characteristics of agriculture. Domestic agricultural policies attempted to stabilize prices and returns to farmers, and this stability had to be protected from fluctuations in import prices. Ad valorem tariffs were not sufficient to offset world price fluctuations.

23. Although tariffs as a principal form of protection constituted a desirable goal, it was recognized that the achievement of this goal would not be attainable in the near future, and that many problems would have to be overcome in the transition. The general objective, however, was to assure a certain amount of bound tariff access for all tariff lines. Tariffs, whether bound or unbound, which were at prohibitive levels were not beneficial to trade. In this regard, it was noted that tariff quotas had the merit of allowing some trade to take place, while still providing protection. Another alternative would be to limit the scope of fluctuations in unbound tariffs, so that a reasonable level of trade could take place.

24. It was pointed out that tariff quotas could also act as quantitative restrictions. If such measures were used to protect national policies, such as those envisaged under Article XI, they should be subject to the effective regulation of domestic production criterion and to the minimum access commitment.

25. The suggestion was also made that the Draft Elaboration should stress that new negotiations should be based on the principle that all customs duties should be bound. A product-by-product approach would exclude many developing countries, particularly those which are not principal suppliers. A linear procedure was suggested, with the greatest reduction occurring with respect to the highest tariffs in order to diminish tariff escalation. It was noted that this was an area where special and differential treatment for developing countries should be considered.

Other Related Measures

26. The view was expressed that some differentiation was necessary between the rules applicable to quantitative restrictions and those elaborated for other measures. It was emphasized in a number of the views expressed that the general objective was to assure a certain level of bound, fixed tariff access under each tariff line. In this regard, it was not the method of restriction used which was important, but the effect in terms of improved market access.

Voluntary Restraint Agreements

27. It was observed that to be consistent with the goals of liberalization and the approach emphasized in the Draft Elaboration, voluntary restraint agreements should be expressly prohibited. It was indicated that general legal opinion was that such measures were already prohibited under the General Agreement. It was also noted that voluntary export restraints were generally not perceived to be voluntary by the smaller countries on whom they were imposed as an alternative to more stringent restrictions. It was frequently the case that such restrictions applied to bound items, and often to products that were subject to seasonal restrictions. Whereas the GATT provided procedures for the re-negotiation of concessions, voluntary restraint agreements were perceived by some as a means of avoiding GATT disciplines. Action was not taken under Article XIX because the country could not demonstrate injury, and Article XI was not invoked because there was no programme for the control of domestic production.

28. On the other hand, it was pointed out that VERs were agreements negotiated between sovereign governments, and that in practice, they could not be effectively prohibited. In many cases, it was suggested, these negotiated agreements were preferable to unilaterally imposed safeguard restrictions. Voluntary restraint agreements were not, in this view, quantitative restrictions. Rather they were used to facilitate the administration of tariff rate quotas, and should not therefore be subject to the disciplines of Article XI.

29. It was noted, in several views expressed, that the major concern about voluntary restraint agreements was with their effect in terms of discrimination and of diversion of trade. In this context, it was suggested that some disciplines could be applied to these agreements along the lines of the suggestion of paragraph 41 of the Draft Elaboration. More specifically, voluntary restraint agreements could be consolidated and required to provide some advantage to the exporter, perhaps through reduced duties. GATT criteria could be established which, although not mandatory, could be invoked at the request of a supplying country not satisfied with the terms of a restraint agreement. The agreement could then be examined by the CONTRACTING PARTIES, and if not in accordance with the criteria, the terms of the agreement would be deemed to constitute prima facie evidence of nullification and impairment. It was suggested that some special and differential treatment for developing countries could be considered, but that all exporters subject to such an agreement should receive some benefit. In addition, it was noted that while some of the suggestions in paragraphs 41 with regard to automatic increase clauses, carry-over provisions, and the limitation of the duration of voluntary restraint agreements might not always be appropriate, some provision should be made for periodic review. It was also pointed out that the Draft Elaboration was not consistent from a legal standpoint in that it suggested that restraint agreements subject to multilateral review in terms of agreed criteria would be valid, could nevertheless be denounced at any time by an exporting country. It was noted, however, that the procedure envisaged was not intended to prevent parties to such agreements from invoking their basic GATT rights.

Variable Levies

30. In a number of the views expressed, it was maintained that levies were a legitimate form of import protection, similar to unbound tariffs, even though such measures were not expressly provided for in the General Agreement. They could be bound and their level was negotiable. In most cases, variable levies had been negotiated and paid for. Any further liberalization, it was suggested, should be done through negotiations based on reciprocity. It was observed that levies provide greater flexibility than tariffs, and that this was necessary to protect domestic prices from fluctuations in import prices. Although negotiation of greater access could take place, the concept of a minimum access commitment was not seen as appropriate to levies because imports entering without restriction could destabilize domestic price support systems.

31. The point was made that as non-tariff measures not expressly recognized by the General Agreement, variable levies should be subject to the requirements of Article XI. In this context, it was noted that variable levies often operated as de facto quantitative restrictions and should, therefore, be subject to minimum access commitments parallel to that required of other quantitative restrictions. It was also considered, in some of the views expressed, that the criterion of effective regulation of production should also be applicable to variable levies. Another view was that variable levies were in essence a mechanism for enforcing a minimum import price and as such they should be treated, in accordance with established practice, as a non-tariff measure under Article XI.

32. Attention was drawn to the fact that a major concern was with levies which were greater than the actual difference between domestic and world market prices. In cases where levies were used to stabilize import prices at a level corresponding to domestic prices in the importing country, it was suggested that they could perhaps be exempt from the minimum access requirement. Another possible approach was to bind the levy and to include some dynamic element so that at least some minimum trade access and growth could be assured.

Minimum Import Prices

33. Minimum import prices, it was observed, had the same purpose as a number of the other measures discussed, that is, to protect the relationship between the stimulative domestic support price and the fluctuating world market price. Their effect was similar to that of a bound duty - import prices were raised to provide some competitive advantage to domestic production. In this regard, the suggestion in paragraph 47 of the Draft Elaboration, that minimum import prices which had the effect of raising import prices above domestic levels should be prohibited, was considered to be unrealistic. In many cases, minimum import prices were simply the method used for administering a negotiated variable levy and had no importance on their own.

34. It was noted that minimum import prices were frequently set at high levels to ensure that imports could not be competitive on the domestic market, which was not generally the objective of tariffs. In addition, their level was often so high as to increase domestic prices and reduce domestic consumption. As frequently used techniques in international trade, they should be explicitly subject to the disciplines of Article XI, including the special provisions for agriculture contained therein.

35. The suggestion in paragraph 47, that minimum import prices at levels greater than that necessary to offset the difference between domestic and import prices should be expressly prohibited, was endorsed in several of the views expressed. The point was raised, however, that this could involve an ex post facto determination with all its attendant difficulties.

36. The observation was made that one could conceptually accept the application of quantitative restrictions on imports when domestic production was also restricted, but that conceptual difficulties arose with regard to other non-tariff import measures. The suggestion was made that perhaps an Article XI bis should be established to provide for some degree of parallel disciplines for these other price related measures.

Unbound Tariffs

37. The view was expressed that the existing GATT rules, which did not include an obligation to bind tariffs or variable levies, were adequate. The proposals of paragraphs 50 and 51 of the Draft Elaboration to impose Article XI disciplines on unbound tariffs went beyond the mandate of the Committee, and beyond what was required in the industrial sector. Changes in unbound tariffs and variable levies should, according to this view, be achieved through negotiations. In this regard, a linear tariff reduction formula was not considered to be applicable to the agricultural sector, where the need for protection varied greatly from one product to another. Instead it was proposed that a request and offer procedure was more realistic.

38. Reference was made to the disparities which existed in the extent of tariff bindings as between individual countries. The suggestion was made that some sort of balance should first be achieved. The point was also raised that fewer tariff bindings existed in the agricultural sector as compared to the industrial sector.

39. In some of the views expressed, it was noted that an ambitious reduction formula was needed, with the highest tariffs being cut the most and a general elimination of the tendency for tariff escalation. It was noted that in order to accommodate the specific characteristics of agriculture, some products might be exempt from the binding of tariff cuts, or perhaps that a longer implementation period should be permitted. This issue presented an opportunity for special and differential treatment of the developing countries.

Subsidies Affecting Trade in Agriculture

Improvements in the Existing Framework of Rules and Disciplines

40. In general terms, the range of views expressed in the course of the Committee's discussions under Option A may be summarized as follows: (i) that the approach outlined appeared to be unduly complicated, to go beyond improvement as such, and to venture into the area of innovation; (ii) that while the suggestions for reinforcing Article XVI:1 presented many useful and concrete ideas, and should be further developed, the suggestions with regard to equitable share were problematic in that the approach outlined appeared to privilege market sharing and to eschew the concept of circumscribing the role of special factors; (iii) that the approach outlined constituted a good and constructive starting point, and a reasonable basis, for further work on agricultural subsidies; and (iv) that as attempts to make the equitable share concept operationally effective were likely to be complex and unworkable, a simpler approach would be a strengthened rule on serious prejudice under Article XVI:1 in tandem with a prohibition on export performance related subsidy practices.

41. One view expressed was that compared to the ideas put forward regarding the negotiation of equitable shares (AG/W/12, paragraph 46), the approach outlined under Option A was somewhat overloaded and obscure. In this view it was pointed out that all countries subsidized their exports and that the existing rules should be improved so as to avoid worsening tensions. The problems affecting world markets were, moreover, of a general character and were not necessarily related to maladjusted supply, but more frequently to a problem of effective demand which necessitated the use of certain subsidies. It was also considered that export subsidies had to be looked at in the overall context of a balance between imports and exports, particularly where constantly increasing volumes of imports made it necessary to seek outlets for displaced domestic production.

42. In this same view and against this background, it was suggested that ways and means of developing the world market should be sought rather than excluding possibilities for assisting effectively with exports as outlined in the Draft Elaboration. The precise objective of the ideas advanced for predetermining equitable shares for all significant exporters who subsidize directly or indirectly, was to avoid getting bogged down in over-complex systems, to restore the operational character of Article XVI:3, and to enable the equitable share concept to act as a preventive discipline. In this regard, it was suggested that equitable shares should be calculated not only on the basis of a recent three- or five-year average but also by taking account of forecasts of future market trends. The resultant share should be expressed as a percentage of the world market, rather than in rigid quantitative terms, and should include all exports including food aid. Price disciplines would also be required. Such an approach, it was suggested, would make it possible to avoid controversy by removing the uncertainty inherent in calculating shares on the basis of past performance, to adjust exports to foreseeable demand, and also, through concertation between exporters, make it possible to take account of the interests of new exporters.

43. On the other hand, it was questioned in this same view whether far-reaching changes to the existing framework outlined in the Draft Elaboration would in fact lead to a real improvement. What, for example, would appropriate remedial action entail in a case involving displacement of the exports of another exporter in an individual market? More generally, the question was raised whether what was proposed in relation to Article XVI:1 did not imply an abandonment of the application of Article XVI:1 to subsidies which reduced imports. It was also pointed out that the distinction between the global and individual market effects of export subsidies appeared to isolate the idea of displacement. What was proposed could not be taken to imply that an exporter whose global share had contracted should be able to compensate its loss of market share in other individual markets, nor that an exporter which had not exceeded its share should nonetheless be exposed to an action for displacement in an individual market. It was also questioned whether the general guidelines or criteria suggested in paragraph 71, which appeared to modify the existing requirements regarding the existence of a casual linkage between export subsidies and alleged adverse effects, would represent an improvement, since it could mean that issues relating to equitable share would continue to be the subject of contentious panel proceedings.

44. The view was also expressed that the fundamental principle in paragraphs 2 and 3 of Article XVI was that export subsidies were likely to be harmful and should be avoided and that, without straying into Option B, the thrust of improvements in the existing framework should be towards discouraging the use of subsidies. Paragraphs 58 to 60 of the Draft Elaboration correctly analysed the problems, but given the discordance in the existing framework and the conflicting interests involved, it was clear that a substantial effort would be required, including a pretty radical re-write of Article XVI:1 and the relevant sections of the Subsidies Code, if the existing rules were to work effectively and in line with the objectives of the General Agreement.

45. In this view, while a number of the suggested improvements, particularly those regarding Article XVI:1, could be endorsed, it was considered that the fundamental principle for determining equitable share should be the share that would have been acquired in the absence of subsidies. It was submitted that an approach based on this principle would not necessarily be more difficult than either an approach based on the negotiation of equitable shares, with its associated problems of relative bargaining power, or an approach based on recent trends in market shares qualified by evidential presumptions and general policy guidelines. In this connection, the question was raised whether, given the difficulties involved in any attempt to devise readily ascertainable and objective criteria for applying such an inherently subjective concept, it would not be better to eliminate the concept altogether. It would then be possible to focus instead on devising criteria for dealing with serious prejudice in the context of individual markets, as well as with situations where in order to retain its market share a non-subsidizing exporter, and one which was dependent for a large part of its export earnings on a particular product, suffered serious prejudice in the form of a reduction in its returns as a result of subsidized competition. While the concept in paragraphs 64 and 66 of "hindrance to the normal evolution of trade" in an individual market might cover this situation, it needed to be dealt with more explicitly and in a broader context.

46. The view was also expressed that, while the improvements suggested for Article XVI:1 were appropriate, the concept of establishing general criteria to enable a panel to determine whether more than an equitable share had been acquired, though reasonable, was not sufficient. Reference was made in this regard to the importance of establishing criteria concerning special factors and to the informal suggestions on this subject contained in SCM/53.

47. It was also considered in this view that the negotiation of equitable shares was the worst hypothesis and that the concept of a readily ascertainable quantitative indicator of what constitutes an equitable share was also very dangerous. Market sharing disregarded dynamic factors in trade and, by shutting off or limiting competition, discouraged efforts to improve productivity. Notwithstanding the safeguards relating to burden of proof and the possibility that the growth in world markets would be reserved to non-subsidizing exporters, it was considered that the sharing-out of markets was an aberration

which would cause more problems and injury to countries, especially developing countries, which had to compete without recourse to export subsidies. The extent to which the suggested approach took account of global injury in the form of price depression, and the scope for an impasse in dispute settlement proceedings in situations where world trade in a particular product stagnated or declined, were also referred to in this general context.

48. With regard to the reinforcement of Article XVI:1 outlined in paragraphs 61 to 67, it was suggested that the criteria relating to serious prejudice should embrace price-depressing effects generally resulting from export subsidies as well as production subsidies. It was also considered important, in this view, that displacement should not be limited to individual markets, but should also cover displacement on a global basis as well. As regards paragraph 61, it was suggested that the obligation to take remedial action should be expressed, quite simply, as an obligation on the part of the subsidizing country to remove the cause of the prejudice.

49. In this same view, and with regard to Article XVI:3, it was observed that the equitable share concept had in practice been shown to be virtually incapable of practical implementation. This had resulted in Article XVI:3 becoming a dead letter and in a situation in which the rights of contracting parties to seek redress in GATT against the distorting effects of agricultural export subsidies had been, in effect, null and void. While in this view the ideal solution would be to extend the prohibition in Article XVI:4 to agricultural trade, the scope for somehow making the existing provisions more effective should be looked at in the context of AG/W/9/Rev.1. However, ideas such as those contained in paragraphs 72 to 75, were considered to be based on market sharing and to offend against the principle of comparative advantage. It was considered, in this view, that the Committee in its further work should examine the concept of defining a list of special factors in conjunction with a provision under which more than an equitable share would be presumed to have been obtained unless the subsidizing country could demonstrate that its exports were the result of one of a number of delineated special factors.

50. With regard to the assertion that all countries subsidized their exports in one form or another, it was pointed out in several of the views expressed that there was an important distinction to be made between occasional export subsidization, on the one hand, and relentless systematic export subsidization on the other. Another distinction mentioned was that between subsidies which isolated producers from market forces and those which did not. It was also pointed out that those countries which heavily subsidized their exports had a relatively greater responsibility having regard to the greater likelihood of damage involved. In this general context, reference was made to the distinction in paragraphs 64 to 66 between subsidizing and non-subsidizing exporting countries and to the need to develop greater precision in this respect. The question was also raised as to whether the suggestions in paragraph 64(iii) should not be broadened to include not only developing countries but any country which had acquired a comparative advantage through increased productivity or technological innovation.

51. As a general observation, it was noted that whether the core of the problems lay in the rules themselves or in their application, the fact remained that the existing system and its functioning had been unsatisfactory and was in need of improvements. In this view, it was considered that such improvements could, to a considerable extent, follow what was outlined in paragraphs 61 to 81. In this perspective, stress was laid on the need for flexibility with regard to small and temporary exportable surpluses, and with regard to the application of a rule on displacement in individual markets in the case of minor shifts in the destination of the exports of a subsidizing country whose overall exports of the product concerned were stable or even in decline.

52. It was also considered, in this view, that there was more than sufficient evidence of the need to provide a dispute settlement body with general policy guidance of the kind suggested, and that the basic reasoning in this respect in paragraphs 67 to 71 could be fully supported. It was indicated, however, that while it was necessary to discourage increasing export subsidization, an excessively mechanical basis for determining indicative equitable shares could not form the basis of a generally acceptable solution and that account would have to be taken of longer-term trends as well as temporary factors associated with trade in agriculture. It was also noted that "the share which might reasonably be expected to prevail in the absence of the subsidy" was a somewhat theoretical concept which, if it was to be fairly applied, would need to take account of a situation in which there were no export subsidies at all. With regard to "pre-established limitations" (paragraph 71(v)), it was pointed out that the particular limitations applied in each country would have to be considered on their respective merits.

53. A number of observations were made in which stress was laid on the need to simplify proposals for improvements in the existing framework. In this regard, it was pointed out that thanks to subsidies, production tended to expand unreasonably to a point where ever-increasing surpluses were produced. This gave rise to two problems, which need to be addressed and limited or controlled. One was a quantitative problem and the other a problem of the impact of subsidized exports on market prices. It was suggested that the Committee should focus its efforts on establishing a relationship based on the evolution of subsidized production by linking, in one way or another, the increase in production with what is exported, in particular, through subsidies. The question was raised whether, in order to achieve this result, it was necessary to have recourse to extremely vague concepts such as equitable share. It was also suggested that the impact of subsidized exports on market prices was a problem that would largely be settled if it were possible to solve the quantitative problem.

54. Another suggestion for keeping things simple, from the point of view of negociability and dispute settlement, was that all that was needed was a strengthened Article XVI:1 rule on serious prejudice in relation to domestic subsidies having adverse effects in terms of exports or imports, plus a prohibition on those subsidies, including subsidized export credit, which were specifically geared to exports and which were the most disruptive of trade in third markets. In this view,

it was pointed out that the idea of somehow trying to clarify the existing rules was simply not going to be workable. Furthermore, if the rules on export subsidies were to be tightened, the tendency would be, in a situation of increasing structural surpluses, for countries to invent other ways of getting rid of these surpluses at the least possible cost. It would therefore be necessary to develop clear and explicit rules on non-commercial sales, on the basis that the only transactions outside the purview of the GATT should be grant food aid. With regard to non-commercial transactions generally, it was considered in several of the views expressed, that all such transactions, including food aid transactions, should be covered, or that all transactions should be covered except for a carefully-defined category of exceptions.

55. In this general context, it was pointed out that, in effect, two sub-options were opening up under Option A: one was to improve what already exists, specifically to improve the method of assessing equitable share; the other was to change, on the pretext of improvement, what was contained in the existing rules. In this view, it was indicated that, while the dividing line between improvement and change was difficult to trace, the idea of dropping the equitable share concept altogether, which in itself may not be an improvement, would not appear to fall within the framework of improvements in the existing rules. The question was also raised as to why there should be a virtually exclusive focus on direct export subsidies, when there were a whole range of other measures that should be taken into consideration. Another question raised in this context was how the export operations of marketing boards were to be addressed in terms of the approach outlined under Option A.

56. It was pointed out in this connection that the suggestion was, in effect, that there should be a prohibition, albeit with exceptions, on all measures explicitly linked to export performance under Option B. In a situation where everybody subsidized, their domestic programmes could have a greater or lesser demonstrable impact on exports and imports. Accordingly, if the GATT were to be relevant in these circumstances, there needed to be some mechanism which provided an effective recourse for a party whose trade interests were materially affected. In another view expressed, it was pointed out that improvements in the existing framework could take a variety of forms, including deletions, additions or interpretative notes, and that the possibility of radical changes to the rules should not be ruled out. In this regard, it was suggested that the most useful elements in the Draft Elaboration were those relating to the strengthening and elaboration of serious prejudice under Article XVI:1. In this view, the need was to define more broadly and explicitly the cases of serious prejudice, both in individual and world markets, which would be subject to a requirement to take remedial action.

57. In several of the observations made, it was noted that special characteristics of agriculture, such as unavoidable seasonal variations in production, were relevant in the context of subsidies. It was also observed that a number of countries that were concerned about providing appropriate support and stability for their domestic producers and about food security, had managed to do so without engaging in export subsidization. It was suggested that this was a significant indicator of the direction that should be possible in a negotiation on agricultural export subsidies.

58. With regard to the question of export subsidies on primary products incorporated in processed agricultural products, a number of views were expressed to the effect that, in line with the existing GATT provisions, such subsidization should not be permitted. To do so, it was suggested, would merely complicate the situation and open it up to even further subsidization. Another view expressed was that the situation as it was described in paragraph 79 did not correspond to reality and that the ideas outlined in paragraph 81(i) appeared to be of greater interest and substance. In this regard, it was noted that it would be necessary to take account of the quantity of an agricultural primary product that was incorporated into processed products, otherwise there could be a risk of possible abuses. One approach, it was suggested, could be to negotiate conversion factors. Other suggestions were that clear guidelines should be developed regarding the definition of an agricultural primary product, and that the ideas on this subject developed in the context of the Code on Subsidies should also be examined.

59. Finally, in this context, the suggestion was made that at an appropriate stage, it might be profitable to have a more informal back and forth discussion on various aspects of the Draft Elaboration as it relates to subsidies affecting trade.

Option B: General Prohibition with Exceptions

60. In several of the observations made, a preference was expressed for the elaboration of a prohibition, with limited exceptions, on direct export subsidies and other forms of export-related assistance along the general lines described in paragraphs 84 and 85. At the same time, it was noted that a more broadly-based prohibition such as that outlined in paragraphs 86 et seq. also deserved careful consideration. A number of reservations were expressed in this connection as to how a producer-financed export subsidy exception would operate in practice, and as to whether it would be possible to devise conditions which would ensure that such a system would operate as an effective and equitable discipline as between countries for whom exports represented a large proportion of domestic production and those for whom exports represented a small proportion of production. A further general observation was that there would be major practical and other difficulties in getting a grip on all measures, including domestic policy measures, which have an impact on exports, and that a prohibition qualified by an exception under which producers financed the full cost of exports could profoundly affect domestic production structures. In the course of the discussion, an alternative option for the elaboration of a general prohibition with exceptions was presented and discussed.

61. It was pointed out in a number of the views expressed that one of the difficulties in assessing the approach outlined under Option B, was how a producer-financed export subsidy system would operate so as to ensure that producers would adjust to world supply and demand conditions. It was suggested that unless other measures were involved, the system proposed would not be permeable, since, in countries where exports were marginal in relation to total output, the protected domestic market could be used to offset the impact of world market trends through, for example, increasing internal guaranteed prices or deficiency payments,

62. According to this view, it would therefore be necessary to devise disciplines which would ensure that such offsetting techniques could not be resorted to. One possibility mentioned in this regard was a "standstill", accompanied by suitable surveillance and enforcement arrangements, under which existing government-financed export subsidy levels might be frozen at the outset. This, it was suggested, could be complemented by a freeze, or some other form of restraint, on internal support prices or measures. In either case, the object would be to ensure that the international price would be borne by producers, rather than by consumers. With some such arrangements in place, there would be a basis on which to devise and negotiate a phase-out of government-funded subsidies over what would necessarily have to be a relatively lengthy period. An approach along these lines, it was submitted, would mean that producers would have to adjust progressively to world market conditions and, despite the scope for some degree of dumping or price averaging, it could lead to a real diminution in the disruption to international markets from subsidized exports. It was noted that other approaches for a prohibition with exceptions should also be considered.

63. Another view was that the approach under Option B could be a step in the right direction and should therefore not be completely rejected. However, the approach as outlined gave rise to major misgivings regarding the scope for government involvement through domestic subsidies, deficiency payments and target prices. In this and other views, the result could be just to substitute government-funded dumping for government-subsidized exports. It was also suggested that there would be problems of equity politically in introducing institutionalized dumping in place of existing arrangements. In this context, it was also pointed out that a producer-financed export subsidy system would at least represent a move away from a situation where the consumer, having paid once in the form of high retail prices, had to pay again as a taxpayer.

64. It was recalled in a further view that there were two basic principles in the "prohibitions with exceptions" approach being elaborated by the Committee: (i) that measures to restrict imports (or subsidize exports) would only be permissible under certain conditions (the exceptions principle); and (ii) that even where such exceptions apply, contracting parties' freedom to exercise such measures would be limited by their obligation to provide access (the proportionality principle of Article XI) and, by extension to Article XVI, to limit subsidized exports. In this view, having regard to reservations similar to those mentioned above concerning the effectiveness of a producer-financed subsidy exception in providing a "limit" on subsidized exports, the following alternative option was outlined:

- (i) a requirement that countries which subsidize their exports of agricultural products negotiate self-sufficiency ratios with their right to use export subsidies limited to a quantity directly linked to movements in domestic consumption;
- (ii) this approach would require negotiation of a fixed percentage of domestic consumption which could be exported with subsidies. If domestic support prices were subsequently reduced and consumption increased then the quantity (not the percentage) which could be exported with subsidies would increase. If, however, support prices were increased and consumption declined, then the quantity which could be exported with subsidies would also decline;

(iii) this approach would have the advantage of placing an effective limit on subsidized exports consistent with the logic of the prohibitions with exceptions approach. It could also have the virtue of encouraging those countries operating high domestic support arrangements to bring the level of support down over time more into line with world prices. On the other hand, if such countries continued with a policy of high and increasing domestic support prices, it would protect other exporting countries from increasing quantities of subsidized product coming onto the market.

65. It was pointed out that a major difference between the work of the Committee and previous efforts in GATT was the recognition of the central importance of domestic agriculture policy as the root cause of problems in agricultural trade. It had to be accepted that governments were not likely to give up their right to support agricultural production, nor that an international body should impose disciplines on internal price levels. On this hypothesis GATT could and should negotiate on trade measures at the import and export level, with the object of minimizing the adverse trade impact of domestic policies. It was considered, in this view, that as export subsidies, subsidized export credit and export performance-related programmes were clearly disruptive of international agricultural trade, they should be prohibited. Such a move would be a major step forward in international trade policy. In this perspective, the producer-financed export subsidy exception was problematical, given the relative importance of the domestic market compared with the export market and the associated potential for averaging returns. Some combination of the elements in options A and B should, however, not be excluded.

66. It was also noted that even if export subsidies and subsidized export credits were to be prohibited, few governments would be prepared to forgo their right to take countervailing or anti-dumping actions against two-price systems unless there were some agreement as to what subsidy practices were countervailable. This was considered to be a matter of some practical importance and was an aspect of the Draft Elaboration that needed to be elucidated. It was also considered that the linkage in paragraph 90, between the note to Article XVI:3 and Article VI:7, was somewhat forced, since what was relevant under Article VI was the final value of the product regardless of where the money came from.

67. It was observed that the Committee's examination of the potential for restraining subsidies affecting exports would have to include not only direct and visible measures, but also other measures, such as deficiency payments or comparable systems which have an effect on exports as such. The problem, given that this would mean getting involved in domestic affairs, would be how and to what extent it would be possible in practice to get a grip on such subsidies. Assuming that the scope of the prohibition could be defined, there would then be the problem of exceptions. In theory, the idea of putting the burden of financing export subsidies on the shoulders of producers might appear to be a possibility. One problem would be the necessity for a very long transition period and another would be whether, for certain products and in certain circumstances, the possibility of some central government financing could be retained. Another aspect to be considered was whether producer financing could operate through a central government fund or through marketing boards. It would be difficult to establish marketing boards for all products. These and other practical implications had to be borne in mind. The question was also raised as to how the export activities of marketing boards would be dealt with in the context of Option B.

68. It was pointed out, in this view, that whereas there were cases where producer-financed subsidy arrangements might be feasible, there would be other cases where a total transfer to producer-financed subsidy arrangements would completely distort or overwhelm production structures, and others where it could even lead to a cessation of subsidized exports altogether. A total transfer of the burden of export financing was also considered to raise problems from the point of view of international trade and the stabilization of markets. The world market was a residual market subject to wide fluctuations and to price depression which was not necessarily the result of subsidies. It would, therefore, in this view, be unrealistic for producers to have to bridge the gap between artificial world market prices and domestic prices. If world market prices were too low, and fluctuations too frequent, domestic support and production systems would be shaken up, especially if, as suggested in the Draft Elaboration, the possibility of price support were limited to internal consumption. It was therefore necessary to examine whether producers could bear such a burden, under what circumstances, and over what period of time the transition would be made. Another issue that needed to be addressed was whether such a scheme was to be accompanied by a parallel and real stabilization of world markets, including the problem of monetary fluctuations.

69. The question was raised whether anything would be achieved in a situation where deficiency payments which resulted in more than 100 per cent self-sufficiency, were replaced by a two-price system. Although deficiency payment systems were preferable from the consumption and access viewpoints, the result could be selective dumping, or what could be described as a convergence of the agricultural and industrial situations. The reality was that the two-price system had attractions from the point of view of national policy makers, as a method of modifying the open-ended nature of national support programmes, but such systems would not remove structural surpluses throughout the world. All that could be said was that the approach would help governments to progressively reduce support in a manner that was less disruptive to international trade. It was also submitted that it was an error to assume that if export subsidies were eliminated, all the world's agricultural problems would be solved. What had to be looked at was not only the elimination of export performance-related subsidies, but also the need to improve access. One of the concerns of policy makers was the volatility of world markets. This volatility was a reflection of the cumulative effect of both import and export measures. Accordingly, if these measures could be reduced and brought under disciplines, conditions in world markets, including prices, would be stronger. It was essential, therefore, that there should be a progressive liberalization of access coupled with a progressive reduction in subsidization and thus a gradual narrowing of the disparities between national price supports and world prices. However, as governments were locked into existing programmes, time would be required to make the transition.

70. It was also noted, in the context of special and differential treatment, that many developing countries would not be in a position to establish producer-financed export subsidy arrangements comparable to those of bigger countries. It was indicated that this was a very important consideration and one that would necessitate a relatively longer transition period in the case of developing countries.

71. Another view expressed was that the approach outlined under Option B would not take account, in the long run, of the problem of sectoral imbalances in various segments of international agricultural trade. The assumption that the marginal cost of producer levies would be at least equal to the marginal benefits accruing from export operations under such schemes, might only be correct for the agriculture sector as a whole. As between individual product sectors, however, this would not necessarily be the case, one example being a situation in which levies collected from producers of a product in short supply were pooled with, and used to supplement, the proceeds from a levy on a product that was in surplus. It was also questioned whether the safeguards referred to in paragraph 98 could be a great deal more effective in the future than they had been in the past.

72. It was suggested that it might be useful to re-assess the approaches under discussion in terms of the objectives the Committee was trying to achieve, and having regard to the fact that one of the basic problems was that the Committee was trying to improve a system that did not work. In this view it was suggested that, adopting an orthodox or traditional approach, one should look at how the existing provisions could be made to fit the existing situation. In parallel with this, an effort should also be made to agree about particular situations and see how these situations could be expressed in terms of legal provisions, which could then be linked up to the existing provisions or even replace them.

73. Another suggestion made in this general context was that it would facilitate the task of assessing the various approaches and suggestions if they were to be presented in the form of draft articles. In this regard, a distinction was made between issues of substance and related procedural matters, with the point being made that it would be important to have transparency relating to the fulfilment of substantive requirements and that, from the point of view of trade operators and others, the final result should be capable of being clearly understood and applied.

74. With regard to the exceptions outlined under Option B the following points were made: that there should be an exception in respect of genuine non-commercial transactions but that otherwise the exceptions should not be more extensive; that some limits or criteria needed to be established to ensure that food aid and other non-commercial transactions did not become a means of escaping disciplines; and, that it would be difficult to define the exception in paragraph 91(iii) in a way that would keep an effective lid on this exception. It was also pointed out that the minimum access related exception described in paragraph 93 was to be regarded as a temporary exception in line with the suggestions outlined in paragraph 60 of AG/W/12.

75. Another observation was that the exceptions outlined under Option B were rather scant. It was suggested that an exception applicable to an agricultural product in its primary form should also apply to the same product when incorporated in a processed product. It was also suggested that consideration be given to other exceptions to cater for the following situations (this listing was not intended to be exhaustive):

- (i) the absorption of a temporary surplus due to a sudden increase in imports of the product in question or possibly of a competing or substitutable product;

- (ii) the absorption of a surplus of a product of animal origin, the domestic production of which is stimulated by, or is directly dependent, wholly or mainly on a product, imports of which have increased substantially;
- (iii) the re-export of quantities of a product, in its natural or processed form, equivalent to quantities previously imported, such as imports from developing countries at prices above the normal market prices;
- (iv) the implementation of a policy to restrict the domestic production of a product or to limit guaranteed support prices in respect of that product (exception applicable to substitutable or competing products);
- (v) meeting the supply requirements of an importing country which is deprived of normal access to the international market or to certain supplying countries as a result, for example, of economic difficulties or certain other specific problems;
- (vi) sales at prices or on terms which are in conformity with:
 - commitments undertaken by virtue of a bilateral intergovernmental agreement relating to an agricultural primary product which is consistent with criteria submitted to the CONTRACTING PARTIES;
OR
 - a multilateral international undertaking applicable to an agricultural product and with which at least a specified number of contracting parties are associated.

76. In this context, it was observed that experience with producer-financed or co-responsibility systems indicated that such systems, if applied across the board, would not meet a number of essential requirements, and that this difficulty would be unlikely to be resolved through ad hoc exceptions or transitional arrangements.

77. With regard to the rules that should govern competition in the framework of a prohibition with exceptions, it was suggested that the more than equitable share concept should be dispensed with if only for the reason that neither the ideas in the Draft Elaboration nor the other suggestions made were persuasive that the concept would be any more practicable in the future than it had been in the past. In this view it was considered that a reinforced Article XVI:1 should apply in the case of serious prejudice caused by the use of export and other subsidies in the transitional stage and thereafter.

78. With regard to the alternative formulation of a prohibition with exceptions outlined in paragraph 64 above, it was considered, in several of the views expressed, that this option should be the subject of further examination. In several of the preliminary observations made, it was indicated that this alternative option fitted into the access logic being discussed under paragraph 1(a) of the Recommendations, and had the advantage of establishing a linkage between domestic policies and the granting of export subsidies. It was also noted that other advantages of this option would be that it would tackle the problem of very large disparities between domestic support prices and international prices, and that producers would be encouraged to accept lower prices in order to be able to dispose of production.

79. Reference was also made to certain possible disadvantages which appeared to be inherent in the alternative option. One disadvantage mentioned was the problem of negotiating acceptable self-sufficiency ratios, and the associated problem, as in the case of negotiating minimum access commitments, of relative bargaining strength. There could also be problems in using the status quo as a base, particularly in cases where the ratio of self-sufficiency was more than 100 per cent. It was indicated that it was somewhat difficult to accept that creating additional access should be accompanied by an automatic right to subsidize a greater quantity of exports. Another aspect referred to was that while domestic markets may grow, it did not follow that the international market would necessarily be capable of absorbing additional subsidized exports. The result of the suggested "additional entitlement" could simply be a larger share by subsidized exports of a static international market. In this connection it was pointed out that while a reduction in high domestic prices to world market levels should be encouraged, the rewards should take the form of lower consumer prices, lower subsidy and stocking costs, rather than a larger share of international markets.

80. It was also explained that the alternative was an option in its own right which would apply to export subsidies in the sense of Article XVI:3, and that it was envisaged that self-sufficiency ratios be negotiated on a commodity and individual market basis. The option was designed to apply as a ceiling limitation on all exports irrespective of whether they happen to benefit from direct export subsidies or other forms of support such as levies collected from producers to finance exports.

81. Finally it was noted in this general context that the basic concept in the approach outlined under Option B in the Draft Elaboration was basically a relatively simple one. The prohibition in Article XVI:4 would be extended to agricultural products on the basis of the existing definition in Articles XVI:1 and 3; there would be some exceptions, the main one being a modified version of the existing Note 2 to Article XVI:3; there would be a transition period to reach this result; during that transition, Articles XVI:1 and XVI:3 would apply; after the transition, the more than equitable share concept would be dropped and Article XVI:1 modified along the lines suggested in Option A would apply. The principal exemption was based on the Note to Article XVI:3 because negotiations would go nowhere if the purported objective was to prohibit domestic support policies. Scope was provided for differential treatment along certain lines. Some participants wanted to limit the exceptions, others appeared to want to extend the range of exceptions to a point where the exception became the rule. A different approach was suggested which could be seen as an operational expression of the existing linkage between domestic policies and exports in the Note to Article XVI:3. Whether levies on producers should transit through a government fund was a technicality. The main point was that it should be the producers not governments who pay.

Sanitary and Phytosanitary Measures and Other Technical Barriers

82. The point was raised that if there were success in the reduction of other non-tariff trade restrictions such as quantitative restrictions, levies, etc., there would be more pressure to use health and sanitary regulations to restrict trade. It was generally agreed that a strengthening of the disciplines in this area, including improved consultation procedures, was necessary.

83. In several of the views expressed, it was considered that there was a need to extend the existing provisions for compensation in cases where concessions were impaired by health and sanitary regulations. It was suggested that such compensation should be required even in situations where the health and sanitary regulation in question had been in existence at the time the concession was granted. One possible approach suggested was the adoption of a provision similar to that of Article II:3, which would require that no contracting party shall change health or sanitary regulations or procedures in such a manner as to cancel or diminish the value of concessions or minimum access commitments. This would provide for a standstill on existing regulations and a basis from which to compute compensation. The point was made that health and sanitary measures were taken because of expert examination of scientific data. Restrictions differed due to differences in locations, in types of production, etc.

84. It was noted that rights could also be impaired by administrative requirements, such as those involving compliance with unreasonable methods or procedures. It was not always a question of open or closed markets, but of the excessive costs incurred in fulfilling specific production or processing requirements. The two approaches examined in the Draft Elaboration were not seen as mutually exclusive. In addition to improvement of Article XX:(b), it was necessary to reinforce disciplines in order to assure non-discrimination and national treatment. The definition of acceptable multilateral procedures in this respect was seen as a possible way to facilitate the identification of unreasonable requirements. It was suggested that reference should be made to existing international standards, including the GATT Standards Code and the FAO Codex Alimentarius. The point was made that the existing international standards had not been successful in this area. In one view, what was necessary was a panel composed of both technical and trade policy experts to address the key question of what was an acceptable degree of risk with regard to the introduction of undesirable pests or diseases.

Review of Measures and Policies

85. The observation was made that it was necessary to strike the right balance between transparency and national rights. In this context, the view was expressed that the Draft Elaboration appeared to transform the desirable proposal for increased transparency into a collective right for interference in domestic legislation. The concern was raised that domestic policy measures could be subject to review and approval in a multilateral body even before such measures were implemented.

86. The point was made that provisions for transparency and the review of measures were a fundamental requirement of any agreed disciplines on access, subsidies, or health and sanitary measures. In several of the views expressed it was noted that review procedures could not be conclusively discussed until there was agreement on the substance of improved disciplines.

Other Matters

87. It was agreed that the Committee would hold its next meeting on 23-24 October and that the secretariat should prepare and circulate a draft of a report by the Committee to the 41st Session.