

ARTICLE XXXVIII

JOINT ACTION

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I. TEXT OF ARTICLE XXXVIII

Article XXXVIII

Joint Action

1. The contracting parties shall collaborate jointly, within the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in Article XXXVI.
 2. In particular, the CONTRACTING PARTIES shall:
 - (a) where appropriate, take action, including action through international arrangements, to provide improved and acceptable conditions of access to world markets for primary products of particular interest to less-developed contracting parties and to devise measures designed to stabilize and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products;
 - (b) seek appropriate collaboration in matters of trade and development policy with the United Nations and its organs and agencies, including any institutions that may be created on the basis of recommendations by the United Nations Conference on Trade and Development;
 - (c) collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed and, in this connexion, seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation to financial assistance for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required;
 - (d) keep under continuous review the development of world trade with special reference to the rate of growth of the trade of less-developed contracting parties and make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate;
 - (e) collaborate in seeking feasible methods to expand trade for the purpose of economic development, through international harmonization and adjustment of national policies and regulations, through technical and commercial standards affecting production, transportation and marketing, and through export promotion by the establishment of facilities for the increased flow of trade information and the development of market research; and
 - (f) establish such institutional arrangements as may be necessary to further the objectives set forth in Article XXXVI and to give effect to the provision of this Part.
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II. INTERPRETATION AND APPLICATION OF ARTICLE XXXVIII

1. Paragraph 1: “The contracting parties shall collaborate ... to further the objectives”

The Report of the Panel on “European Communities - Refunds on Exports of Sugar - Complaint by Brazil”, notes that the Brazilian representative argued that by maintaining its sugar subsidy system, resulting in increased exports and reduced imports, and by refusing to participate in the International Sugar Agreement, 1977 (“ISA”), the European Communities had acted inconsistently with Article XXXVIII:1, 2, 2(a) and 2(e).¹ The Panel findings provide as follows:

“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 with the guidelines given in Article XXXVIII and thus further the principles and objectives of Article XXXVI.”²

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.”³

2. Paragraph 2(f): “The CONTRACTING PARTIES shall ... establish ... such institutional arrangements as may be necessary”

The CONTRACTING PARTIES established the Committee on Trade and Development on 26 November 1964 to “keep under continuous review the application of the provisions of Part IV” and to carry out various other tasks related to the implementation of Part IV.⁴ See the chapter on Part IV concerning the mandate and activities of the Committee and its Sub-Committees.

IV. PREPARATORY WORK AND RELEVANT DOCUMENTS

See Part IV.

¹L/5011, adopted on 10 November 1980, 27S/69, 80, para. 2.25.

²*Ibid.*, 27S/95, paras. 4.30 - 4.31.

³*Ibid.*, 27S/97, para. (h).

⁴13S/75.