

## ARTICLE XXXVI

### PRINCIPLES AND OBJECTIVES

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I.	TEXT OF ARTICLE XXXVI AND INTERPRETATIVE NOTE AD ARTICLE XXXVI.....	1053
II.	INTERPRETATION AND APPLICATION OF ARTICLE XXXVI .....	1055
	1. General.....	1055
	2. Paragraph 1: “basic objectives of this Agreement” .....	1056
	3. Paragraph 3: “share in the growth of international trade” .....	1056
	4. Paragraph 4: “primary products” .....	1057
	5. Paragraph 8: “do not expect reciprocity” .....	1057
III.	PREPARATORY WORK .....	1058
IV.	RELEVANT DOCUMENTS .....	1058

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#### I. TEXT OF ARTICLE XXXVI AND INTERPRETATIVE NOTE AD ARTICLE XXXVI

##### Article XXXVI

##### *Principles and Objectives*

- 1.\* The contracting parties,
  - (a) recalling that the basic objectives of this Agreement include the raising of standards of living and the progressive development of the economies of all contracting parties, and considering that the attainment of these objectives is particularly urgent for less-developed contracting parties;
  - (b) considering that export earnings of the less-developed contracting parties can play a vital part in their economic development and that the extent of this contribution depends on the prices paid by the less-developed contracting parties for essential imports, the volume of their exports, and the prices received for these exports;
  - (c) noting, that there is a wide gap between standards of living in less-developed countries and in other countries;
  - (d) recognizing that individual and joint action is essential to further the development of the economies of less-developed contracting parties and to bring about a rapid advance in the standards of living in these countries;
  - (e) recognizing that international trade as a means of achieving economic and social advancement should be governed by such rules and procedures \_ and measures in conformity with such rules and procedures \_ as are consistent with the objectives set forth in this Article;
  - (f) noting that the CONTRACTING PARTIES may enable less-developed contracting parties to use special measures to promote their trade and development;

agree as follows.

2. There is need for a rapid and sustained expansion of the export earnings of the less-developed contracting parties.

3. There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development.

4. Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products,\* there is need to provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development.

5. The rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification\* of the structure of their economies and the avoidance of an excessive dependence on the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties.

6. Because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development. There is, therefore, need for close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these less-developed contracting parties assume in the interest of their economic development.

7. There is need for appropriate collaboration between the CONTRACTING PARTIES, other intergovernmental bodies and the organs and agencies of the United Nations system, whose activities relate to the trade and economic development of less-developed countries.

8. The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.\*

9. The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly.

Interpretative Note *Ad* Article XXXVI from Annex I

*Paragraph 1*

This Article is based upon the objectives set forth in Article I as it will be amended by Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX when that Protocol enters into force.

*Paragraph 4*

The term "primary products" includes agricultural products, *vide* paragraph 2 of the note *ad* Article XVI, Section B.

*Paragraph 5*

A diversification programme would generally include the intensification of activities for the processing of primary products and the development of manufacturing industries, taking into account the situation of the particular contracting party and the world outlook for production and consumption of different commodities.

*Paragraph 8*

It is understood that the phrase "do not expect reciprocity" means, in accordance with the objectives set forth in this Article, that the less-developed contracting parties should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments.

This paragraph would apply in the event of action under Section A of Article XVIII, Article XXVIII, Article XXVIII *bis* (Article XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX shall have become effective), Article XXXIII, or any other procedure under this Agreement.

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## II. INTERPRETATION AND APPLICATION OF ARTICLE XXXVI

### 1. General

The Panel Report on “European Communities - Refunds on Exports of Sugar - Complaint by Brazil” examined, *inter alia*, Brazil’s argument

“... that the Community system for granting refunds on exports of sugar and its application were inconsistent with commitments under Part IV of the General Agreement. The increased Community sugar exports effected through the use of subsidies, had severely depressed world market prices, and had displaced Brazilian exports and led to reduced sales opportunities and to reduced export earnings for Brazil, contrary to the provisions of Article XXXVI:2. By enlarging its market share, the European Communities had failed to make positive efforts as indicated in Article XXXVI:3, thus impeding that Brazil could be secured a share of the growth in international sugar trade compatible with its needs of economic developments. By refusing to participate in the International Sugar Agreement, 1977, and restricting its exports accordingly, the European Communities had seriously jeopardized the attainment of the objectives of that Agreement, contrary to the provisions of Article XXXVI:4. Furthermore, concerning sugar, the European Communities had not acted in a manner as to give effect to the implementation of the relevant principles and objectives contained in Article XXXVI, as stipulated in Article XXXVI:9. ...

“... the Community representative recalled the very considerable Community efforts made in favour of developing countries. These efforts comprised an innovative aid policy which through the STABEX system guaranteed export receipts for a number of least developed countries. In the field of primary commodities, the European Communities had always pursued an active and constructive policy towards the setting up of international agreements. With regard to Community participation in the International Sugar Agreement, 1977, there was no use in recalling the reasons for the present state of affairs.

“He furthermore argued that the provisions of Article XXXVI constituted principles and objectives and could not be understood to establish precise, specific obligations. It was therefore not possible by definition to ascertain that these principles had been infringed through the application of any specific measure. He also argued that it was not possible to imagine that the Community system of export refunds for sugar could have objectives contrary to those of Article XXXVI. Given the legal analogy between the provisions of Articles XXXVI and XXXVIII, the comments made in connexion with the former are also valid for the latter.”<sup>1</sup>

The Panel findings provide in this regard:

“The Panel noted the principles and objectives stipulated in Article XXXVI and the guidelines for joint action given in Article XXXVIII to further the objectives set forth in Article XXXVI, and that Brazil being a developing country could expect to enjoy benefits in accordance with these provisions. In this connection, the Panel also noted that the European Communities had made considerable efforts in favour of a number of developing countries and had pursued an active and constructive policy towards the setting-up of international agreements.

“However, the Panel also noted that in the particular situation in the sugar market in 1978 and 1979, when Brazil and other developing countries took action through the ISA to improve the market situation, the European Communities increased its subsidized sugar exports to an extent that inevitably reduced significantly the effects of the measures taken by Brazil and other sugar exporters. It was evident that the magnitude of subsidized Community sugar exports together with the extensive use of maximum export refunds, tended to accentuate the detrimental effect on export earnings of other sugar exporters directly faced with the competition from Community sugar. The Panel felt that even though the European Communities was not a party to the ISA and not bound by the same obligations as members to that Agreement, it would nevertheless be appropriate to collaborate with other contracting parties in conformity

<sup>1</sup>L/5011, adopted 10 November 1980, 27S/69, 79-80, paras. 2.25, 2.27-2.28.

with the guidelines given in Article XXXVIII and thus further the principles and objectives of Article XXXVI”.<sup>2</sup>

The Panel concluded:

“The Panel recognized the efforts made by the European Communities in complying with the provisions of Articles XXXVI and XXXVIII. It nevertheless felt that increased Community exports of sugar through the use of subsidies in the particular market situation in 1978 and 1979, and where developing contracting parties had taken steps within the framework of the ISA to improve the conditions in the world sugar market, inevitably reduced the effects of the efforts made by these countries. For this time-period and for this particular field, the European Communities had therefore not collaborated jointly with other contracting parties to further the principles and objectives set forth in Article XXXVI, in conformity with the guidelines given in Article XXXVIII.”<sup>3</sup>

The 1989 Report of the Panel on “EEC - Restrictions on Imports of Dessert Apples - Complaint by Chile” examined, *inter alia*, a claim by Chile “that in restricting imports of apples from Chile the Community had paid no regard to the special needs of Chile as a developing country as it was obliged to do under Part IV. It made no conscious and purposeful effort to ensure that Chile secure a share of growth in international trade in apples commensurate with the needs of its economic development. It did not provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, as required under Article XXXVI”; and the argument of the EEC that “it did take these commitments seriously and that it made every effort to avoid having to take restrictive measures against a developing country ... Part IV did not, and could not, mean that the EEC should forego its rights or be obliged to discriminate against other contracting parties”.<sup>4</sup> The Panel findings provide:

“The Panel examined the EEC measures in relation to the objectives and commitments embodied in Articles XXXVI and XXXVII of Part IV of the General Agreement ... The Panel found that the EEC's import measures on dessert apples did affect a product of particular export interest to less-developed contracting parties. It noted that the EEC had held consultations with affected suppliers and had amended its regulations, but these consultations and amendments had been general in scope and had not related specifically to the interests of less-developed contracting parties in terms of Part IV. Following a careful examination of this issue, the Panel could not find that the EEC had made appropriate efforts to avoid taking protective measures on apples originating in Chile. ...<sup>5</sup>

See also the references to this report under Article XXXVII.

## 2. Paragraph 1: “basic objectives of this Agreement”

As stated in the Note *Ad* Article XXXVI:1, the “basic objectives” referred to are those which would have been set forth in Article I of the General Agreement, if the Protocol Amending Part I and Articles XXIX and XXX had entered into force. For the text of this amendment, see the chapter on the Preamble. The Protocol Amending Part I and Articles XXIX and XXX failed to gain the requisite unanimous approval by 31 December 1967 and was abandoned.

## 3. Paragraph 3: “share in the growth of international trade”

The Report of the Working Party on a 1967 consultation under Article XXII:2 on the “United States Subsidy on Unmanufactured Tobacco” discusses the application of Article XXXVI in relation to an export subsidy of a developed country competing with a developing country. The Report notes that during the consultation Malawi suggested that Article XXXVI:3 “could be interpreted as meaning that the share of less-

<sup>2</sup>*Ibid.*, 27S/95-96, paras. 4.30-4.31.

<sup>3</sup>*Ibid.*, 27S/97-98, para. (h).

<sup>4</sup>L/6491, adopted on 22 June 1989, 36S/93, 118-19, paras. 8.4-8.5.

<sup>5</sup>*Ibid.*, 36S/133-34, paras. 12.31-12.32.

developed countries in world trade in a particular commodity could grow at a faster rate than world trade as a whole, and the rate of export growth by industrialized countries”.<sup>6</sup>

#### 4. Paragraph 4: “primary products”

See also the corresponding provisions in Article XXXVIII:2(a). The Note *ad* Article XXXVI:4 refers to the definition in paragraph 2 of the Note *ad* Section B of Article XVI. The definition of “primary product” in that paragraph is the same as the definition of “primary commodity” in Article 56:1 of the Havana Charter, which defined the scope of the Charter provisions on commodity agreements.

See also Articles XVIII:5, XX(h), XXII:2 and the material on them in this Index.

#### 5. Paragraph 8: “do not expect reciprocity”

Conclusions reached at the meeting of Ministers of 27-30 November 1961 include the following: “... the Ministers agreed that, in view of the stage of economic development of the less-developed countries, a more flexible attitude should be taken with respect to the degree of reciprocity to be expected from these countries”.<sup>7</sup>

The Committee on Trade and Development discussed the interpretation of the provisions of paragraph 8 and of the Interpretative Note and the possibility of working out *a priori* rules for the application of the principle of non-reciprocity. Some developed countries stated in discussions on this question that they did not consider that Article XXXVI:8 relieved developing countries of their obligations under Article XXVIII to maintain a general level of concessions during renegotiations.<sup>8</sup>

In the GATT Council meeting of November 1975, the application of Article XXXVI:8 was discussed in connection with the request by Brazil for a waiver of Article II to the extent necessary to enable the Government of Brazil to apply the rates of duty in its new Customs Tariff, pending completion of renegotiation of its Schedule pursuant to Article XXVIII. The considerations stated by the contracting parties who participated in the discussion are summarized in the Council Minutes. In the light of the discussion, the preamble of the draft waiver was amended to recognise the desirability of maintaining a general level of mutually advantageous concessions that would favour high and expanding levels of trade, and the decision maintained a reference in the decision to Part IV of the General Agreement including Article XXXVI:8, as follows:

“Part IV of the General Agreement, including Article XXXVI:8, is applicable to the negotiations between Brazil and the contracting parties which have accepted the Protocol amending the General Agreement on Tariffs and Trade to introduce a Part IV on Trade and Development; and other contracting parties, negotiating with Brazil, likewise accept the principle enunciated in Article XXXVI:8, as applicable to the negotiations.”<sup>9</sup>

A number of other such Article II waiver decisions in the period 1973-1977 also included such a reference to Article XXXVI:8.<sup>10</sup>

See also the Decision of 28 November 1979 on “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries”<sup>11</sup> whose paragraph 5 provides:

“The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make,

<sup>6</sup>L/2925, adopted on 22 November 1967, 15S/116, 123-124, para. 23.

<sup>7</sup>Conclusions adopted 30 November 1961, 10S/25, 26.

<sup>8</sup>16S/92-94, paras. 13-17; COM.TD/89; COM.TD/W/239, p. 9-10.

<sup>9</sup>C/M/110; see “Brazil - Renegotiation of Schedule III”, L/4259, Decision of 26 November 1975, 22S/10, 11, para. 2.

<sup>10</sup>20S/28, para. 3; 20S/29, para. 2; 23S/9, para. 3; 24S/16, para. 2.

<sup>11</sup>26S/203.

concessions that are inconsistent with the latters' development, financial and trade needs."<sup>12</sup>

Paragraph 6 sets out special provisions for the least-developed countries:

"Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems."<sup>13</sup>

Paragraphs 7 and 8 provide:

"The concessions and contributions made and the obligations assumed by developed and less-developed contracting parties under the provisions of the General Agreement should promote the basic objectives of the Agreement, including those embodied in the Preamble and in Article XXXVI. Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement. Particular account shall be taken of the serious difficulty of the least-developed countries in making concessions and contributions in view of their special economic situation and their development, financial and trade needs."<sup>14</sup>

See also the discussion of the scope of Article XXXVI:8 in the unadopted 1994 panel report on "EEC - Import Régime for Bananas".<sup>15</sup>

### **III. PREPARATORY WORK**

See the chapter on Part IV.

### **IV. RELEVANT DOCUMENTS**

See the chapter on Part IV.

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<sup>12</sup>26S/204, para. 5.

<sup>13</sup>26S/204, para. 6.

<sup>14</sup>26S/205, paras. 7, 8.

<sup>15</sup>DS38/R, dated 11 February 1994, paras. 160-162.