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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Trade and Development
Thirty-First Session

NOTE ON THE APPLICATION OF PART IV OF THE GENERAL AGREEMENT

Prepared by the Secretariat

1. The Committee on Trade and Development, in addition to reviewing the implementation of Part IV during its thirtieth session in November 1975, also commented on the question of the application of Part IV in the light of the objectives it is intended to serve (L/4252, paragraphs 5-13). In this context, it was felt that having regard to the consideration that is to be given to improvements in the international framework for the conduct of world trade as provided for in paragraph 9 of the Tokyo Declaration, it would be appropriate for the Committee to start giving thought to possible ways and means by which Part IV and other parts of the General Agreement could be improved so as to make them more responsive to the needs of developing countries. To facilitate further consideration of this matter, the Committee agreed to request the secretariat to prepare a background note which would bring together information on the experience of contracting parties with respect to the application of Part IV[1] as well as a summary of the specific observations and suggestions which had been made in the Committee on Trade and Development since its inception and in other GATT bodies with respect to a review and possible amendment of the provisions of Part IV.

2. The Committee recognized that this initiative touched on a number of questions which were already under consideration or which might be taken up in the Trade Negotiations Committee, its Groups and their Sub-Groups. However, it was noted that as most countries represented in the Committee on Trade and Development were participants in the multilateral trade negotiations, the discussions in the Committee on a review of the provisions of Part IV would be expected to reflect themselves in the deliberations of these bodies. It was further noted that the Committee could give only preliminary consideration to the subject without commitment on the part of delegations in advance of the more substantive discussions that were expected to take place in the multilateral trade negotiations.

[1] Part IV was added to the General Agreement in February 1965.

3. The following paragraphs summarize a number of issues relevant to a review of Part IV which have been discussed in various contexts since 1963 and which, in some instances, have had relevance to certain other provisions of the General Agreement. They may not be exhaustive of all the matters raised in this connexion, nor may they fully reflect the emphases and nuances placed by delegations on particular aspects of their proposals. Furthermore, in the light of recent developments in international trade relations, they may not adequately cover the current objectives of governments in seeking improvements in the international framework for the conduct of world trade.

4. For the sake of convenience the note is divided into four sections. Section I summarizes the main points made by delegations during the 1968-69 review of the application of Part IV by the Committee on Trade and Development. In Section II an attempt has been made to bring together some of the specific proposals for improvements in the text of the provisions in Part IV which have been made by delegations in past discussions on the subject. These include proposals for: (i) making commitments under Article XXXVII:1 legally more binding; (ii) writing into the text of the General Agreement provisions to cover preferences in favour of developing countries and among developing countries; (iii) making the concept of non-reciprocity more precise and (iv) permitting the use of import surcharges for balance-of-payments reasons. Section III lists some of the specific points related to the provisions of the General Agreement, including those in Part IV, which have been made by delegations in the multilateral trade negotiations including differential treatment in favour of developing countries in the fields of quantitative restrictions, safeguards and subsidies and countervailing duties. This section would show that a number of issues relating to the application of Part IV in specific trade policy situations are now under consideration in negotiations in various areas of the MTN. Section IV comprises a number of proposals made at the time of the drafting of Part IV which were not included in the final text. Some of these proposals were later touched upon or pursued in other contexts and have been included as of interest for this reason. Some others were not pursued and have been included for the sake of completeness, even though it is not possible to say whether any delegation still attaches importance to them.

Section I. Examination of the application of Part IV, 1968/69

5. In its report to the twenty-fifth session of the CONTRACTING PARTIES in November 1968, the Committee on Trade and Development suggested that there was a need for an examination of the application of Part IV in order to explore how the objectives set out in Article XXXVI could be implemented in a more systematic and effective manner (L/3102). This examination was carried out in 1969 during the

thirteenth, fourteenth and fifteenth sessions of the Committee.[1] Members were invited to submit statements of any difficulties they had experienced in connexion with the implementation of Part IV and to make suggestions for improvement; statements from eighteen countries or groups of countries were circulated.[2] Many of the points made by developing countries related to what they considered to be the inadequate implementation by developed countries of commitments and of the provisions for joint action. Developed countries generally felt that it was too early to judge the adequacy or inadequacy of the provisions of Part IV and some of them thought that the introduction of a scheme of tariff preferences in favour of developing countries would go far in easing the trade problems of the latter.

6. At the fifteenth session of the Committee, it was generally concluded that there was no need to modify the text of Part IV or to establish new machinery at that time (L/3335). During the course of the examination, several developing countries had indicated difficulties with the use of the consultation provisions under Article XXXVII:2. Since it was felt that this procedure was important for encouraging the fulfilment of the commitments specified in Part IV and for allowing the examination of specific problems, it was agreed that procedures for using Article XXXVII:2 should be determined. Such procedures were adopted at the sixteenth session of the Committee and reproduced in document COM.TD/74. However, up to the present time these procedures have not been utilized by any contracting party.

Section II. Specific proposals for improvements to Part IV

Nature of the commitments in Part IV

7. The developed contracting parties have in Article XXXVII assumed certain "commitments" which they are required to take into account in their trade relations with the developing countries, in particular under paragraph 1 of that Article:

> "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:

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[1] COM.TD/64, COM.TD/65, COM.TD/69 and Addenda, L/3335

[2] COM.TD/W/97/Add.1-18; summary of the main points made is contained in COM.TD/W/103/Rev.1.

(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."

8. A number of developing countries have maintained that these commitments, particularly that relating to "standstill" on the introduction of new tariff and non-tariff measures including quantitative restrictions on products currently or potentially of export interest to developing countries, have not always been adhered to by developed importing countries. In their view, the words "except when compelling reasons, which may include legal reasons, make it impossible" provide an escape clause to the commitments in the paragraph; and they have suggested that the possibility of amending the wording of the paragraph to enforce more binding commitments needed to be explored. Moreover, they have stated that the commitment to reduce and eliminate barriers in sub-paragraph 1(a) of the Article was further qualified by the fact that the developed countries were only required to give it "high priority". The developed countries, however, have maintained that, while they had always endeavoured to abide by the commitments relating to standstill and priority treatment in the elimination of barriers to trade, they required some freedom and flexibility in cases where their vital interests were involved.

9. In this connexion, it is relevant to note that 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 in 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 the 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 (paragraph 6 above).

10. As regards the experience of contracting parties in this area, it may be noted that the terms of reference of the Committee on Trade and Development provided, inter alia, for a review at each of its meetings of the implementation of the provisions of Part IV. In this connexion, the Committee agreed to undertake, at least once a year, a full review of developments on the basis of notifications submitted by governments. 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.

11. 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.[1]

12. 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.

13. It is also relevant to note that with a view to making a special effort to stimulate urgent and positive action on developing country trade problems including, inter alia, the fuller implementation of the provisions of Part IV, the Committee on Trade and Development established the "Group of Three" in 1971. The Group was requested to present proposals for concrete action that might be taken to deal with trade problems of developing countries, having regard to the provisions of GATT, the relevant conclusions of the CONTRACTING PARTIES and past discussions in GATT committees and bodies. The Group presented three reports[2] containing assessments of the main trade problems of developing countries and proposals for concrete action taking into account the informal consultations it had held with contracting parties. In its second and third reports the Group was able to note a number of positive actions that had been taken by developed countries in response to its recommendations. With the recognition that the multilateral trade negotiations were expected to deal, inter alia, with the trade problems of developing countries in accordance with the provisions of the Tokyo Declaration, the Committee on Trade and Development agreed at its meeting in October 1973, that the work of the Group could be suspended for the time being.

Preferences

14. In the discussions in the Committee on Trade and Development and other GATT bodies some developing countries have stated that it was somewhat anomolous that the Generalized System of Preferences, to which they attached considerable importance, and preferences among developing countries, were treated as exceptions to the rules of the General Agreement and had been implemented by waivers. These countries have stated that any reform of the rules governing international trade relations should aim at correcting this anomolous situation

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[1] See also paragraph 36.

[2] Issued as L/3610, L/3710 and L/3871

by incorporating suitable provisions in the General Agreement to cover the Generalized System of Preferences and preferences among developing countries.

15. Since the introduction of the Generalized System of Preferences, developing countries have expressed certain views about its non-contractual and temporary nature. In the work of the MTN Group "Tariffs", the importance of ensuring increased security of the Generalized System of Preferences has been stressed by delegations from developing countries. It has also been suggested, inter alia, that preferential duties for products of special export interest to developing countries should be bound in special schedules of concessions.

16. To provide a basis for further discussion on this issue, the following paragraphs summarize the main points made by the delegations at the time of the drafting of Part IV and later when preference schemes were being implemented.

17. 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, some 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 arrangements in favour of less-developed countries (Spec(63)276).[1] 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 Section III above".[2]

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.

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[1] It should be noted that any amendment to Articles I and II of the General Agreement requires unanimous acceptance by contracting parties.

[2] Spec(63)316/Rev.1 - Section III of the Model Chapter contained the commitment provisions which were finally reflected in Article XXXVII, paragraphs 1-5.

18. 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. This sub-paragraph reads as follows:

> "3. The developed contracting parties shall:
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> (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."

and is accompanied by the following explanatory note:

> "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."

Developed countries could not agree that this provision 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 (L/3487). 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[1] provided an adequate legal basis.

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[1] Article XXXVII:4 reads as follows:

"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."

Non-reciprocity

19. The provisions of the General Agreement relating to non-reciprocity are contained in paragraph 8 of Article XXXVI. The paragraph reads as follows:

> "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."

An interpretative note to the Article states:

> "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.
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> "This paragraph would apply in the event of action under Section A of Article XVIII, Article XXVIII, Article XXVIII bis, Article XXXIII, or any other procedure under this Agreement."

20. In discussions on the subject, some developing countries have referred to practical difficulties which they had encountered because of the lack of precision in the concept of non-reciprocity. In particular, it has been stated that in expecting contributions from developing countries, some of the developed countries had not in the Kennedy Round of Trade Negotiations strictly adhered to the concept of non-reciprocity.

21. These developing countries therefore considered that it was necessary to work out more precise criteria to ensure that requests by developed countries for contributions from developing countries in trade negotiations were truly in line with the principles laid down in paragraph 8 of Article XXXVI. In more recent discussions, some of these countries have stated that the concept that the least developed among developing countries should not be required to make any contribution needed to be fully recognized and accepted.

22. Developed countries, however, while affirming their intentions to apply the principle of non-reciprocity in trade negotiations, have felt that it was not possible to work out a priori rules for the application of this principle, since situations with respect to individual developing countries and products varied greatly; the problem was more one of practical application than of legal form.

23. It is relevant to note in this context that the Committee on Trade and Development at its twenty-third session in March 1973 discussed the type and nature of the contributions which developing countries could make to the objectives of the multilateral trade negotiations, taking into account the provisions of paragraph 8 of Article XXXVI. A summary of the main points made by delegations both from developed and developing countries is contained in document COM.TD/89.

24. It has also been suggested by a developing country that the provisions of Part IV should be amended so as to remove any ambiguities and possible difficulties relating to the applicability of the principle of non-reciprocity to the renegotiation by developing countries of schedules of concessions under Article XXVIII.[1] Some developing countries have claimed that in practice, in such negotiations, developed countries had not always accepted that the principle of non-reciprocity should apply. Some developed countries have 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.[2]

Import surcharges

25. At the time of the drafting of Part IV, it was agreed that it would be desirable in principle to insert a paragraph in Section B of Article XVIII to permit developing countries to impose import surcharges as an alternative to quantitative restrictions for balance-of-payments reasons (L/2281). It had been thought anomolous that, whereas under the General Agreement, tariffs were recognized as a legitimate form of protection and quantitative restrictions for the most part were not, developing countries could apply quantitative restrictions in cases of balance-of-payments difficulties but not import surcharges.

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[1] COM.TD/W/97/Add.13

[2] In this connexion, it may be noted that the application of Article XXXVI:8 was recently discussed in the GATT Council in connexion with the request for a waiver to cover increases in bound duties. The considerations stated by the contracting parties who participated in the discussion are summarized in the Council Minutes C/M/110. In the light of the discussion (i) the preamble of the draft waiver was amended to provide a recognition of the desirability of maintaining a general level of mutually advantageous concessions that would favour high and expanding levels of trade; (ii) the reference in the draft decision to Part IV of the General Agreement including Article XXXVI:8 as being applicable to the negotiations was maintained.

Some delegations suggested that import surcharges had an advantage over quantitative restrictions because they minimized distortions in trade flows. A provision authorizing import surcharges under Article XVIII was not, however, included in the final text of Part IV because the Legal Drafting Group set up to examine the draft of Part IV found that there were problems of interpretation and implementation of the proposed text on this point which went beyond the competence of that Group to resolve (L/2297).

26. At its second session in March 1965, the Committee on Trade and Development established an "Ad Hoc Group on Legal Amendments to the General Agreement" to examine what amendments to Articles XVIII and XXIII were necessary or desirable to meet the development and trading needs of developing countries (L/2410). Although there continued to be no disagreement on the desirability of a provision allowing import surcharges, the drafting of a suitable amendment caused the Group some difficulties; in addition to drafting problems of how to make the amendment fit into the General Agreement, there was disagreement about whether import surcharges should only be permissible as a replacement for quantitative restrictions or permissible also in conjunction with them. The Committee on Trade and Development reported to the CONTRACTING PARTIES in March 1966 that the Group would only meet again if concrete proposals were received for consideration (L/2614). No such proposals were subsequently made.

Section III. Proposals made in the context of the MTN

27. In this Section, it is intended to refer briefly to some of the proposals relevant to a review and possible amendment of the General Agreement which have been elaborated in the MTN or in the preparatory work for the MTN. The object of the Section is to mention certain points which may be of interest to delegations and not to provide a complete summary of the discussions that have taken place in the TNC and its Groups and their Sub-Groups. It needs also to be borne in mind that in the discussions some delegations have emphasized that, although in some cases formal amendment to existing provisions may be required, it may be possible in certain areas to make improvements in existing rules through the adoption by the CONTRACTING PARTIES of new procedures for consultations or codes of conduct and similar binding instruments.

Differential treatment in favour of developing countries

28. Many of the suggestions which have been put forward by developing countries involving possible amendments to the General Agreement have been based on the concept of differential treatment in favour of developing countries. They have

suggested that in both the tariff and non-tariff fields where such treatment was applied it should be done through revision or adaptation of the rules of the General Agreement and not as an exception to them. They have stated that, even though the Ministers in the Tokyo Declaration recognized the importance of the application of differential measures to developing countries in ways which would provide special and more favourable treatment for them in areas where this was feasible or appropriate, the General Agreement including Part IV was still generally interpreted by developed countries on the basis of most-favoured-nation treatment and non-discrimination with respect to developed and developing countries alike.

Differential treatment in the field of quantitative restrictions

29. Article XIII of the General Agreement lays down the principle of non-discrimination in the administration and the removal of quantitative restrictions. In particular, it states that "no prohibition or restriction shall be applied by any contracting party on the importation of any product .... unless the importation of the like product of all third countries ... is similarly prohibited or restricted".

30. In the discussions in the Committee on Trade and Development, as well as in the MTN Sub-Group "Quantitative Restrictions" and the preparatory work of Group 3(b), developing countries have put forward proposals for the dismantling of quantitative restrictions on a differential basis, particularly where the removal of such restrictions on an m.f.n. basis was not considered possible. In particular it has been suggested that, since in the past there have been important departures from the principle of non-discrimination with respect to quantitative restrictions, notably under the OEEC Code of Trade Liberalization, the removal of QR's on a differential basis in favour of developing countries could be feasible.[1]

Subsidies and countervailing duties

31. The GATT provisions relating to the use of subsidies for exports of "non-primary products" are contained in paragraph 4 of Article XVI. The paragraph visualizes that contracting parties should cease to grant, either directly or indirectly, any form of export subsidy which results in the sale of such products for export at a price lower than the comparable price charged for the like products to buyers in the domestic market. The paragraph, however, did not contain any firm date for the implementation of the provisions, and in order to

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[1] Document MTN/3B/20 examines the technical feasibility of implementing proposals for differential treatment in favour of developing countries in the field of quantitative restrictions.

provide for a definite target date, the CONTRACTING PARTIES in 1960 adopted a Declaration on the Prohibition of Export Subsidies on products other than primary products. This Declaration has become effective in respect of sixteen developed countries which have so far accepted it. The developing countries have not accepted the Declaration under paragraph 4 of Article XVI and are thus not at present bound by commitments, not to grant subsidies on their exports of manufactured products.[1]

32. As regards countervailing duties, Article VI of the General Agreement permits the levying by an importing country of a countervailing duty on subsidized products, if imports of such subsidized products cause or threaten to cause material injury to its domestic industry. 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), which reads as follows:

> "3. The developed countries shall:
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> (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."

33. In the discussions in the Sub-Group "Subsidies and Countervailing Duties", delegations from developing countries have stated that in their view subsidies and countervailing duties were one area where, in elaborating solutions, it was both technically feasible and economically justifiable to extend special and more favourable treatment to developing countries through the application of differential measures. They have suggested that it should be recognized that developing countries might need to adopt suitable incentive schemes for the promotion and development of exports of their manufactures. Some of these representatives have stated that, as in their view exports under such incentive schemes were not in breach of GATT rules, measures in the form of countervailing

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[1] However, they are bound by other provisions in Article XVI, including the obligation to notify to the GATT secretariat particulars of export subsidies and other similar measures maintained by them which operate "directly or indirectly to increase exports or to reduce imports" and to discuss on request with any other contracting party or parties or with the CONTRACTING PARTIES, the possibility of limiting the subsidization.

action should be taken against their exports only in exceptional situations after appropriate procedures regarding prior consultations and international surveillance had been fulfilled. They have stated that one of the solutions to the problems in this area would be to make the language of paragraph 3(c) of Article XXXVII more explicit so as more fully to reflect what appears to them to be its underlying intent.

34. In this connexion, it may be mentioned that 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 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. In recent discussions on the subject, particularly in the Sub-Group "Subsidies and Countervailing Duties", developed countries have maintained that the relevant GATT provisions did not give developing countries "carte blanche" in the field of subsidies, and that, where such subsidized imports caused or threatened to cause material injury to a domestic industry in importing countries, they would wish to have recourse to the possibility of countervailing action in accordance with the provisions of the General Agreement. It was, however, noted in the Sub-Group that there was a consensus that possibilities existed for the application of differential treatment for developing countries in this field.

Safeguards

35. The drafting history of Part IV shows that "escape clause" action was one of the measures envisaged as being subject to the provisions of Article XXXVII:3(c). It has already been mentioned that proposals made by developing countries during the drafting of Part IV to strengthen the language of this paragraph, by providing that developed countries should refrain from applying such measures if they affected the essential interests of developing countries, were not acceptable to developed countries.

(a) Measures to safeguard balance of payments

36. 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.[1] 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.

(b) Safeguard action under Article XIX

37. 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[2] 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.

38. 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.

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[1] It may be mentioned that one country exempted from its import surcharge, imports entering under its Generalized System of Preferences.

[2] COM.TD/84, L/3760, L/3873.

39. 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. In the MTN Group "Safeguards", the proposals of developing countries are under consideration and it has been agreed that the possibility of the application of differential treatment in favour of developing countries should be given careful attention.

Section IV. Proposals made during the drafting of Part IV but not incorporated in its text

Article XXIII

40. The problem of how to increase the bargaining power of developing countries in cases where benefits have been nullified or impaired by the maintenance of residual restrictions or other action inconsistent with GATT was considered at the time of the drafting of Part IV and was subsequently examined by the Committee on Trade and Development. Developing countries have said that they faced special difficulties in using the procedures available under Article XXIII, because of what they have described as the inequality of their bargaining position vis-à-vis developed countries and their consequent difficulty in making effective use of the authority for retaliatory action contained in paragraph 2 of Article XXIII.

41. In 1964, a proposal was put forward by certain developing countries in the Committee on the Legal and Institutional Framework of GATT for amendment to the provisions relating to Article XXIII.[1] The proposal contained four main elements:

(i) the arrangement for action under paragraph 2 of Article XXIII should be elaborated in a way that would give developing countries invoking the article the option of employing certain additional measures;

(ii) where it had been established that measures complained of had adversely affected the trade and economic prospects of developing countries and it had not been possible to eliminate the measure or obtain adequate commercial remedy, compensation in the form of an indemnity of a financial character would be in order;

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[1] L/2195/Rev.1 Annex IV

(iii) in cases where the import capacity of a developing country had been impaired by the maintenance of measures by a developed country contrary to the provisions of the General Agreement, the developing country concerned would be automatically released from its obligations under the General Agreement towards the developed country complained of, pending examination of the matter in GATT; and

(iv) in the event that a recommendation by the CONTRACTING PARTIES to a developed country was not carried out within a given time-limit, the CONTRACTING PARTIES would consider what collective action they should take to obtain compliance with their recommendation.

42. Developing countries generally supported the proposal; but developed countries thought there were several practical difficulties which made it unacceptable. Some developed countries could not envisage their national legislatures agreeing to provide funds for compensatory payments and thought there would be insuperable problems of enforcement of payments.[1] They also felt

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[1] In this connexion, it is worth noting that in response to a suggestion by the Chairman of the Action Committee in his report to the Second Special Session of the CONTRACTING PARTIES in November 1964, that the CONTRACTING PARTIES consider the case for granting compensation to developing countries for loss of trading opportunities resulting from the application of quota restrictions inconsistently with GATT, the CONTRACTING PARTIES agreed that the secretariat should carry out a study of the question. The secretariat study (COM.TD/5) noted that, if following consultations, it was still not possible for a quantitative restriction to be removed, a possible solution could be the accelerated reduction of tariffs or other charges on items of interest to developing countries by the contracting party maintaining the restriction. The study also noted that under Article XXIII as it stood, it was open to a contracting party whose benefits were being nullified or impaired to make representations and proposals to the other contracting party concerned, and that those representations could include suggestions for compensatory measures. Also, the CONTRACTING PARTIES could make, under Article XXIII, recommendations concerning such compensatory measures. The study noted that under Article XXIII any recommendations could only be implemented to the extent that they proved acceptable to the contracting party to whom they were addressed and who would have the right to determine the nature of the compensatory concessions and the items on which to offer them. At the first meeting in April 1965 of the Ad Hoc Group on Legal Amendments to the General Agreement, it was agreed that the secretariat study should be given further consideration. However, in subsequent meetings this matter was not pursued.

that the provision for automatic release of the country suffering impairment or nullification from its obligations to the country complained of would endanger the whole work of GATT.

43. At the twenty-third session of the CONTRACTING PARTIES in March and April 1966, a Decision[1] was adopted generally encompassing the points contained in sub-paragraphs (i) and (iv) of the points mentioned in paragraph 41 above. The aim of the Decision was to provide procedures for more speedy and efficient use of the provisions of Article XXIII by developing countries. Although developing countries welcomed the procedures adopted in the Decision, they felt that their fundamental concerns had not been met. While it was agreed by the CONTRACTING PARTIES that work could continue on points (ii) and (iii), no further action was taken in this respect.

Other proposals related to Article XVIII

44. In addition to the proposal relating to the use of import surcharges referred to in paragraphs 25 and 26, other proposals for amendment to Article XVIII were made by developing countries during the work on the drafting of Part IV. These included one for simplified procedures for developing countries applying measures under this Article. It was suggested that the existing consultation procedures required before measures could be applied should be eliminated and that developing countries should have the right to apply protective measures permitted under Article XVIII provided that they were notified to GATT. It may be noted that in December 1972, the Council approved simplified procedures for periodic consultations on balance of payments with developing countries under Article XVIII:12(b).

45. A proposal was made in relation to Article XVIII, Section C, which aimed to extend the circumstances in which developing countries might deviate from the normal rules and procedures of the GATT. Action inconsistent with the other provisions of the GATT would be permissible, subject to the requirements of the Article, where it was necessary not only for the establishment of a new industry but also for the development or reorganization of an existing industry when such development or reorganization was essential for the implementation of an economic development programme. A proposal by a developed country for a complete revision of Article XVIII which aimed to extend certain of its provisions to "contracting parties in the process of development" who were not developing countries also contained provisions for a revised Section C allowing action by developing countries inconsistent with the normal rules and procedures of the GATT where it was necessary for the development of an existing industry.

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[1] BISD, Fourteenth Supplement, pages 18-20.

46. Discussion on these points during the work on the drafting of Part IV was not extensive and it was agreed to leave consideration of a revision of Article Article XVIII until later. In the Ad Hoc Group on Legal Amendments to the General Agreement, consideration of Article XVIII concentrated on the question of import surcharges. It appears that it was felt by some delegations that a full revision of Article XVIII was no longer necessary since certain of the changes that had been suggested had already been taken into account in the new Part IV.

Regional economic arrangements

47. Certain proposals relating to the formation of regional economic arrangements which were not eventually embodied in Part IV were put forward in the work of the Committee on the Legal and Institutional Framework of GATT on the drafting of Part IV. One developed country proposed that Article XVIII should be amended in such a way as to enable developing contracting parties belonging to the same region to justify entering into arrangements which provided for the reduction or elimination of tariffs between them in certain sectors of industry or agriculture so that markets of an adequate size for the establishment, development or modernization of those sectors would be obtained. This proposal was subsequently considered by the Group on Expansion of Trade Among Developing Countries in which there was a large measure of support for the establishment of preferences among developing countries on a more general basis.

48. It was also proposed by a developing country in the Committee on the Legal and Institutional Framework of GATT that, in order to facilitate the evolution of regional arrangements between developing countries on a step-by-step basis, Article XXIV:5 should be amended so as not to require developing countries entering into regional arrangements to formulate a plan and schedule for the completion of a customs union or a free-trade area at the outset. This developing country also proposed that in any revision of Article XXIV:5, provisions should be added protecting the interests of developing countries who were dependent on a limited number of commodities for their export earnings when duties or other regulations affecting commerce in these products were increased or made more severe as a result of the formation of a customs union or free-trade area. Discussion of these proposals during the work on the drafting of Part IV does not appear to have been extensive and subsequently, in the Committee on Trade and Development, attention focussed on the consideration of preferences between developing countries.

Centrally-planned economies

49. In the Committee on the Legal and Institutional Framework of GATT in Relation to Less-Developed Countries, some developing countries suggested that the new Part IV should provide for the development of trade between developing countries

and contracting parties having centrally-planned economies. One developing country suggested the following text.[1]

"Contracting parties, with centrally-planned economies, in the formulation and carrying out of their future developments plans, should agree:

(i) - to provide for a progressively increasing share of their imports of, and expansion of their markets to products originating in less-developed countries, and to give increased priority to their consumption;

(ii) - that such increased imports should include commodities, in raw or processed form, manufactures and semi-manufactures, without exclusion from the plans of any categories of goods, with a view to an increase in the number and value of products and of the share of those products passing through the processing or manufacturing process in less-developed countries;

(iii) - in the framework of such bilateral trading and payments systems as they may adopt, to take concerted action with a view to making it possible to balance trade with less-developed countries at increasing levels, minimizing individual deficits and maximizing the use of individual surpluses for purposes of economic development;

(iv) - to provide for their increased output of products, particularly capital goods, necessary for the economic development of less-developed countries;

(v) - to provide adequate opportunity for consultation on their production and trade policies with a view to the expansion of trade and the economic development of less-developed countries."[2]

The Committee agreed that this was an important subject and that it would have to be resolved at a later date.

50. During the examination of the application of Part IV in 1968/69, the question of trading relations between developing countries and developed countries with centrally-planned economies was raised again. One developing country

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[1] L/2123

[2] This was accompanied by a note saying that these proposed amendments dealt with trade between developing countries and industrialized countries with centrally-planned economies and they did not prejudice the need for the formation of general rules of a more ample character to discipline trade between countries with different social and economic systems.

suggested that contracting parties with centrally-planned economies should undertake to allocate specific proportions of their imports to suppliers in developing countries.

Agriculture

51. In the Committee on the Legal and Institutional Framework of GATT in Relation to Less-Developed Countries, which was responsible for the drafting of Part IV, one developing country proposed the inclusion of the following commitments by contracting parties.

> "in establishing their agricultural policies for the maintenance of agricultural income, to avoid restrictive measures that limit imports of raw or processed products of particular interest to less-developed countries and inhibit their consumption."
>
> "to adjust and moderate agricultural protective measures, in order to facilitate exports of agricultural products by less-developed countries."

52. However, it was agreed that instead of including specific provisions in Part IV, a statement on this subject by the Chairman should be included in the record of the second special session of the CONTRACTING PARTIES at which agreement was finally reached on the text of Part IV.[1] This statement, after having noted that the importance of trade in agricultural products had been stressed in the Committee and a specific proposal had been discussed, observed that the CONTRACTING PARTIES had agreed to seek solutions to problems of agricultural trade in the course of the Kennedy Round and had agreed that in these trade negotiations every effort would be made to lower barriers to exports from developing countries. It concluded with the following paragraph:

> "Although a specific paragraph to cover all the specific concerns expressed by those less-developed contracting parties particularly interested in agricultural trade problems has not been included in Part IV, agricultural products are covered by the general provisions of Part IV. However, it is understood that at a later stage and in the light of the forthcoming trade negotiations, interested contracting parties will be entitled to revert to this matter in the Committee on Trade and Development."

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[1] L/2314 and Corr.1/Rev.1