

GENERAL AGREEMENT ON
TARIFFS AND TRADE

PROBLEMS OF TRADE IN CERTAIN NATURAL RESOURCE PRODUCTS

Fish and Fisheries Products

Draft Report of the Working Party

Revision

1. The Working Party was established by the Council at its meeting on 13 March 1984 (C/M/176) with the following terms of reference:

"To examine, in accordance with the Decision on Problems of Trade in Certain Natural Resource Products adopted at the Ministerial meeting of the CONTRACTING PARTIES in 1982 (BISD 29S/20), problems falling under the competence of the General Agreement relating to tariffs, non-tariff measures, and other factors affecting trade in the following natural resource products including in their semi-processed and processed forms, with a view to recommending possible solutions:

- (a) non-ferrous metals and minerals,
- (b) forestry products,
- (c) fish and fisheries products.

The Working Party shall conduct its examination on the basis of background documents prepared by the secretariat. Other relevant documentation, including any information provided by delegations, may also be considered.

The Working Party shall submit a separate report to the Council on each of the three areas mentioned above. Each report will be submitted to the Council when it is concluded, independently from progress in the other areas. A progress report will be submitted to the fortieth session of the CONTRACTING PARTIES in November 1984.

Work in each area will progress in accordance with its own time-frame, and not be linked to progress in the other areas".

2. Subsequently, the Council was informed at its meeting on 15/16 May 1984 (C/M/178) that Mr. M. Cartland (United Kingdom - Hong Kong) had assumed the chairmanship of the Working Party.

3. The Working Party held meetings on problems affecting trade in fish and fisheries products on 3 May, 27 June, 20/21 September 1984 and on 6/7 May, 1/2 July and [.....] 1985. Pursuant to its terms of reference, it submitted a progress report (covering the three product areas under its examination) to the fortieth session of the CONTRACTING PARTIES in November 1984 (MDF/3).

4. The Working Party has conducted its examination of problems of trade in fish and fisheries products on the basis of a background study and other documents prepared by the secretariat¹ as well as other relevant information submitted by some of its members². It was understood that all this material [would continue to form an integral part of] [could also be considered in] any future work in this product area. Having concluded such an examination, the Working Party, further pursuant to its terms of reference, herewith submits to the Council its report on this product area, independently from progress in the other areas.

5. The Working Party noted that some of its members considered progress towards a further liberalization of trade in natural resource products to be of central importance and a key component of the GATT Work Programme established by the 1982 Ministerial Decision.

¹Listing of documents prepared by the secretariat.

²Listing of documents submitted by members.

6. The Working Party paid considerable attention to background developments which occurred in the fishery sector during the last decade. [Factors were considered such as increases in the costs of operating fishing vessels deriving from sharp upward movements in oil prices since the mid-seventies; the situation of overfishing of many stocks which had also emerged since the mid-seventies; and the reallocation of marine resources in terms of catch opportunities which has followed the almost generalized introduction by coastal states of 200-mile exclusive economic zones since 1977.] [Among the several factors considered, one was of primary importance, namely the reallocation of marine resources in terms of catch opportunities which has followed the almost generalized introduction by coastal states of 200 miles exclusive economic zones since 1977. Other factors were, inter alia, an increase in the cost of operating fishing vessels deriving from sharp upward movements in oil prices since the mid-Seventies and the situation of overfishing of many stocks which has also emerged since the mid-Seventies.]

7. Some members stated that these developments should [ultimately] provide new export opportunities for the most efficient producers, including those who had benefited from a shift in their comparative advantage position, following the extension of national jurisdiction over marine resources within the 200-mile limit. However, these members were mostly concerned with the status of trade conditions in the fishery sector, as they found that in most key markets, fish access was seriously impeded by an array of trade barriers. In particular, they noted that the accumulated or total protection provided by tariffs and non-tariff measures affecting the same products resulted in a number of processing and manufacturing facilities for resource products being located rather more frequently behind the protection present in the major importing markets than in the resource exporting countries.

8. These members further pointed out that as long as such trade barriers were maintained, there would be distortions in the patterns of trade in resource products. If these were instead fully liberalized, not only would trade shifts likely occur between the primary and other levels of processing, but overall levels of trade would increase as demand reacted positively to more efficient production. In their view, therefore, the main underlying task of the Working Party should be that of signalling ways in which such trade expansion could be realized.

9. Some other members stated that recent developments in fishing conditions, while resulting in an expansion of international trade in fish and fisheries products, had also affected different fishing countries in a very different way, thereby creating a fundamental change in international competition conditions. [In this connection, those members pointed out that the trade arrangements in fisheries, in general, predated the new situation which had resulted from the introduction of the 200 miles exclusive economic zones.] Serious efforts were required to be made by all countries in order to adjust their fisheries to the new circumstances. It would be essential, however, that this process, which might require a long period of adaptation, should aim at achieving balanced benefits for all trading countries, on the basis of reciprocal advantages and in accordance with the objectives of the General Agreement. [Other members indicated however that the reality of the current situation was that comparative advantage had shifted in fisheries and that trade implications of this fact required fuller acceptance. Significant and sometimes rapid shifts in comparative advantage had occurred before in other sectors. These members emphasized the dangers for GATT if fisheries were treated as a special case requiring a special GATT regime. In this regard, the question of access to fishing grounds clearly fell beyond the purview of GATT.]

10. In some other views expressed, it was noted that in certain countries fishing was a traditional activity confronted, for various reasons, with special characteristics. In this connection, it was further noted that countries with a very high rate of per capita consumption and in which marine products constituted a substantial share of domestic animal protein consumption should legitimately pursue a policy aimed at achieving a substantial degree of supply security for their population.

11. The Working Party carried out a detailed examination of problems relating to tariffs, non-tariff measures, and other factors affecting trade in fish and fisheries products including in their semi-processed and processed form. It did so without prejudice to the views of delegations as to whether the problems identified fell within the competence of the General Agreement.

(a) Tariffs

12. Several members of the Working Party said that, notwithstanding the reductions negotiated in the course of several rounds of multilateral trade negotiations, specific product examples showed that many fisheries products continued to face high nominal tariffs in the major importing markets. These members also noted that, although in two major markets the average level of bindings was close to 100 per cent, in some other important markets several tariffs remained unbound.

13. Statistical data indicated that a substantial amount of trade in fish and fisheries products still occurred at the primary products level. This was despite the progress made during successive rounds of multilateral negotiations in liberalizing trade in these products, including at their semi-processed and processed levels. Some members thus argued that if an understanding of the possibly distorting effects on trade of tariffs was to be achieved, it was not enough merely to quote the nominal or ad valorem equivalent listed next to a tariff item. They indicated that the escalation in the nominal tariffs and the effective rate of tariff protection derived therefrom, generally provided a very much higher degree of protection. This issue was therefore regarded by several members as of major importance among other trade distorting factors. [Specific examples were provided which appeared to support the view illustrated above.]

14. [It was also stressed, however, that it was a well-known fact that consumer preference was for fresh or simply preserved products. Moreover it was in the interest of the exporters to sell fish in the freshest and most unprocessed possible forms as these products normally commanded higher prices.] [There was, therefore,] [It was noted that there was] a basic difference among the natural resource products examined by the Working Party. Non-ferrous metals and minerals as well as forestry products come to completely different uses depending on whether they were in the form of raw material, semi-processed or processed. The same could only be said of fish and fisheries products

to a limited extent. These statements were generally accepted. [Some members, however, said that given, inter alia, the geographical distance between their fisheries and the importing markets, substantial room still existed to improve the value added embodied in many of their products for which the demand could not be met otherwise.]

15. Some members reiterated the views that the existing coverage and effective margins of preference granted by current GSP schemes on fish and fisheries products were both inadequate. They also expressed serious concern for the continuing erosion of the GSP preferential margins vis-à-vis other existing preferential schemes.

16. Some other members noted that, in spite of the underlying difficulties in this sector, a number of tariff reductions on fishery products had been made in recent years, either as unilateral concessions or within the framework of the Tokyo Round tariff cuts.

17. With regard to existing preferential tariff arrangements, [the view was expressed] [some members expressed the view] that tariff preferences, including those resulting from Article XXIV agreements, might operate to divert trade by causing shifts in imports from MFN to other suppliers. The members holding this view further stated that it was not their intention to challenge the GATT consistency of these agreements but merely to analyse, in this Working Party, the impact of tariff preferences on fish and fisheries products trade.

18. Referring to this argument, some members pointed out that, as a matter of principle, the issue of Article XXIV agreements fell outside the purview of the Working Party. [They claimed nonetheless that Article XXIV agreements were legitimate under the General Agreement and although such agreements might have an influence on trade, they should not be presumed to have distorting trade effects.] [They noted that Article XXIV agreements were legitimate under the General Agreement and that the very purpose of such agreements was to facilitate trade between the constituent territories in accordance with the provisions of that article]. Another member, having recalled the fundamental importance of fishery in the GNP and the export trade of his country, stressed that

the preferential agreement which his country had entered into with some of its traditional trading partners was an integral part of the free-trade arrangement of which his country was a member and fulfilled entirely the prerequisites of Article XXIV.

(b) Non-tariff measures

19. In its examination of this matter, the Working Party, in addition to background material prepared by the secretariat, had before it a considerable volume of detailed information submitted by some of its members¹.

20. With regard to measures affecting imports, several members stated that quantitative restrictions, [including tariff quotas,] remained, in some cases a major obstacle to the development of export markets for fish and fisheries products. Several references were also made to the restrictive and discriminatory effect on trade which derived from the application of certain licensing systems currently in force in some important markets.

21. With respect to this latter point, the view was expressed that there would be little purpose in licensing products that were priced too high for the demand in the importing market. On the other hand, it was argued that the licensing system in question did not restrict trade, as it had allowed fish imports in the country to more than double in recent years.

22. One member noted that, in certain countries, given some of the traditional and special characteristics, the market should be controlled and production limitations should be maintained. Hence, where required in order to make the domestic policy measures applied more effective, imports should also be subject to some form of control. In his view, however, this Working Party was not considered to be an appropriate body for discussing the GATT consistency of certain existing quantitative restrictions on imports of fish and fishery products.

¹See footnote 2 page 2.

23. Some members further [pointed out] [expressed the view] that the reference price system applied by a major importing market had serious restrictive effects on a number of products for which it had been implemented. [However, the member applying the system stated that the reference price system was a part of its internal price regulation mechanism; it was designed to ensure the stability of the market and was applied only under exceptional circumstances, where the import prices offered on the market were abnormally low. It did not result in quantitative restrictions but simply required imports to respect the reference price.] The fiscal compensation tax levied by another country on the landed duty-paid value of several fish products also had similar effects.

24. Serious concern was also expressed by some members in connection with the important trade-distorting implications stemming from the broad utilization in most importing markets of strict health and sanitary regulations as well as very rigid packaging and labelling requirements. The proposal was made that in any future work in this product area, a detailed examination be carried out, in cooperation with the FAO/WHO Codex Alimentarius Commission, of health and sanitary measures maintained on the importation of fish and fisheries products with a view to assessing any possible trade-distorting effect not justified by their otherwise legitimate purposes.

25. With regard to measures affecting export and, more generally, competition, several members stressed that in their view, production and export subsidies should be included among the factors which were having a major distorting effect on fish and fisheries products trade.

26. Some members pointed out that [massive] programmes based on governmental financial assistance, were [currently] carried out in some major exporting countries with the aim of helping the restructuring of their domestic fishery industry, thereby [unfairly] upsetting the competitive conditions in this sector. [It was noted] [These members noted] that this situation could constitute the most significant single factor fostering a situation of uncertainty and difficulty in fish trade.

27. [Some members also noted with concern that some of the financial assistance programmes referred to by some of the members were merely measures that their governments were taking within the framework of their general social policy and not specifically designed to assist the domestic fishery industry. On the other hand, in some of these countries, the fishery industry was, either nationally or regionally, a vital industry which required to be preserved. Moreover, present GATT disciplines were tolerant of the use of such measures.] [Some members pointed out that some of the assistance programmes referred to by some of the members were measures that their governments were taking within the framework of their general regional and social policy and not specifically designed to assist the domestic fishery industry. Furthermore, the measures implemented were fully compatible with relevant GATT rules and provisions.]

[28. There was, nevertheless, a general consensus that the effect on trade of some of the governmental assistance programmes examined [might be] [was] an accepted concern for the Working Party, and that there was a need for more discipline in this area.]

(c) Other factors

29. Some members pointed out that the Working Party, in accordance with its terms of reference, should deal exclusively with problems affecting trade in fish and fisheries products falling within the competence of the General Agreement. They emphasized that any attempt to link the question of extended fisheries jurisdictions with the task of the Working Party to analyse problems in fish trade was a dangerous concept for an open, multilateral trading system which should allow for the free play of comparative advantages. [Another member recalled that the Law of the Sea Convention was an integrated whole which it took a decade to accomplish and where important interests of some countries as to the contents of some of the Convention's chapters were met by concessions as to the contents of other chapters. The final result was, therefore, a carefully balanced package where everybody both had to give and take. In view of that fact, this member stated that to come to GATT to demand compensations for the contents of one chapter of the LOS Convention could only be considered as unrealistic and unacceptable.]

30. The view was also expressed that access to resources was not a trade issue but one which should be more appropriately understood as an investment issue. As such, it was clearly beyond the purview of the Working Party, as nothing in the drafting history of the General Agreement would justify the contrary. In some other views expressed in this regard, it was specifically reiterated that questions relating to extended fishery jurisdictions did not fall within the competence of GATT.

31. While noting the arguments made above, as well as those developed during the discussion on the background situation of fisheries, some members argued that the international competitive conditions in this sector had been fundamentally altered by the general extension of fisheries jurisdictions since 1977. The new fishing régimes were indeed having an [indirect] effect on the trading régimes, as, increasingly, a number of bilateral fishery agreements entered into since then, generally as a consequence of the new conditions of access to production, did include, inter alia, specific trading clauses. [Other delegations noted that the fact that many bilateral fisheries agreements had been signed among various countries since 1977 reinforced the widely-held view that liberalization of fisheries trade within the purview of the GATT was required, if the tendency to trade management were to be replaced by trade based on comparative advantage.]

32. [The view was also expressed that this new situation in world fisheries clearly pointed to an imbalance in rights and obligations as, on the one hand, access to resources was determined entirely according to the coastal state's criteria, necessarily discriminatory, and outside any multilateral scrutiny.] On the other hand, the price to be paid for such access was subject to the multilateral discipline of the General Agreement. This was an inbuilt contradiction in the present system which could, in the long term, contribute to an unsatisfactory situation, in terms of GATT, in the fishery context. In this view, the problem of access to resources had become one that GATT could not ignore. This was clear from the requirement by the resource-rich coastal states that commercial benefits be granted in payment for access, which establishes, on a bilateral basis, a direct link between

liberalization of trade and access to resources. If the contracting parties would continue to consider this as outside the scope of GATT, the risk existed that tariff concessions would progressively escape the control of GATT and the strict application of the MFN. Contrary to what had happened before the general extension of fisheries jurisdictions in 1977, the incentive to bind the tariffs under GATT, or to decrease tariffs already bound, which might serve as payment for badly-needed access to resources would diminish. The trend could even be reversed, and unbinding might result. In this way, the bilateral nature of agreements on access to surplus resources would increasingly be reflected in trade practices.

33. These members further noted that in order to get a meaningful understanding of the real problems affecting trade in this product area, the Working Party should pay attention to all relevant factors having a bearing on current trading conditions as well as on the multilaterally-agreed trading rules of the General Agreement. They felt that this was particularly important if the Working Party should ultimately attempt to recommend possible solutions for these problems within the framework of the General Agreement itself.

34. [One member drew attention to the potential trade effects of an extra-territorial application of the United States Magnuson Fishery Conservation and Management Act of 1976, as amended.] [Other members stated that it was the inclusion of trade provisions in some bilateral arrangements on access to resources that had given rise to a trade problem, and not the fact that GATT had ignored the question of access to resources - an area clearly outside its scope and competence. The appropriate way for GATT to address such a trade problem would therefore be to ensure that individual contracting parties refrained from linking trade concessions and access to resources.]

[Conclusions and Recommendations]

35. The Working Party found that its examination of problems affecting trade in fish and fisheries products had permitted a clear identification of the basic underlying difficulties and complexity currently faced by world fisheries. This examination had also brought the Working Party to the general consensus that any expansion of trade in this sector would require a further process of trade liberalization.

36. The Working Party felt that the soundest way to achieve further trade liberalization in this sector would be to enter into a negotiating stage on a multilateral basis. The Working Party noted that such a stage would be outside the scope of its present mandate. Some of its members further felt that it could only take place in the context of a new general round of multilateral trade negotiations.

37. On this basis, the Working Party recommended that work in this product area should be continued at an appropriate time with a view to facilitating eventual negotiations.

38. The Working Party considered, moreover, that it was within its mandate to make suggestions on what subsequent negotiating modalities would be best suited to facilitate possible solutions to the problems of trade in this product area.

39. In discharging this task, the Working Party took into account many factors, including, inter alia, the timing of a new round; the possibility to determine a self-balancing package of reciprocal concessions in this product area; the specificity of the fishery sector, and the claimed need to preserve such a specificity in order to arrive at positive practical results; questions relating to the competence of the General Agreement with respect to some of the problems identified by the Working Party, and the work undertaken by other relevant GATT bodies, notably the Committee on Trade in Agriculture.

40. Some members, having reiterated that some of the issues examined by the Working Party were, in their view, clearly outside the purview of any GATT negotiations and having considered that fisheries represented too narrow a trade sector to allow for a balanced package of reciprocal concessions, suggested that consideration should be given to the following options:

(a) that negotiations of the trade problems identified by the Working Party should form part of the general process in other GATT bodies as appropriate;

(b) that a group be established in the context of a new round of multilateral trade negotiations with a negotiating mandate covering fish and fishery products as well as some other sectors;

(c) that a group on fish and fishery products be established with a view to reviewing progress which could be made in this sector in other negotiating bodies in the course of a new round of multilateral trade negotiations.

41. Some other members felt that, in order to achieve meaningful results in any further work, the specificity of the sector should be maintained and the sound understanding of reciprocal positions that this Working Party was able to achieve, should be preserved. As a possible option, these members suggested that the CONTRACTING PARTIES at an appropriate time should establish a negotiating framework on fish and fisheries products within which all factors affecting trade in this product area would be included with a view to elaborating negotiated solutions.]

[...]

[Problems of Trade Falling Within the Competence of GATT

35. There was a general consensus among members of the Working Party that the following measures which are present in the fish and fisheries product area fall within the competence of the General Agreement: high nominal tariffs (including unbound tariffs), tariff escalation, high effective rates of tariff protection, preferential tariff arrangements, quantitative restrictions, licensing system, reference price systems, the administration of certain fiscal compensatory taxes, health and sanitary regulations, packaging and labelling requirements and production and export subsidies.

Conclusions and Recommendations

36. The Working Party found that its examination of problems outlined in the previous paragraph and affecting trade in fish and fisheries products had permitted a clear identification of basic underlying difficulties and complexity currently faced by world fisheries. This examination had also brought the Working Party to the general consensus that any expansion of trade in this sector would require a process of trade liberalization.

37. The Working Party felt that the soundest way to achieve further trade liberalization in this sector would be to enter into a negotiating stage on a multilateral basis. The Working Party noted that such a stage would be outside the scope of its present mandate. Some of its members further felt that it could only take place in the context of a new general round of multilateral trade negotiations.

38. On this basis, the Working Party recommended that work in this product area should be continued at an appropriate time with a view to facilitating eventual negotiations.

39. The Working Party considered, moreover, that it was within its mandate to make suggestions on what subsequent negotiating modalities would be best suited to facilitate possible solutions to the problems on trade in this product area.

40. In discharging this task, the Working Party took into account many factors, including, inter alia, the timing of a new round; the difficulty of establishing a self-balancing package of reciprocal concessions in this product area alone; and the work undertaken by other relevant GATT bodies.

41. Members, having considered that fisheries represented too narrow a trade sector to allow for a balanced package of reciprocal concessions, suggested that consideration should be given to the following options:

(a) that negotiations of the trade problems identified by the Working Party should form part of the general process in other GATT bodies as appropriate;

(b) that a group be established in the context of a new round of multilateral trade negotiations with a negotiating mandate covering fish and fishery products as well as
some other product areas;

(c) that a group be established with a view to reviewing progress which could be made in several resource product areas, including fish and fisheries products, in other negotiating bodies in the course of a new round of multilateral trade negotiations.]

[Conclusions and Recommendations

35. The Working party found that its examination of problems affecting trade in fish and fisheries products had permitted a clear identification of the basic underlying difficulties and complexity currently faced by world fisheries. This examination had also brought the Working Party to the general consensus that any expansion of trade in this sector would require a negotiating process to be held on a multilateral basis.

36. Without prejudging the question of whether or not the present GATT provisions were applicable to the problem of access to fish resources, the Group recognized that these questions could have a significant incidence, not only on trade, but also on the basic attitudes which determine, on the part of the responsible authorities, the decisions directly affecting trade policy. As a result, the problems which the Group had been able to identify under the terms of its mandate, concerning tariff measures, non-tariff measures and other factors influencing trade, should be studied in detail by the Group at an appropriate time. The objective was to outline solutions to the different problems identified, so that future negotiations could also cover fishery products, and could lead to a greater liberalization of trade. The Group had in fact concluded that, in view of the positions clearly expressed by the different parties, it was illusory to reach satisfactory results in the negotiations, if all the elements specific to the fisheries sector having an influence on trade were not treated in a global manner and did not obtain equitable and acceptable solutions.

37. Consequently, the Group recommends to the Contracting Parties that they should instruct the Group, within the framework of its mandate, to study these questions in detail on the above lines in order to arrive at guidelines to negotiation appropriate to this sector.]