

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Group "Non-Tariff Measures"

Group "Framework"

NOTE BY THE SWISS DELEGATION

This note further clarifies and, where necessary, supplements some of the views expressed by the Swiss delegation at the meeting of the Group "Framework" on 21 and 22 February 1977.

A. Issues that could be discussed in the Group

1. The five issues enumerated in paragraph 3 of document MTN/17 all involve difficult and complex problems that merit joint examination. An open discussion of them would be desirable, therefore, so that all options can be considered advisedly. The considerations below have been formulated in this spirit. They are of a preliminary and exploratory character.

B. Trade relations between developed and developing countries (points 1 and 4 in paragraph 3 of document MTN/17)

2. The issues arising under points 1 and 4 are directly interlinked. They should be examined under the terms of reference defined in the Note by the Chairman of 8 November 1976 (MTN/17, paragraph 1): "The Group shall seek to negotiate improvements in the international framework for the conduct of world trade, particularly with respect to trade between developed and developing countries and differential and more favourable treatment to be adopted in such trade". This mandate contains two important concepts, that of "negotiation" and that of "improvement".

The first of these suggests that solutions to be sought should not be of an autonomous and unilateral character but on the contrary should comprise mutual commitments. Nevertheless, for reasons that will be indicated later, these commitments will not necessarily be "reciprocal" in the traditional sense. The concept of "improvement" involves supplementing, developing and perfecting what has been attained, and not rejecting it.

3. In its conception, the General Agreement is fundamentally of an egalitarian character. It establishes in principle the same rights and the same obligations for all contracting parties. Nevertheless, its implementation can lead to differentiation at the level of the individual contributions of contracting parties. Thus, in punctual negotiations (product by product, individual measures) all the contracting parties benefit automatically, under the most-favoured-nation clause, from the concessions exchanged - in most cases between the major trading nations - without having to grant anything in return. Resort to negotiating methods based on solutions of general application (tariff formula, codes of conduct, multilateral settlements, etc.) modifies this situation. Indeed, solutions of general application imply in principle that all the participants contribute to their implementation.

4. While presenting certain similarities, these two types of negotiation differ on some fundamental aspects. In both cases, it is of necessity, the countries having the largest share in world trade that play a primordial rôle in the negotiations. In both cases, too, while the results of the negotiations concern all the parties to the negotiations, they do not necessarily meet the direct and specific interests of each of those parties. On the other hand while, in the first case, punctual solutions do not require contributions from all the contracting parties, in the second case, general solutions imply a commitment from all the parties concerned.

5. Solutions of general application should meet the interests of all the parties to the negotiations, since by definition all the parties will have to participate in their implementation. One must, therefore, determine the nature, the scope and the modalities of such participation. For this purpose there are certain reference marks:

(a) The negotiation of general solutions in a multilateral context requires that the specific interests of each party be taken into consideration to the fullest extent possible. The developing countries are therefore called upon to participate actively and directly in the work. This participation, which involves highlighting their specific interest, should likewise bear on the co-responsibility that they are ready to take-on, in the same way as the other parties but in a medium- and long-term perspective, in the implementation of the general solutions.

(b) With respect to the extent of co-responsibility, the Tokyo Declaration establishes certain principles in regard to the concept of differential and more favourable treatment to be applied in trade between developed and developing countries, and which are designed in particular to facilitate acceptance by the latter countries of solutions of general application. These principles are essentially based on two concepts:

- that of exemption from strict application of the principle of reciprocity in the traditional sense;
- that of the additional character of measures.

Under the first of these concepts, the developed contracting parties refrain from claiming from developing contracting parties some of their rights under the general agreement and, consequently, solutions negotiated under its auspices. Thus, as stated in the Tokyo Declaration, "the developed countries do not expect the developing countries, in the course of the trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs".

As to the second of these concepts, it implies that the developed contracting parties take additional trade policy measures specifically designed to meet the particular interests of the developing countries. The Tokyo Declaration explicitly recognizes the need "for special measures to be taken in the negotiations to assist the developing countries in their efforts to increase their export earnings and promote their economic development" and to "treat tropical products as a special and priority sector".

With respect to the first concept - that of an exemption from strict application of the principle of reciprocity in the traditional sense - it follows from the very wording of the Tokyo Declaration that the extent of this exemption must be modulated or differentiated in relation to each developing country's own capacity to contribute.

In the second case - that of additional or special measures - the Tokyo Declaration makes a distinction between measures for the benefit of developing countries in general and those to be designed for the least developed among the developing countries (paragraph 6 of the Tokyo Declaration).

(c) The application of special and more favourable treatment therefore requires the negotiation of certain implementing modalities. This negotiation must be conducted in a dynamic perspective, given that the general objective is to help the developing countries progressively to attain a stage of economic development and of participation in world trade allowing them fully to apply the general and unitarian GATT system. Accordingly, if the special and more favourable treatment were of a permanent character, it should comprise transitional provisions in regard to the conditions and modalities under which each beneficiary country will progressively give up resorting to it. The relation between special and more favourable treatment itself (exemption and additional measures as referred to in (b) above) and the commitments made by the beneficiary countries in connexion with the transition affords the negotiating elements mentioned above. It is by showing their readiness to settle these issues in the light of their present and future possibilities that the developing countries will be assured of participating effectively in real negotiations of a truly multilateral character and will be able to avoid being in a "submissive position" in a "tutorial arrangement" as mentioned by the representative of Yugoslavia (see MTN/FR/W/5).

C. Safeguard action for balance-of-payments and economic development purposes

6. In its very conception, the trade policy pursued by the developing countries corresponds to economic development purposes. That being so, it is difficult to see how safeguard action other than that justified by balance-of-payments difficulties can be contemplated. The Swiss Delegation is nevertheless ready to examine any views that may be presented by other delegations concerning the application of safeguard clauses for economic development purposes. The following comments bear on safeguard action for balance-of-payments purposes.

7. The existing system of floating exchange rates raises the problem of the reference framework for examination in GATT of trade measures taken for balance-of-payments purposes. Indeed, the existing reference framework is conceived in relation with the former system of fixed rates of exchange. That being so, and in the absence of relevant legal criteria, any examination of trade measures taken since the introduction of the new exchange régime and of measures that might be adopted in future for balance-of-payments purposes is carried out pragmatically and case by case. Precedents are thus established at the level of procedure and of principles.

8. That being so, while it may be premature to define a legal doctrine suited to the new circumstances, given that the new monetary system has been in effect for too short a time, it would be useful nevertheless to begin to draw the lessons of experience gained:

- at the level of internal GATT procedures;
- at the level of co-operation between the GATT and the IMF.

The objective of such action would be to arrive at equality of treatment in comparable situations.

9. That first stage being completed, it would then be easier to tackle the complex and difficult issue of revising existing legal provisions.

10. Unless this two-phase approach at the GATT level is undertaken fairly soon, there is a danger that the trade policy aspects arising from resort to safeguard action in the event of balance-of-payments difficulties may be neglected or dealt with outside GATT.

11. As a first step in regard to procedure, it would be desirable to entrust to one committee the responsibility for dealing with all cases of resort to Articles XII and XVIII. Such a decision would undoubtedly contribute to ensuring better uniformity and greater continuity in the treatment of individual cases, in particular depending on whether developed or developing countries are concerned.

D. Consultations, dispute settlement and surveillance procedures under Articles XXII and XXIII

12. These matters arise and are examined in different Groups of the Trade Negotiations Committee. Given that, in its essence, the substantive problem is the same whatever the sector considered, it would be appropriate nevertheless to identify the main elements of a general doctrine. In so doing, it will be possible to ensure that in each area concerned, solutions consistent with each are devised in regard to consultations, dispute settlement and surveillance.

One of the aspects that the Group "Framework" must examine concerns the stages that these procedures should comprise and the pace at which they should be completed. It would be desirable, for example, to envisage that time-limits would be fixed in advance and would not be subject to negotiation each time the relevant procedures are invoked.

13. The Swiss delegation reserves the right to present concrete proposals on the matter when the time comes.

E. Examination of existing GATT rules concerning the application of restrictions at the border that affect exports, taking into account development needs

14. At this stage of its work, the Group "Framework" is called upon to make an examination of existing rules. These rules were devised in a situation of shortage resulting from the circumstances of the post-war period. It would be appropriate, therefore, likewise to examine their relevance in the present and future context, in the light of export measures applied in recent years.