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GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

GROUP 3(b) - CONSIDERATION OF TASK 8 OF PROGRAMME OF WORK

At the meeting of Group 3(b) in early March there was discussion of the desirability of additional data on export restrictions and information on the GATT provisions relevant to such restrictions. In view of the complexities of the issues, the Group agreed that some time was needed for reflection and it was agreed to revert to the matter.

In order to facilitate this reflection the secretariat, on its own responsibility, has prepared the following technical note.

GATT AND EXPORT RESTRICTIONS

Technical Note by the Secretariat

In 1948, when GATT entered into force, most countries suffered from unemployment and lack of reserves. A major purpose of GATT was to prevent countries from attempting to shift these problems on to their trading partners by restricting imports. The drafters of GATT were influenced by the experience of the 1930's when such actions had been common and when a vicious spiral of retaliatory import restrictions substantially reduced world trade. GATT was to provide a legal framework for the removal of these restrictions and to prevent a new breakdown of international trade by channelling and supervising the desire of nations to import as little as necessary and to export as much as possible.

In 1973, when GATT celebrated its 25th anniversary, the focus of international concern had shifted. High levels of employment prevailed in most of the large trading nations and many countries enjoyed a comfortable foreign reserve position.[1]

[1] In a report on its activities during 1973, the International Monetary Fund writes: "The use of the Fund's financial facilities was low principally because of the relative reserve ease experienced by many member countries and the ease of borrowing in international financial markets, and because of the increased flexibility of exchange rates which alleviated the problem of financing balance-of-payments deficits." (IMF Survey 7 January 1974, page 8).

The economic dangers during 1973 stemmed in many countries from inflation, rather than unemployment and lack of reserves. In this environment the aims of foreign trade policy in a number of countries changed. Cheap imports began to be viewed as a means to fight inflation and important trading nations reduced their import barriers unilaterally. At the same time the inflationary impact of exports started to receive increased attention. As a result, many countries began limiting exports to keep the level of domestic prices down. There are numerous examples of this. In many countries concern about inflation led to price controls which, in turn, produced export controls to prevent local shortages that tend to arise when suppliers shift sales abroad to take advantage of a world price exceeding a fixed domestic price. A country's foreign trade measures to control inflation, of course, tend to exacerbate the inflationary problem of other countries. In 1973, it became apparent that exporting inflation can in certain circumstances become a beggar-thy-neighbour policy disrupting international trade as did attempts to export unemployment that had preoccupied the drafters of GATT.

During the post-war period, countries supplying primary products generally tried to maximize their exports and since demand grew only slowly they suffered from low or declining prices. The drafters of GATT recognized the difficult situation of these mostly developing countries and gave primary products a special status in the General Agreement. Consequently, GATT exempts commodity agreements from the normal trade rules (Article XX(h)), submits export subsidies on primary products to a more lenient régime than those on manufactured goods (Article XVI) and provides for actions to improve market access and prices for primary products of interest to less-developed countries (Article XXXVIII).

During the past year, key commodities became increasingly scarce and reached record prices. The shortages recalled the forecast of the Club of Rome that such important raw materials as crude oil, copper, zinc, bauxite, mercury and silver could be exhausted in less than half a century. The energy crisis has demonstrated how the suppliers of scarce raw materials can increase prices by co-operative action and how vulnerable the importing countries are to such action. Some raw material exporting countries have welcomed the oil-nations' action as a successful precedent. The raw material importing nations are reviewing their reliance on imports because for them joint moves by supplying countries can mean payments problems, inflation and unemployment. International concern is shifting towards the problem of access to supplies.

It is not known, of course, whether the recent spreading of export restrictions is the beginning of a trend or a temporary phenomenon. However, whatever the future, it is now possible to visualize concretely situations in which export restrictions could be a major factor in world commerce. Historically, international economic organization has been based on the assumption that free trade could be achieved by giving all nations the right to sell abroad; in the future the right to buy from other countries might have to be added in some areas. The purpose of this note is to analyze the GATT provisions governing measures limiting foreign access to supplies, and to evaluate possibilities for solving the problems arising out of such measures in the framework of the trade negotiations in a manner satisfactory both to exporting and importing countries.

GATT provisions governing exports

The General Agreement distinguishes between quantitative restrictions (prohibitions, licensing etc.) and cost restrictions (tariffs, taxes etc.). While quantitative restrictions are, subject to certain exceptions, prohibited, cost restrictions may be freely imposed unless the contracting party has committed itself to a maximum tariff in a schedule annexed to the General Agreement (Articles II and XI). This basic distinction applies not only to import restrictions but to export restrictions as well. Quantitative export restrictions are thus under GATT in principle forbidden; the elimination of export duties, however, has been left to negotiations.

This approach to the problem of export restrictions differs from that adopted by the drafters of a number of regional economic arrangements. The EEC and EFTA agreements, for instance, while permitting temporary and individually negotiated import restrictions, provide for a general elimination of export restrictions.[1] The drafters of GATT considered a complete abolition of export restrictions but rejected the idea. The representative of an important trading nation said during a preparatory session preceding GATT: "If we had put in this draft exactly what we ourselves would have liked there would have been a prohibition of export duties and a prohibition of restrictions on raw materials", but he added that for some countries export duties have the same purpose as import duties for other countries "and therefore to be logical you must negotiate on that, too".[2] Another representative elaborated this idea by

[1] Articles 12 and 16 of the Treaty establishing the European Economic Community; Articles 8, 11, 21 and 26 of the Convention establishing the European Free Trade Association.

[2] United Nations Conference on Trade and Employment, Preparatory Committee, 1st Session (London: 1946). Document E/PC/T/C.II/ST/PV/1 page 11.

pointing to the case of a country whose raw material processing industry is jeopardized by the import tariffs of other countries and which, as a result, imposes an export tariff on the raw material so as to protect its processing industry. This representative felt that "there may be a certain reasonableness in the idea that a country producing the raw material should in those cases be able to defend itself by reserving the right to have an export tax serving to prevent the processing industry from being completely taken away from it by an import duty in another country .... Having regard to that .... it would not be altogether reasonable to require the complete abolition of export taxes, but, on the other hand, there may be a good case for asking for negotiation".[1]

GATT provides for exceptions to the general prohibition of quantitative restrictions which differ depending on whether imports or exports are concerned. Quantitative import restrictions may be imposed for balance-of-payments reasons and to avoid market disruption, but only subject to detailed legal requirements (Articles XII, XVIII B, XIX). As to quantitative restrictions on exports, GATT imposes less stringent limitations. They may be applied inter alia "to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party" (Article XI:2(a)), and to conserve "exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption" (Article XX(g)). They are also permitted under two general exceptions to GATT relating to short supply situations and price controls on raw materials. These will be discussed at the end of this note.

In 1950, the CONTRACTING PARTIES decided to discuss quantitative restrictions in the knowledge that they had been "widely applied by most countries since the war". Their discussion also comprised quantitative export restrictions because they found that "many countries have made extensive use of restrictions on exports in order to protect their supplies of scarce commodities".[2] During their discussion the CONTRACTING PARTIES came to the conclusion that the following types of quantitative export restrictions generally fall outside the exceptions provided for in the General Agreement:

"(i) export restrictions used by a contracting party for the purpose of obtaining the relaxation of another contracting party's import restrictions;

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[1] Idem page 12

[2] Cf. The General Agreement on Tariffs and Trade "The Use of Quantitative Restrictions for Protective and other Commercial Purposes" (Geneva: 1950) page 4.

(ii) export restrictions used by a contracting party to obtain a relaxation of another contracting party's export restrictions on commodities in local or general short supply, or otherwise to obtain an advantage in the procurement from another contracting party of such commodities;

(iii) restrictions used by a contracting party on the export of raw materials, in order to protect or promote a domestic fabricating industry; and

(iv) export restrictions used by a contracting party to avoid price competition among exporters."[1]

The basic obligation of the contracting parties to avoid discrimination does not only apply to imports but extends to foreign trade in general. No matter how a government regulates its foreign trade, it may in principle not make distinctions as to the origin or as to the destination of products crossing the border. Article I requires most-favoured-nation treatment both for imports and exports in respect of customs duties and various types of charges, regulations and requirements. The avoidance of discrimination in administering quantitative restrictions both on imports and exports is required by Article XIII. State-trading enterprises are to avoid discriminatory treatment both as regards their imports and their exports according to Article XVII.

GATT contains a number of exceptions to the principle of non-discrimination which in general apply to imports as well as exports. The exceptions that have in practice been particularly relevant to export restrictions are contained in Article XXI. This provision permits any action a contracting party considers necessary for the protection of its security interests provided that the action is related to military supplies or fissionable materials, or is taken in time of war or other emergency in international relations. The Article also permits actions taken to comply with obligations under the United Nations Charter regarding the maintenance of international peace and security. The latter exception is related to Articles 25 and 41 of the United Nations Charter obliging members to implement decisions of the Security Council calling for complete or partial interruption of economic relations with another country.

There appear to have been only three complaints against discriminatory export restrictions in the history of GATT. In 1948, Pakistan complained that India did not refund excise duties on a number of commodities when they were exported to Pakistan while such refunds were granted for exports to all other destinations.[2] In 1952, a similar complaint was discussed in GATT. This time the parties to the

[1] Idem pages 5-6

[2] GATT document CP.2/SR.11 (1948)

dispute were reversed. India complained that Pakistan discriminated in its taxation of jute exports against India. India explained that jute was exported from Pakistan in the form of wire-bound bales and loose bales and that Pakistan's export duties on loose bales were higher than those on wire-bound bales. Since India took most of its supplies in the form of loose bales it felt that it was the object of discrimination.[1] Both these complaints were withdrawn following bilateral compromises.[2] In 1949, Czechoslovakia brought a complaint against the United States arguing that its practice of export control licences discriminated against Czechoslovakia.[3] The CONTRACTING PARTIES, however, formally decided that the United States had not "failed to carry out its obligations under the Agreement through its administration of the issue of export licences".[4]

Possibilities for negotiating export concessions

Since there is no general GATT provision against export duties the question arises whether specific commitments on exports could be negotiated. In principle, there is no reason why this could not be done given the many similarities and symmetries between import and export restrictions. Basically there are three commercial reasons for which export restrictions are introduced: first, to protect a domestic manufacturing industry by providing it with cheap raw materials; second, to prevent or relieve critical shortages; and third, to improve the terms of trade. In each of these areas, negotiations would be possible.

Export tariffs can be a form of protection. If an important exporting country imposes a duty on the export of a raw material, the domestic price of the raw material will tend to fall and the world market price will tend to rise. The domestic manufacturing industry being able to purchase the raw material at the local price will therefore have an advantage over foreign manufacturers that have to pay world market prices. Many raw material producing countries are resorting to export restrictions to further the development of domestic processing industries. Some oil producers limit crude oil exports to promote industries processing oil; other countries limit leather exports to help their shoe industries; coffee growing countries restrict the export of green coffee but not that of soluble coffee; etc. Schemes to promote exports of manufactured goods by discouraging exports of raw materials have had a significant impact on

[1]GATT document L/41 (1952)

[2]GATT document CP.3/SR.19 (1949) and L/82, Add.1 (1953)

[3]GATT document CP.3/33 (1949)

[4]GATT document CP.3/SR.22 (1949)

the trade of some countries. Thus, the total imports of leather products by developed economy countries from one developing country rose from $4 million to $30 million between 1962 and 1968, while during the same period their imports of hides and skins from that country fell from $10 million to only $1 million. A coffee producing country's soluble coffee exports to a major consuming country soared from 1 per cent of that country's soluble market in 1965 to 14 per cent in 1967 after differential coffee export taxes favouring processed coffee had been introduced. The tendency of the raw material exporting countries to levy high export duties on raw materials and low or no duties on finished products corresponds to a tendency in the raw material importing countries to levy import duties that rise with the degree of processing. These two forms of protection, it would seem, could become the subject of multilateral negotiation in which a mutually beneficial step towards free trade could be made by exchanging commitments to lower export tariffs on raw materials with commitments to lower import tariffs on processed goods.

Export restrictions to prevent or relieve situations of short supply also seem to be susceptible to multilateral negotiation. Short supply controls have been imposed periodically by a number of nations on exports of fertilizers, copper and ferrous scrap, farm products and a variety of other items. In the long run, export restrictions to deal with shortages serve no country well. Not only do they prevent the scarce product from being sold where it is needed most but they also tend to exacerbate the world shortage by reducing, as a result of the lowering of domestic prices, the incentive to produce more and to waste less in the country restricting exports. Moreover, they invite retaliatory action and are therefore often counter-productive in the long run. A country restricting exports in times of scarcity may find that it is unable to sell abroad in times of abundance because its trading partners, shunning the unreliable source of supply, have erected import barriers to increase their self-reliance. It seems conceivable that there are at least some products where countries would find it in their mutual interest to agree to share eventual future shortages rather than to preserve the often short-run advantage of exporting the shortages to other nations.

In some cases, countries may have an interest in exchanging import concessions against commitments not to introduce short supply controls on exports. In general a reduction of import tariffs leads to a more extensive division of labour among countries and therefore also to a higher degree of dependency on imports. If export controls become more common, countries foregoing the possibility to produce certain goods as a result of an import concession might wish to obtain assurances that they will actually be able to import the goods in the future. Supposing countries A and B consider a lowering of import charges on grains and meat and that this would tend to make A a producer of grains and B a producer of meat. If A has a history of export restrictions, B might be reluctant to agree to the new division of labour unless it obtains assurances that A will refrain from imposing short supply controls on grain exports in the future.

Finally, export restrictions may be a means of improving the terms of trade. When the foreign demand for a product is inelastic, a reduction in the quantity of exports leads to an expansion of exports by value. By exporting less the restricting country earns the financial resources to import more, and thus improves its terms of trade. Conversely, when the supply of a commodity is inelastic, restrictions on imports may lower the world price of the commodity and improve the terms of trade of the importing country. Such actions will, in most cases, only be successful if a significant proportion of the total world trade is controlled; international agreements are generally necessary to achieve this. Export restrictions have helped to improve the terms of trade of countries producing crude oil, tin, coffee and a few other commodities. Clear-cut cases of import restrictions to improve terms of trade, however, have hitherto appeared more often in textbooks than in reality. The opportunities for terms of trade actions by both exporting and importing countries are limited since, in the long-run, demand and supply elasticity in international trade is high and the administration of international agreements to control trade tends to be difficult.

Terms of trade restrictions could not always be dealt with by way of tariff concessions alone. Tariff concessions can only help solve problems where countries are using border measures (export or import taxes or quotas) to improve their terms of trade; in situations where countries are using internal measures to raise or lower the price of a commodity (taxation or direct limitation of production or consumption) or could easily switch to such measures, a mutually satisfactory solution will often only be found in the framework of agreements fixing quantities and prices. This latter situation is likely to prevail in countries that are large producers and insignificant users of a raw material.

If a country wishes to retain the possibility of imposing export tariffs on a certain product to improve its terms of trade, but to forego, in exchange for other concessions, the option to protect its domestic processing industry with the help of differential export taxes favouring processed goods, it could commit itself to levying uniform export tariffs on the product in all stages of processing. With this technique it would be possible to deal with the terms of trade issue in the framework of agreements fixing quantities and prices and treat the problem of the location of processing industries by way of tariff concessions in the multilateral trade negotiations. To take a concrete example, a less developed oil-producing country could, through export restrictions on crude oil easily attract petrochemical industries, but it might prefer to industrialize in labour-intensive, low technology sectors so as to protect itself against the day when its oil reserves are depleted and new sources of energy are found. If this country finds that other countries' import restrictions prevent it from expanding production in sectors in which it considers it has a long-run comparative advantage, it might try to obtain tariff concessions in these sectors by offering a commitment to levy uniform export taxes on oil and oil products in all stages of processing. It would then retain the option to improve its terms of trade by taxing uniformly oil and oil products, but renounce the possibility to establish or further oil processing industries with the help of differential export taxes. Oil importing countries that do not wish to lose foreign markets of their petrochemical industries might be interested in such a concession.

The binding of export concessions in GATT schedules

There are thus ample possibilities for exchanging export concessions in multilateral trade negotiations. GATT as a forum could no doubt play an essential rôle in such negotiations; however, would GATT as an agreement be serviceable? The first question that arises is whether the results of export negotiations could be included in the GATT tariff schedules and thereby formally incorporated into the General Agreement's legal framework.

One view that has been stated is that Article II, by which schedules are incorporated into GATT, refers to importation only. Export commitments could, therefore, not become part of GATT. A scheduled export commitment would have to be treated like any independent bilateral agreement between two members of GATT and would apply for the benefit of all GATT members under the MFN obligations of Article I. If one takes this view, one could probably go one step further and say that the parties to such a bilateral agreement, by inscribing the commitments into a GATT schedule rather than elsewhere, implicitly agree to make the rules of GATT an integral part of their agreement.

On first sight, there appears to be no difference between a concession incorporated into GATT and a bilateral agreement to which the rules of GATT apply. Indeed, as long as the concession exists there are similarities: GATT rules govern the concession in both cases and the MFN clause serves to multilateralize the trading advantage irrespective of the legal character of the export concession. However, the moment the concession is withdrawn, important differences appear. A scheduled concession incorporated into GATT can only be withdrawn if procedures safeguarding the interests of affected third countries are observed. Substantially interested third countries have, under certain circumstances, the right to withdraw scheduled concessions to compensate for the lost trading advantage (cf. Articles XVIII:7; XXIII:2; XXVIII:3, 4). They also have the right to be consulted or to receive offers for compensation (cf. Articles II:5; XXII:1, 2). By contrast, a bilateral concession can be withdrawn by agreement between the two parties concerned. In that case affected third countries have no right to withdraw concessions to compensate for the lost trading advantage nor would they enjoy the procedural benefits of the General Agreement. The Contracting Parties have decided that "the determination of rights and obligations between governments arising under a bilateral agreement is not a matter within the competence of the Contracting Parties".[1] They could therefore not assist in settling disputes arising out of bilateral concessions.

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[1]Decision of 9 August 1949 (BISD, Volume II, 1952).

It would seem that neither the wording of Article II nor the practice that has developed under it justifies a narrow interpretation. Article II declares in the introductory paragraph that "each contracting party shall accord <u>to the commerce of the other contracting parties</u> treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement"; it thus speaks of the foreign commerce generally not only of imports. It is true that the drafters had principally import concessions in mind because the remaining paragraphs of Article II, elaborating the principle set forth in the introductory paragraph, speak of importation only. However, the contracting parties did not wish to limit the scope of concessions to import tariffs. As pointed out above, the possibility of negotiating export duties was discussed during the preparatory work. Moreover, in Article XXVIIIbis, the contracting parties formally recognize the importance of substantially reducing"the general level of tariffs and other charges on imports <u>and exports</u>". Similarly, they agree in a note to Article XVII that trade obstacles created by State-trading enterprises should be the subject of negotiations leading "towards the reduction of duties and other charges on imports <u>and exports</u>". Given the contracting parties' intention to negotiate barriers to both imports and exports one may conclude that they wished to multilateralize not only import but also export concessions.

While the possibility to incorporate export concessions into GATT exists, almost no use has been made of it in practice. The only export bindings contained in GATT schedules appear to be concessions on tin exports included in the schedules of Malaysia and Singapore.[1] They read as follows: "Export Duties: Tin ore and tin concentrates.

<u>Note</u>: The products comprised in the above item shall be assessed for duty on the basis of their tin content: the rate to be levied on such tin content being the same as the rate chargeable on smelted tin,

<u>Provided</u> that the rate of duty on this item may exceed the rate chargeable on smelted tin in the event that and so long as the Government of the United States of America subsidizes directly or indirectly the smelting of tin in the United States."

The purpose of the concessions apparently is to assure that Malaysia and Singapore do not subsidize tin smelting by placing a high export tax on tin ore and tin concentrates while levying only a low export tax on smelted tin provided the United States refrains on its part from subsidizing the American tin smelting industry.

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[1]These bindings go back to a concession that the United Kingdom made on behalf of the Malayan Union. (See Schedule XIX - United Kingdom, Section D, Malayan Union; reprinted in: General Agreement on Tariffs and Trade "Consolidated Schedules of Tariff Concessions", Vol. 3 (Geneva: 1952) p.135.

There have been at least two cases in the history of GATT where a contracting party attempted to forestall or at least neutralize protective export taxes by making import tariff commitments for processed goods dependent on the absence of export limitations on the raw materials contained in such goods. One of these cases was the following proviso limiting British import tariff concessions on yarns:

"The Government of the United Kingdom shall be free to impose on yarns containing flax a duty higher than that provided for in respect of the above item if at any time supplies of raw flax for export from the territories of Belgium, Luxembourg or the Netherlands are subjected to duties or other charges on exportation."[1]

The other case was also contained in the United Kingdom schedule and related to imports of Brazil nuts. The United Kingdom scheduled import tariff on unshelled Brazil nuts was 5 per cent, and that on shelled Brazil nuts 10 per cent. This was a typical case of an escalated tariff rising with the degree of processing. Brazil, as the only major producer of Brazil nuts, could protect its shelling industry with an escalated subsidy and impose a high export tariff on unshelled nuts while leaving processed nuts free from export duties. The Brazilian shelling industry would then possibly have enjoyed a competitive advantage over that of the United Kingdom. Presumably to avoid this, the United Kingdom added the following note to its tariff concession.

"If at any time unshelled Brazil nuts exported from Brazil are charged with export duties or other taxes which are not offset by corresponding export duties or taxes on shelled Brazil nuts exported from Brazil, then the Government of the United Kingdom shall be free to impose on shelled Brazil nuts, in addition to the 10 per cent provided for in this item, a duty equivalent to the amount by which the aforesaid export duties or taxes on unshelled Brazil nuts supplied to the domestic shelling industry."[2]

To make import concessions for manufactured goods dependent on the absence of export limitations on raw materials may serve to create disincentives for the raw material exporting countries to resort to export restrictions. In essence, such privisos are similar to countervailing duties levied to offset production subsidies. The General Agreement permits such countervailing duties only if the exporting country's measures cause or threaten "material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry" (Article VI:6(a)). Import tariffs that vary with the degree of protection afforded to the processing industries of raw material producing countries by means of export restrictions permit the levying of a countervailing duty without the need to establish such material injury or retardation.

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[1]Schedule XIX, reprinted in General Agreement on Tariffs and Trade, supra, p.82.

[2]Schedule XIX, reprinted in General Agreement on Tariffs and Trade, supra, p.12.

Such measures do not, of course, fully solve the problem for the raw material importing country. A countervailing duty can only insulate the domestic market. In foreign markets the country subsidizing the production of manufactured goods by restricting raw material exports will tend to have an advantage over those countries that have to purchase the raw material at world market prices. In most circumstances, raw material importing countries are therefore likely to attach a high value to export concessions designed to prevent subsidization, even if they have the possibility to levy countervailing duties.

The protection of the value of export concessions and their withdrawal in emergencies

Why have there been so few concessions on export restrictions in the past despite the contracting parties' formal recognition that it would be desirable to negotiate them and despite the legal possibility to bind export tariffs? The problem of export restrictions may have been hidden behind the mass of import restrictions that existed. A further reason may have been the following. The binding of export tariffs requires, just as the binding of import duties, a carefully balanced legal framework to ensure, on the one hand, that the concession is not invalidated by other governmental measures and, on the other, that the concession can be withdrawn in emergency situations. If the maintenance of the value of a concession cannot be guaranteed, it will be unattractive and will not cause other countries to reciprocate. In the absence of escape clauses countries will be reluctant to commit themselves.

The General Agreement contains such a balanced legal framework for import tariff bindings, but not for export concessions. Article II:1(b)(c) obliging the contracting parties not to levy other duties or charges on bound items applies only to imports. Article II:2(a), which limits border tax adjustments, refers to importation only. Article II:4 regulates import but not export monopolies on bound products. Article III, which requires national treatment on internal taxation and regulations, applies to imports only. The General Agreement thus provides no specific assurances against governmental encroachment of export bindings by means of other duties or charges, border taxes, export monopolies, and internal taxes and regulations.

Appropriate rules are also lacking for the withdrawal of export tariff concessions in emergency situations. The traditional GATT escape clauses are designed to deal with import restrictions, but not with export limitations. If the domestic market is flooded with imported goods as a result of import tariff concessions, the affected contracting party may have recourse to Article XIX permitting import restrictions. There is no equivalent provision to regulate and supervise the withdrawal of export concessions to prevent or relieve serious injury to a processing industry or the domestic consumers or the terms of trade.

GATT contains some general exceptions that could be interpreted to cover the withdrawal of export concessions in emergency situations. According to Article XX(j) a contracting party may take any non-discriminatory measure "essential to the distribution of products in general or local short supply". The withdrawal of an export concession to prevent or relieve scarcities could fall under this clause. However, this provision was not drafted to regulate the withdrawal of export concessions. Unlike GATT's escape clauses for import concessions, it is very broadly worded and does not provide for procedural safeguards, nor for the compensatory withdrawal of concessions by affected nations. It is therefore unlikely that countries exchanging export concessions would wish this clause to govern their rights and duties.

Another general exception that could affect export concessions is contained in Article XX(i), which provides that contracting parties may take non-discriminatory measures

> "to ensure essential quantities of ... materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry ...".

This clause thus permits export restrictions to enforce price controls on raw materials provided any protective effects are eliminated by offsetting measures. An example of an - at least partially - offsetting measure is the recent decision by a group of countries to complement export taxes on sugar by export levies on a range of products containing sugar.

Given the widespread use of price controls leading to export limitations, any exchange of export concessions would require a legal framework settling the issues arising out of such measures. Such a framework would have to ensure that the export restrictions to which price controls give rise do not invalidate concessions, that there are sufficient procedural safeguards, and that affected nations would have the right to take compensatory measures if procedures fail to settle a disagreement. Article XX(i) does not provide this necessary legal framework.[1]

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[1] The General Agreement, in Article III:9, deals with price controls but only in so far as they lead to a reduction of imports: "The contracting parties recognize that internal maximum price control measures ... can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects".

Reference rules for export concessions

The lack of an appropriate legal framework regulating the maintenance and the withdrawal of export concessions could be remedied in several ways. An obvious way would be to amend the General Agreement. For many reasons this would be difficult to achieve, and it would in any case be premature to consider such a possibility.

Another solution to the problem would be to add notes to all relevant tariff items regulating in detail how the concession is to be maintained and under what circumstances it can be withdrawn. If export concessions should continue to be a rare exception, this might be the most practical way to handle the problem. However, should they become more common, a lengthy note under each export item would be rather cumbersome. The lack of uniformity among the notes would create inequalities and confusion. Moreover, practical negotiating problems would tend to arise. The commercial value of an offer to bind exports can only be assessed against the background of the legal framework guaranteeing the export concession. A concession that can be withdrawn easily is worth less than a concession embedded in a set of firm rules. The contracting parties would thus have to negotiate simultaneously in each individual case the export concession and the rules to govern it. This would no doubt complicate significantly the negotiating process.

These difficulties could be avoided if a third approach were adopted. To fill the gap regarding export commitments, the contracting parties could, before negotiating export bindings, agree on a set of rules for export concessions. These rules, by themselves, would not be legally binding. However, the contracting parties could refer to them in a brief note to scheduled export concessions and they would then become binding for the individual contracting party with respect to the particular product. While assuring a certain degree of uniformity, the rules would leave room for flexible handling of individual cases, since they could be modified easily to take into account special circumstances by adding a supplementary note to the schedule item. With such reference rules for export concessions, GATT could help realize the goals of its drafters in a trading environment that they could not foresee.