

## ARTICLE XXXVII

### COMMITMENTS

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

##### Article XXXVII

##### *Commitments*

1. The developed contracting parties shall to the fullest extent possible – that is, except when compelling reasons, which may include legal reasons, make it impossible – give effect to the following provisions:

- (a) accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;\*
- (b) refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties; and
- (c) (i) refrain from imposing new fiscal measures, and  
(ii) in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures,

which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products.

2. (a) Whenever it is considered that effect is not being given to any of the provisions of sub-paragraph (a), (b) or (c) of paragraph 1, the matter shall be reported to the CONTRACTING PARTIES either by the contracting party not so giving effect to the relevant provisions or by any other interested contracting party.

(b) (i) The CONTRACTING PARTIES shall, if requested so to do by any interested contracting party, and without prejudice to any bilateral consultations that may be undertaken, consult with the contracting party concerned and all interested contracting parties with respect to the matter with a view to reaching solutions satisfactory to all contracting parties concerned in order to further the objectives set forth in Article XXXVI. In the course of these consultations, the reasons given in cases where effect was not being given to the provisions of sub-paragraph (a), (b) or (c) of paragraph 1 shall be examined.

(ii) As the implementation of the provisions of sub-paragraph (a), (b) or (c) of paragraph 1 by individual contracting parties may in some cases be more readily achieved where action is taken jointly with other developed contracting parties, such consultation might, where appropriate, be directed towards this end.

(iii) The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further the objectives of this Agreement as envisaged in paragraph 1 of Article XXV.

3. The developed contracting parties shall:

(a) make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels;

(b) give active consideration to the adoption of other measures\* designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end;

(c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties.

4. Less-developed contracting parties agree to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other less-developed contracting parties, in so far as such action is consistent with their individual present and future development, financial and trade needs taking into account past trade developments as well as the trade interests of less-developed contracting parties as a whole.

5. In the implementation of the commitments set forth in paragraph 1 to 4 each contracting party shall afford to any other interested contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of this Agreement with respect to any matter or difficulty which may arise.

Interpretative Note *Ad* Article XXXVII from Annex I

*Paragraph 1 (a)*

This paragraph would apply in the event of negotiations for reduction or elimination of tariffs or other restrictive regulations of commerce under Articles XXVIII, XXVIII *bis* (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), and Article XXXIII, as well as in connection with other action to effect such reduction or elimination which contracting parties may be able to undertake.

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*Paragraph 3 (b)*

The other measures referred to in this paragraph might include steps to promote domestic structural changes, to encourage the consumption of particular products, or to introduce measures of trade promotion.

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## II. INTERPRETATION AND APPLICATION OF ARTICLE XXXVII

### A. SCOPE AND APPLICATION OF ARTICLE XXXVII

#### 1. Paragraph 1

##### *(1) “to the fullest extent possible”*

In 1964 the Committee on the Legal and Institutional Framework of the GATT in Relation to Less-Developed Countries stated in its Report that it “recognized that the phrase ‘to the fullest extent possible’ would have the effect of leaving the applicability of the provisions of sub-paragraphs (a), (b) and (c) of paragraph 1 exclusively to the judgement of each contracting party subject to them”. Some developing contracting parties expressed concern “that this phrase might be used in a way that would considerably detract from the effectiveness of the paragraph”. For this reason, the Committee “agreed to incorporate in the commitment an interpretation of the phrase ‘to the fullest extent possible’ and to make provision for consultations”.<sup>1</sup>

A 1976 Secretariat Note on the application of Part IV states:

“... the draft model chapter on trade and development prepared initially by the secretariat on the basis of proposals from delegations for incorporation as Part IV of the General Agreement, did not contain any qualifying clause. The words, ‘to the fullest extent possible,’ appear to have been inserted in the draft later as most of the developed countries considered that they would not be in a position to accept commitments in this area unless there were provisions for exceptions in appropriate cases. The developing countries, on the other hand, were concerned that the phrase ‘to the fullest extent possible’ might be used by developed contracting parties ‘in a way that would considerably detract from the effectiveness of this paragraph’. As a compromise, it was agreed that the term ‘to the fullest extent possible’ should be explained further by stating that it means ‘except when compelling reasons, which may include legal reasons, make it impossible’. It was also agreed to provide in paragraph 2 of Article XXXVII for a procedure for consultations in cases of non-compliance so as to ensure as far as possible that the commitments were honoured and implemented by the contracting parties concerned. ...

“With respect to the language qualifying the commitments in Article XXXVII:1, it is not possible to say how it has weighed with governments in meeting their commitments including the undertaking to refrain from introducing new, or increasing the incidence of existing, barriers to the trade of developing countries (Article XXXVII:1(b)). However, in the course of the reviews undertaken by the Committee, representatives of developed contracting parties have been able to indicate the reasons underlying any specific measures which may have been introduced, including new barriers to trade or the intensification of existing restrictions.”<sup>2</sup>

The 1980 Panel Report on “EEC - Restrictions on Imports of Apples from Chile” concluded that the EEC import restrictions at issue were not in conformity with Article XIII. In response to a claim of Chile regarding the application of Part IV,

“The Panel examined the EEC measure in relation to the objectives and commitments embodied in Articles XXXVI and XXXVII; in particular XXXVII:1(b) ... Although the EEC measure did affect the

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<sup>1</sup>L/2281, para. 4.

<sup>2</sup>COM.TD/W/239, p. 5, paras. 9-10.

ability of a developing country to export into the EEC market, the Panel noted that the EEC had taken certain actions, including bilateral consultations in order to avoid suspending imports of apples from Chile. After a careful examination, the Panel could not determine that the EEC had not made serious efforts to avoid taking protective measures against Chile. Therefore the Panel did not conclude that the EEC was in breach of its obligations under Part IV.”<sup>3</sup>

The 1989 Panel Report on “EEC - Restrictions on Imports of Dessert Apples - Complaint by Chile” examined the EEC’s system of restrictive licensing applied to imports of apples under various provisions of the General Agreement:

“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, particularly XXXVII:1(b) which states that ‘the developed contracting parties shall to the fullest extent possible ... refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less developed contracting parties’; and XXXVII:3(c), which requires developed contracting parties to ‘have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties’.

“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. However, the Panel noted that the commitments entered into by contracting parties under Article XXXVII were additional to their obligations under Parts I - III of the General Agreement, and that these commitments thus applied to measures which were permitted under Parts I - III. As the Panel had found the EEC’s import restrictions to be inconsistent with specific obligations of the EEC under Part II of the General Agreement, it therefore did not consider it necessary to pursue the matter further under Article XXXVII.”<sup>4</sup>

**(2) “accord high priority”**

See the Interpretative Note to paragraph 1(a).

The 1976 Secretariat Note on the application of Part IV states:

“In so far as according ‘high priority’ to the removal of trade barriers on products of export interest to developing countries is concerned, it has been suggested that any such action needed to be considered in the context of the existing legal or other authority available to the contracting party concerned for initiating such action and the extent to which such action may have to be considered in the light of measures affecting trade relations with other developed contracting parties.”<sup>5</sup>

<sup>3</sup>L/5047, adopted on 10 November 1980, 27S/98, 117, paras. 4.22-4.23.

<sup>4</sup>L/6491, adopted on 22 June 1989, 36S/93, 133-34, para. 12.31-12.32.

<sup>5</sup>COM.TD/W/239, p. 6, para. 12.

(3) ***“refrain from introducing”; “refrain from imposing”; “products ... of particular export interest to less-developed contracting parties”***

(a) *Trade measures taken for balance-of-payments purposes*

The Report of the 1971 Working Party on “United States Temporary Import Surcharge” includes the following paragraphs:

“A number of representatives of developing countries said that they could not accept the United States contention that exemption from the surcharge for exports of developing countries could be construed as discrimination, impermissible under the General Agreement. Article XXXVII clearly established that, in the absence of compelling reasons, developed contracting parties must abstain from introducing or increasing tariff or non-tariff barriers vis-à-vis developing countries. They did not consider that the United States had advanced compelling reasons since there could be no serious economic effects for the United States in exempting developing countries from the surcharge. They, therefore, drew the conclusion that Article XXXVII was not being respected and stressed the fundamental importance to developing countries of this Article - the sole commitment of developed countries towards developing countries. In the view of some of these delegations, this Article should be considered as being parallel in application to other Articles in the GATT. Moreover, they considered that the surcharge was inconsistent with current trends in international co-operation, as exemplified by the Generalized System of Preferences and with recent developments in other international organizations.

“The representative of the United States drew attention to the fact that Article XXXVII provided for a standstill only as regards ‘products’ of export interest to developing countries and stated that the United States had endeavoured to exempt such products from the surcharge by the exclusion of duty-free items. He further stated that it was neither possible nor proper to identify those countries that were ‘responsible’ for the balance-of-payments difficulties and to exclude all others from the operation of the surcharge.”<sup>6</sup>

The 1976 Secretariat Note on the application of Part IV states:

“During the review of the application of Part IV in the Committee on Trade and Development in 1968/69, some developing countries have mentioned that import surcharges and import deposit schemes when introduced or maintained by developed countries should not be applied to imports from developing countries in the light of the provisions of Part IV. Developed countries which had resorted to such measures for balance-of-payments reasons stated that they had endeavoured to abide by the obligations assumed by them under Part IV and had given special consideration to the interests of developing countries. For example, some developed countries had exempted from import deposit or surcharge schemes, raw materials and certain semi-finished products which constituted a substantial share in the exports of developing countries to their markets. It was, however, not possible for them to consider complete exemption from such schemes of imports from developing countries as this would weaken the effectiveness of the measures taken and might thus necessitate emergency measures being continued for a longer period ... It may be mentioned that one country exempted from its import surcharge imports entering under its Generalized System of Preferences.”<sup>7</sup>

The 1979 “Declaration on Trade Measures taken for Balance-of-Payments Purposes” provides, *inter alia*:

“If, notwithstanding the principles of this Declaration, a developed contracting party is compelled to apply restrictive import measures for balance-of-payments purposes, it shall, in determining the incidence of its measures, take into account the export interests of the less-developed contracting parties and may exempt from its measures products of export interest to those contracting parties.”<sup>8</sup>

<sup>6</sup>L/3573, adopted on 16 September 1971, 18S/212, 221-222, para. 37-38.

<sup>7</sup>COM.TD/W/239, p. 14, para. 36 (for exemption of GSP products see the Working Party Report on “Danish Temporary Import Surcharge”, L/3648, adopted on 12 January 1972, 19S/120, 125-126, 129-130, paras. 18, 22, 41, 42).

<sup>8</sup>L/4904, adopted on 28 November 1979, 26S/205, 206, para. 2.

See also the material under Article XII in this Index on the relationship between Article XII and Articles I and XIII.

(b) *Safeguard measures under Article XIX*

The drafting history of Part IV of the General Agreement indicates that an escape clause action would fall within paragraph 1(b) of Article XXXVII.<sup>9</sup>

The 1976 Secretariat Note on the application of Part IV states:

“At the eighteenth session of the Committee on Trade and Development in July 1971, a proposal for differential treatment in favour of developing countries was made in relation to Article XIX, having regard to Part IV and in particular Article XXXVII (COM.TD/82). Further discussion on this issue has taken place at subsequent meetings of the Committee on Trade and Development (COM.TD/84, L/3760, 3873) and in the MTN Group ‘Safeguards’. Developing countries have suggested that the general rule should be that safeguard measures should not be applied by developed countries to imports from developing countries. Exceptions should be made to this rule only in specific and clearly delineated circumstances, subject to objective criteria and appropriate justification procedures, and only after prior consultations had taken place with the affected developing countries and after the safeguard measures had been authorized by an appropriate multilateral body. They have also expressed the view that safeguard action should only be taken in cases of proven actual material injury and not in cases of potential injury. Such action should take into account, *inter alia*, actual material injury to the export industries of developing countries. More emphasis should be put on adjustment assistance measures in developed countries to make sure as far as possible that future safeguard actions were not necessary.

“Developing countries have also called for special provisions to be elaborated in order to facilitate the application by developing countries of safeguard measures, in accordance with their particular needs and interests.

“It might be noted that in discussions in the Committee on Trade and Development, developed countries, although agreeing that careful consideration should be given to the interests of developing countries when safeguard action was contemplated, generally considered that it would be inappropriate to revise Article XIX along the lines proposed by developing countries. They maintained that such differential treatment, by reducing the ‘safety-valve’ value of Article XIX, would make contracting parties reluctant to make tariff concessions which they would be otherwise prepared to make and might encourage the taking of action by importing countries inconsistent with the GATT. Some developed countries stated that they could not accept that Part IV allowed a departure from the principle of non-discrimination with regard to Article XIX, which ought to be applied across the board on a most-favoured-nation basis.”<sup>10</sup>

A 1978 Secretariat Note on “Modalities of Application of Article XIX”<sup>11</sup> stated that as of that time there had been no instances where Article XXXVII had been relied upon to exempt developing countries from actions taken under Article XIX.

(c) *Fiscal measures*

The Conclusions and Resolutions adopted by Ministers on 21 May 1963, include, *inter alia*:

“Industrialized countries shall progressively reduce internal charges and revenue duties on products wholly or mainly produced in less-developed countries with a view to their elimination by 31 December 1965.”<sup>12</sup>

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<sup>9</sup>L/2195/Rev.1.

<sup>10</sup>COM.TD/W/239, p. 15-16, paras. 37-39.

<sup>11</sup>L/4679, para. 29.

<sup>12</sup>12S/36, 37, para. (vi).

The 1970 Report of the Working Party on “Border Tax Adjustments” notes that

“Members from developing countries drew attention to the Ministerial Conclusions of 1963 and Article XXXVII of the GATT, which stressed that developed contracting parties should endeavour to suppress taxes on products imported essentially from developing countries ... Representatives of developed countries considered that a distinction should be made between internal charges of a general application and selective or specific taxes, since many of the taxes imposed such as cumulative turnover taxes and the tax on value added affected all products and were, in their view, not covered by Article XXXVII:1(c), which refers to fiscal measures applied specifically to those products in raw or processed form wholly or mainly produced in the territories of developing contracting parties. Representatives of developing countries pointed out that in the process of change-over to [value-added taxes], selective excise taxes were replaced by general consumption taxes. They therefore considered that the provisions of Article XXXVII:1(c) were applicable.”<sup>13</sup>

## **2. Paragraph 2: “The CONTRACTING PARTIES shall ... consult with the contracting party concerned”**

In 1965-66, an Ad Hoc Group on Legal Amendments established by the Committee on Trade and Development drew up “Procedures under Article XXIII” for complaints by developing contracting parties. Paragraph 11 of these Procedures provides that “If consultations, held under paragraph 2 of Article XXXVII, relate to restrictions for which there is no authority under any provisions to the General Agreement, any of the parties to the consultations may, in the absence of a satisfactory solution, request that consultations be carried out by the CONTRACTING PARTIES pursuant to paragraph 2 of Article XXIII and in accordance with the procedures set out in the present decision, it being understood that a consultation held under paragraph 2 of Article XXXVII in respect of such restrictions will be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII if the parties to the consultations so agree.”<sup>14</sup>

In March 1970, the Committee on Trade and Development adopted Procedures for “Consultations Concerning the Implementation of Provisions of Part IV”.<sup>15</sup> The terms of reference of the Committee on Trade and Development also provide for a review at each of its meetings of the implementation of the provisions of Part IV. The Committee has agreed to undertake, at least once a year, a full review of developments on the basis of notifications submitted by governments. Concerning the mandate and work of the Committee, see further the chapter on Part IV.

No consultations have ever been held under Article XXXVII:2 and paragraph 11 of the 1966 Procedures has never been invoked.

## **3. Paragraph 3**

### ***(1) “give active consideration to the adoption of other measures”***

See the Interpretative Note to paragraph 3(b).

### ***(2) “have special regard to the trade interests of less-developed contracting parties when considering the application of other measures”***

According to the 1976 Secretariat Note on the application of Part IV, the drafting history of Part IV shows that “escape clause action and countervailing and anti-dumping duties” were among the “other measures” intended as being subject to the provisions of Article XXXVII:3(c). During the discussions relating to the drafting of Part IV, one developing country had suggested that paragraph 3(c) of Article XXXVII should be strengthened by providing that developed contracting parties should “refrain from applying” measures such as countervailing and anti-dumping duties if they affected the essential interests of developing countries. From the records of

<sup>13</sup>L/3464, adopted on 2 December 1970, 18S/97, 105, paras. 29, 30.

<sup>14</sup>14S/18, 20, para. 11. See also discussion of this work in the Report of the Committee on Trade and Development, L/2614, adopted on 5 April 1966, 14S/129, 139-141, paras. 40-47.

<sup>15</sup>COM.TD/74, adopted on 23 March 1970, 18S/61-62.

discussions it would appear that this and other similar proposals to make the provisions of paragraph 3(c) of Article XXXVII more specific were not acceptable to developed countries which considered that the indiscriminate use of subsidies for the promotion of exports of manufactured products would not be in the interests of developing countries themselves.<sup>16</sup>

The Report of the Working Party on a 1967 consultation under Article XXII:2 on the "United States Subsidy on Unmanufactured Tobacco" notes that during the consultation, Malawi, supported by other members of the Working Party, stated that while prior consultations were not explicitly required under Article XXXVII:3(c), such consultations "would enable a less-developed country concerned to express its views which might not otherwise be known to the industrialized country contemplating action".<sup>17</sup> The United States stated in reply that Article XXXVII:3(c) "did not obligate a contracting party to hold consultations prior to the introduction of the subsidy".<sup>18</sup> The Chairman of the CONTRACTING PARTIES later noted "that the report of the Working Party contained no conclusive indication as regards damage to the trade interests of other tobacco producers arising from the existence of the United States subsidy. However, as it appeared that, to some extent, the provisions of Part IV were involved and as it was conceivable that the trade interests of other producers could be affected," he suggested, and it was so agreed, that CONTRACTING PARTIES urge the United States to give sympathetic and urgent consideration to the requests made by certain members of the Working Party.<sup>19</sup> These members had requested that the US remove the subsidy and consult before taking action to extend the existing subsidy.<sup>20</sup>

During the Council discussions in October 1974 of United States countervailing duties on imports of non-rubber footwear from Brazil, the representative of Brazil stated that countervailing duties were among the "other measures" referred to in Article XXXVII:3(c). The representative of the United States said that the countervailing measures had met the requirements of Part IV.<sup>21</sup>

Article 13 of the 1979 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, which was agreed in the Tokyo Round, provides that:

"It is recognized that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under this Code. Possibilities of constructive remedies provided for by this Code shall be explored before applying anti-dumping duties where they would affect the essential interests of developing countries."<sup>22</sup>

The Decision of 5 May 1980 of the Committee on Anti-Dumping Practices provides that:

"The Committee, cognizant of the commitment in Article 13 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under the Agreement, takes the following decision concerning the application and interpretation of the Agreement in relation to developing countries:

"(i) In developing countries, governments play a large rôle in promoting economic growth and development in accordance with their national priorities, and their economic régimes for the export sector can be different from those relating to their domestic sectors resulting *inter alia* in different cost structures. This Agreement is not intended to prevent developing countries from adopting measures in this context, including measures in the export sector, as long as they are used in a manner which is consistent with the provisions of the General Agreement on Tariffs and Trade, as applicable to these countries.

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<sup>16</sup>COM.TD/W/239, p. 14, paras. 32, 34.

<sup>17</sup>L/2925, adopted on 22 November 1967, 15S/116, 124, para. 23.

<sup>18</sup>*Ibid.*, p. 124, para. 24.

<sup>19</sup>SR.24/13, p. 166.

<sup>20</sup>15S/125, paras. 27, 28.

<sup>21</sup>C/M/100, p. 13-14.

<sup>22</sup>26S/184.

“(ii) In the case of imports from a developing country, the fact that the export price may be lower than the comparable price for the like product when destined for domestic consumption in the exporting country does not *per se* justify an investigation or the determination of dumping unless the other factors mentioned in Article 5:1 are also present. Due consideration should be given to all cases where, because special economic conditions affect prices in the home market, these prices do not provide a commercially realistic basis for dumping calculations. In such cases the normal value for the purposes of ascertaining whether the goods are being dumped shall be determined by methods such as a comparison of the export price with the comparable price of the like product when exported to any third country or with the cost of production of the exported goods in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits ...”<sup>23</sup>

#### 4. Relationship between Article XXXVII and other Articles

##### (1) *Articles I and XIII*

The 1976 Secretariat Note on the application of Part IV states:

“With respect to the standstill, one view which has been expressed in the Committee by representatives of some developed countries has been the need to take measures which do not distinguish between different sources of supply. While developing countries have sought the exemption of their exports from the scope of any new measures raising trade barriers in developed country markets, developed countries have generally stated that such a distinction was not appropriate because of the legal provisions of GATT (e.g. Articles I and XIII) or because any such exemption would weaken the effect of the measures in question and mean their maintenance for a longer period of time than would otherwise be necessary. On the other hand, it has been stated that while developing country exports could not be exempted as a general rule from across-the-board actions, careful consideration had been given to the exclusion from such actions of products or product areas of interest to developing countries, taking into account the need not to impair the essential purpose or objectives which the measures have been intended to serve.”<sup>24</sup>

The same Secretariat Note also states:

“At the time of the drafting of Part IV, preference schemes in favour of developing countries and between developing countries were under discussion. In this respect, consideration was given to whether provision should be made for these matters on a legal and formal basis. In the Committee on the Legal and Institutional Framework of GATT in Relation to Less-Developed Countries, it was suggested in 1963 that in Article I of the General Agreement, the most-favoured-nation provision should be amended to provide for new preferential agreements in favour of less-developed countries (Spec(63)276). Subsequently, the ‘Model Chapter’ which was drawn up by the secretariat on the basis of proposals made by contracting parties included the following sub-paragraph in the section dealing with joint action in relation to economic development:

‘(b) that nothing in the General Agreement shall prevent effect being given to arrangements agreed upon in the furtherance of the commitments outlined in [Article XXXVII:1-5].’

“This was accompanied by the comment that the sub-paragraph would provide a legal basis for giving effect to preferences accorded by developed countries to imports from developing countries and to preferences accorded by developing countries to each other even if they deviated from other provisions of the General Agreement. It would appear that it was found impossible to agree on any such enabling clause and, rather than delay the implementation of Part IV, it was decided that, while excluding such a reference from the final provisions, work should continue on the question of preferences.

“Some developing countries suggested, at the time of the discussion in GATT on the provision of a legal basis for the Generalized System of Preferences, that Article XXXVII:3(b) provided such a basis for preferences in favour of developing countries. ... Developed countries could not agree that this provision

<sup>23</sup>ADP/2, 27S/16-17.

<sup>24</sup>COM.TD/W/239, p. 5, para. 11.

provided authority for action which in their view was inconsistent with objectives under other provisions of the General Agreement and it was eventually decided that a legal basis for the Generalized System of Preferences should be provided by means of a waiver from the provisions of Article I. ... A similar waiver was provided to cover preferences between developing countries under 'The Protocol Relating to Trade Negotiations Among Developing Countries', although some countries considered that Article XXXVII:4 provided an adequate legal basis."<sup>25</sup>

A separate legal basis was later established for preferences for and between developing countries by the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (Enabling Clause) of 28 November 1979.<sup>26</sup> See further concerning this Decision under Article I.

See also related material under Part IV and the material under Article XII on the relationship between Article XII and Articles I and XIII.

### **(2) Article XVI**

See the material at page 1066 above on the Report of the Working Party on a 1967 consultation under Article XXII:2 on the "United States Subsidy on Unmanufactured Tobacco".

### **(3) Article XXIII**

See under Article XXIII; see also material on the 1966 Procedures under Article XXIII, in the chapter on Article XXIII and above at page 1065.

## **B. EXCEPTIONS AND DEROGATIONS**

On 19 May 1965, Australia accepted the Protocol Introducing Part IV with a Declaration stating the understanding that

"(a) because of its own development needs and policies it would be inappropriate for Australia, one of the contracting parties referred to in Article XVIII:4(b) of the General Agreement, the economy of which is in the course of industrial development and which is seeking to avoid an excessive dependence on a limited range of primary products for its export earnings but which is not a less-developed country, to undertake to give effect to the provisions of paragraphs 1, 2 and 3 of Article XXXVII to the same extent or in the same manner as the other contracting parties to which those paragraphs apply; and

"(b) the provisions of those paragraphs of Article XXXVII will be applied to the fullest extent consistent with Australia's development needs and policies and responsibilities."<sup>27</sup>

## **III. PREPARATORY WORK**

See the chapter on Part IV.

## **IV. RELEVANT DOCUMENTS**

See the chapter on Part IV.

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<sup>25</sup>*Ibid.*, p. 7-8, paras. 17-18.

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

<sup>27</sup>See Status of Legal Instruments, p. 2-14.2. See also statements of Australia, New Zealand and South Africa, 2SS/SR.4 and 5.