

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES
Twenty-first Session

COMMITTEE ON THE LEGAL AND INSTITUTIONAL FRAMEWORK OF GATT IN RELATION TO LESS-DEVELOPED COUNTRIES

Report of the Committee

1. The Committee, which was set up pursuant to the Resolution of Ministers of 21 May 1963 (MIN(63)8), has held three meetings since its establishment. The terms of reference of the Committee are as follows:

"Taking full account of the views expressed by Ministers at the meeting held on 16-21 May, to examine all aspects of the problems related to the provision of an adequate legal and institutional framework which would enable the CONTRACTING PARTIES to discharge their responsibilities in connexion with the work of expanding the trade of less-developed countries, and to report with appropriate recommendations to the twenty-first session."

2. At its first meeting from 14-18 October 1963, the Committee considered proposals¹ for certain modifications to the General Agreement and decided to request the Executive Secretary to prepare a model chapter on trade and development which would bring together these proposals.

3. The model chapter (Spec(63)316/Rev.1) prepared by the Executive Secretary was examined by the Committee at its meeting from 12-17 December 1963. The Committee agreed that the chapter approach offered possibilities and it was therefore decided that governments should be invited to make definite proposals concerning the content of such a chapter. Proposals received from Australia, Brazil, Chile, India, the United Arab Republic and the United States were circulated in documents L/2147 and L/2165.

4. At its third meeting from 25 February-19 March 1964 the Committee prepared a draft chapter for submission to the CONTRACTING PARTIES. This draft is attached as Annex I. A number of delegations made statements to the Committee concerning their general approach to the work of the Committee; statements by the European Economic Community and the United States were circulated in Spec(64)53 and Spec(64)36 respectively.

¹See Spec(63)266 and Spec(63)276.

5. It will be noted that at two places in the draft chapter the heading "preferences" appears in brackets. The Committee did not discuss this issue as preferential arrangements are the subject of discussion in another body of the CONTRACTING PARTIES.

6. The Committee did not have time to discuss the substance of certain proposals submitted to it. These proposals were as follows:

(a) Amendments to the existing Article XVIII

The Committee has provided in the Chapter for the inclusion at a later stage of the provisions of the existing Article XVIII amended or unamended. In this connexion the Committee took note of an Australian proposal (L/2165) for amending this Article; the Article as it would appear if amendments proposed by Australia were to be accepted is reproduced in Annex II to this report.

(b) The development of trade of less-developed contracting parties with contracting parties having centrally-planned economies

The delegation of Brazil submitted certain proposals with respect to commitments which, in the view of that delegation, should be undertaken by contracting parties having centrally-planned economies. The Brazilian representative considered that these proposals, which are reproduced in Annex III to this report, should eventually find their place within Section II (Commitments) in the draft chapter. The Committee agreed that this was an important matter which would have to be resolved at a later date.

(c) Amendment to Article XXIII

Lack of time prevented the Committee from considering certain proposals concerning a possible revision of Article XXIII submitted by the delegations of Brazil and Uruguay. Both the proposals themselves and a statement by the representative of Brazil introducing them are reproduced as Annex IV to this report.

(d) Article XVII

The Committee considered a proposal submitted by the delegation of the United Arab Republic (page 7, L/2147) which was designed to ensure that, "in interpreting the provisions contained in Article XVII of the General Agreement, contracting parties should give sympathetic consideration to the need of developing contracting parties to make use of State-trading enterprises as one means of overcoming their difficulties in their early stages of

development". The Committee agreed that consideration should be given at a later date to a note to Article XVII which would make clear that nothing in the Agreement prevents a contracting party from establishing or maintaining State-trading enterprises.

7. The Committee discussed the problems concerned with identifying the less-developed contracting parties and defining the term "less-developed contracting party". Two main views emerged in the Committee. On the one hand, some members considered that it was not at this stage either necessary or feasible to attempt a definition of a less-developed contracting party and that if a problem as to identification arose such a problem could be dealt with at that time. On the other hand, some members felt that it was possible by a systematic identification of either less-developed contracting parties or developed contracting parties to resolve the matter at a later stage.

8. In submitting its report to the CONTRACTING PARTIES the Committee wishes to draw attention to the fact that, despite the shortage of time available to it, agreement on many difficult issues has been achieved and that, in its view, given more time, the remaining issues can be resolved.

ANNEX I

DRAFT CHAPTER ON TRADE AND DEVELOPMENT¹

1. The contracting parties,
 - (a) recalling that the basic objectives of the General Agreement include the raising of standards of living and the progressive development of the economies of all contracting parties, and considering that the attainment of these objectives is particularly urgent for less-developed contracting parties;
 - (b) considering that export earnings of the less-developed contracting parties can play a vital part in their economic development and that the extent of this contribution depends both on the volume of their exports and, /particularly/ on the prices received for these exports /in relation to prices paid by the less-developed contracting parties for essential imports/;
 - (c) /noting that there is a wide gap between standards of living of less-developed and other contracting parties;/
 - (d) recognizing that individual and joint action is essential to further the development of the economies of less-developed contracting parties, in order to bring about a rapid advance in the standards of living of these countries /so as to reduce the gap between their standards of living and those of the more developed contracting parties/;
 - (e) recognizing that international trade as a means of achieving economic and social advancement should be governed by such rules and procedures as are consistent with the objectives referred to in this Chapter /and should not be restricted by measures incompatible with them/;

¹The words in square brackets in this draft represent areas of disagreement. When a contracting party is specifically mentioned in a footnote, this means that the contracting party concerned was the only member of the Committee to reserve its position or to propose the retention or deletion, as the case may be, of the words in question.

²The United States reserves its position on these words.

Ad paragraph 1

Acceptance of this Chapter constitutes acceptance of the objectives set forth in amended Article I, set forth in Section A of paragraph 1 of the Protocol of 10 March 1955 Amending Part I and Articles XXIX and XXX of the General Agreement on Tariffs and Trade, even though the amendment provided for in such Section A shall not yet have become effective.

agree as follows:

I. PRINCIPLES AND OBJECTIVES

2. (a) there is need for a rapid and sustained expansion of the export earnings of the less-developed contracting parties;
- (b) there is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development;
- (c) given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products, there is need to provide in the largest possible measure more favourable access to markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular the attainment of stable, equitable and remunerative prices, which permit an increase in the export earnings of less-developed contracting parties and an expansion of world demand and which enable the less-developed contracting parties to increase imports particularly of capital goods needed for their economic development or having regard to the import requirements, particularly of capital goods; associated with their economic development;
- (d) the rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification of the structure of their economies and the avoidance of an excessive dependence on the export of primary products; there is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties;

Ad paragraph (d)

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

- (e) because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development which require close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these developing contracting parties assume in the interest of their economic development;
- (f) there is need for the Agreement to provide to the less-developed contracting parties flexibility in the application of its provisions/ or there is need to provide to the less-developed contracting parties flexibility in the application of the provisions of the General Agreement/ to enable them to use special measures as may be necessary to promote their trade and development and to meet difficulties arising from a shortage of foreign exchange in relation to growing import needs associated with their economic development;
- (g)¹ not to expect less-developed contracting parties to provide full reciprocity in negotiations with developed countries;/ or not to expect to receive reciprocity from the less-developed contracting parties;/

Ad paragraph (g)

As the less-developed countries accept a measure of discipline in their commercial policies through their participation in the General Agreement, it is to be expected that reciprocity for tariff concessions would be expressed in the increased capacity to import, generated by such concessions, rather than through reciprocal concessions by the less-developed contracting parties. The effect of this increased capacity to import on the trade of individual developed contracting parties could be balanced through the exchange of concessions among the developed contracting parties concerned.

¹As there was a difference of view as to where this paragraph should appear, it is also reproduced in paragraph 3(g) below.

Ad paragraph (g)

This paragraph would apply in the event of action under Section A of Article XVIII-B, Article XXVIII, Article XXVIII bis (Article XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol of 10 March 1955 Amending Part I and Articles XXIX and XXX of the General Agreement on Tariffs and Trade shall have become effective), Article XXXIII, or any other procedure under this Agreement.

- (h) the adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly /who, for this purpose, should take into account the urgency of development needs of the individual less-developed contracting parties/ /as well as measures already being applied by contracting parties individually or jointly toward meeting such needs/.

II. COMMITMENTS

3. To give effect to the foregoing principles and objectives, the contracting parties undertake the following commitments:

A. the developed contracting parties shall:

- (a) /to the fullest extent possible/ 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 tariffs and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;

Ad paragraph (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 of 10 March 1955 Amending Part I and Articles XXIX and XXX of the General Agreement on Tariffs and Trade shall have become effective), and Article XXXIII, as well as in connexion with other action to effect such reduction or elimination which contracting parties may be able to undertake.

- (b) /to the fullest extent possible/ refrain from introducing, or increasing the incidence of, duties or other restrictive regulations of commerce on products currently or potentially of particular export interest to less-developed contracting parties;

Ad paragraph (b)

This paragraph would apply in the event that consideration were being given to special measures permitted under Article XII, Article XVIIIB, Article XIX, Article XXIV¹, Article XXVIII, or under any other procedure permitted by this Agreement.

- (c)² to the fullest extent possible refrain from imposing new fiscal measures and take steps to eliminate the existing fiscal measures which may hamper growth of consumption of products wholly or mainly produced in less-developed contracting parties and which are applied specifically to those products;
- (d)³ make every effort, in cases where a government directly or indirectly determines the resale price of goods imported from less-developed contracting parties, to maintain trade margins at equitable levels;
- (e)⁴ 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 to the promotion of or promote appropriate international action to this end;

Ad paragraph (e)⁴

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

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

¹The EEC have a specific reservation on the inclusion of Article XXIV in this paragraph.

²The EEC have a specific reservation on this paragraph.

³Japan reserves its position on paragraph (d).

⁴Japan reserves its position both on paragraph (e) and on the interpretative note.

- (g)¹ not expect less-developed contracting parties to provide full reciprocity in negotiations with developed countries; or not expect to receive reciprocity from the less-developed contracting parties;
- (h) preferences;
- (i) without prejudice to the generality of the above provisions, in establishing and administering their agricultural policies, adjust and moderate protective measures and avoid restrictive measures in order to facilitate exports of agricultural products of particular interest to the less-developed contracting parties.

- B. The less-developed contracting parties shall in their commercial policies contribute to the expansion of world trade to the extent and in a form compatible with their current economic and financial needs, the nature of their economic and financial structures and their programmes for future development, bearing in mind the trade interests of other less-developed contracting parties. The less-developed contracting parties shall further devise other measures to promote the expansion of their trade with other less-developed contracting parties, seek outlets for their products in the markets of such contracting parties and strive to obtain from them the primary products and manufactures needed for their economic development.
- B. the less-developed contracting parties also undertake the foregoing commitments to the largest extent possible, bearing in mind the trade interests of other less-developed contracting parties.

(Because of a lack of time, the Committee did not have a full discussion of either of these proposals.)

4. Those contracting parties, the economies of which are undergoing a process of industrialization and which are seeking to avoid an excessive dependence on a limited range of primary products for their export earnings or on primary production/ but which are not less-developed contracting parties, shall endeavour, with due regard to their own development needs and policies, to apply to the maximum possible extent the obligations which other contracting parties accept under Section IIA.

¹If it is decided to place this paragraph here the interpretative notes at present reproduced under paragraph 2(g) of Section I would also appear here.

5. In the implementation of the commitments set forth in paragraph 3 above, contracting parties shall afford to any other contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of the General Agreement with respect to any matter or difficulty which may arise.

III. ARTICLE XVIII

A United States proposal (L/2136, p.3) to amend Article XVIII to permit a less-developed contracting party to impose import surcharges in place of quantitative restrictions subject to certain criteria and procedures set forth elsewhere in the Agreement was accepted in principle by the Committee.

The Committee agreed to leave aside for the time being certain proposals, notably those of Australia, concerning possible amendments to the present Article XVIII. (See Annex II).

IV. JOINT ACTION IN RELATION TO ECONOMIC DEVELOPMENT

6. The contracting parties shall collaborate jointly, within the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in this Chapter.

7. In particular, the CONTRACTING PARTIES shall:

(a)¹ where appropriate, take action, including action through international arrangements, to improve conditions of access to markets for primary products of particular interest to less-developed contracting parties and to seek to devise measures designed to stabilize and improve conditions of world markets in these products including the attainment of stable, equitable and remunerative prices for exports of such products.

(b) preferences;

(c) collaborate in analyzing 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

¹The Brazilian delegate reserves his position on this paragraph and holds the view that the text should fully reflect the text of paragraph 2(c) of Section I.

²The United Kingdom wishes to retain the words in brackets.

promote the development of export potential and to facilitate⁷ or /advising on the market prospects for products which the less-developed contracting parties are seeking to export and to facilitating/ access to export markets for the products of the industries thus developed, /and seek to estimate the impact of any such measures on the net foreign exchange position of the contracting parties concerned¹/. In this connexion they shall 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;

Ad paragraph (c)²

The collaboration under this paragraph may include the reporting of the existence of measures affecting the trade of less-developed contracting parties and the carrying out of adequate consultations in connexion with the adoption or change of such measures. Such collaboration may also include consultations in connexion with action proposed by less-developed contracting parties to promote their development and extend their export markets.

- (e) /collaborate in evaluating the effects of national and international economic integration of organizations active in production, transportation and marketing, according to the different flows of trade, on the expansion of trade and economic development of developing countries, and consider the nature and extent of possible adjustments, for long-term concerted action;/
- (f) 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 shall make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate;
- (g) 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.

¹The United Kingdom reserves its position regarding the inclusion of these words.

²United Kingdom reserves its position on this interpretative note.

Certain other proposals were submitted to the Committee but were not discussed. These were a proposal by Brazil relating to commitments to be undertaken by contracting parties having centrally-planned economies and a proposed amendment to Article XXIII, submitted by the delegations of Brazil and Uruguay. (See Annexes III and IV.)

ANNEX II

SECTION III OF CHAPTER ON TRADE AND DEVELOPMENT

ARTICLE XVIII

Proposal by Australia

I. Measures to assist less-developed contracting parties

1. The CONTRACTING PARTIES recognize that it may be necessary for less-developed contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their people, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives set out in this Chapter. The CONTRACTING PARTIES recognize further that less-developed contracting parties tend, when they are in rapid process of development, to experience balance-of-payments difficulties arising mainly from efforts to expand their internal markets as well as from instability in their terms of trade. They agree therefore that those contracting parties should enjoy the additional facilities provided in Section II of this Article to enable them:

- (a) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment or development of a particular industry;
- (b) to apply quantitative restrictions or import surcharges for balance-of-payments purposes in a manner which takes full account of the continued high level of demand for imports likely to be generated by their programmes of economic development.

2. The CONTRACTING PARTIES further agree that there may be circumstances where no measure consistent with this Agreement, including the provisions of Section II of this Article, is practicable to permit a less-developed contracting party to grant the governmental assistance required to promote the establishment or development of particular industries with a view to raising the general standard of living of its people. Special procedures are laid down in Section III of this Article to deal with those cases.

3. The CONTRACTING PARTIES further recognize that the export earnings of less-developed contracting parties which depend on the export of a small number of primary products may be seriously reduced by a decline in the sale of such commodities. Accordingly, when the exports of primary commodities by such a contracting party are seriously affected by measures taken by another contracting party, it may have to resort to the consultation provisions of Article XXII of this Agreement.

II. Duties and other trade regulations of less-developed contracting parties

4. If a less-developed contracting party considers it desirable, in order to promote the establishment or development of a particular industry with a view to raising the general standard of living of its people, to modify or withdraw a concession included in the appropriate Schedule annexed to this Agreement, it shall notify the CONTRACTING PARTIES to this effect and enter into negotiations with any contracting party with which such concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. If agreement is reached between such contracting parties, they shall be free to modify or withdraw concessions under the appropriate Schedules to this Agreement in order to give effect to such agreement, including any compensatory adjustments involved.

5. If agreement is not reached within sixty days after the notification provided for in paragraph 4 above, the contracting party which proposes to modify or withdraw the concession may refer the matter to the CONTRACTING PARTIES which shall promptly examine it. If they find that the contracting party which proposes to modify or withdraw the concession has made every reasonable effort to offer adequate compensation and reach an agreement, that contracting party shall be free to modify or withdraw the concession if at the same time it gives effect to the compensation offered.

6. In order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development, a less-developed contracting party may, subject to the provision of paragraphs 7 to 14 of this Article, control the general level of its imports by restricting the quantity or value of merchandise permitted to be imported; Provided that the import restriction instituted, maintained or intensified, shall not exceed those necessary:

- (a) to forestall the threat of, or to stop, a serious decline in its monetary reserves; or
- (b) in the case of a less-developed contracting party with inadequate monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

7. In applying these restrictions, the contracting party may determine their incidence on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of its policy of economic development; Provided that the restrictions are so applied as to avoid unnecessary damage to the commercial

or economic interests of any other contracting party and not to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and Provided further that the restrictions are not so applied as to prevent the importation of commercial samples or to prevent compliance with patent, trademark, copyright or similar procedures.

R. In carrying out its domestic policies, the contracting party concerned shall pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources. It shall progressively relax any restrictions applied under this Section as conditions improve, maintaining them only to the extent necessary under the terms of paragraph 6 of this Article and shall eliminate them when conditions no longer justify such maintenance; Provided that no contracting party shall be required to withdraw or modify restrictions on the ground that a change in its development policy would render unnecessary the restrictions which it is applying under this Section.

9. Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Section shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES as to the nature of its balance-of-payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties. The consultations shall cover all basic elements in the trade and development problems of the less-developed contracting party concerned, including consideration of structural factors which may limit the possibility of expanding its exports or maximizing its export returns. The CONTRACTING PARTIES shall endeavour to devise and suggest remedial measures to overcome the problems identified in the course of such consultations.

10. Contracting parties applying restrictions under this Section shall enter into consultations of the type provided for in paragraph 9 above with the CONTRACTING PARTIES at intervals of approximately, but not less than, two years according to a programme to be drawn up each year by the CONTRACTING PARTIES; Provided that no consultation under this sub-paragraph shall take place within two years after the conclusion of a consultation of a general nature under any other provision of this Section. In drawing up a programme of consultations under this paragraph, the CONTRACTING PARTIES shall make provision for early consultation with any less-developed contracting party which accedes to this Agreement and which, at the time of its accession, is applying restrictions.

11. The CONTRACTING PARTIES shall also invite any contracting party which is applying restrictions under this Section to enter into consultations with them at the request of any contracting party which can establish a prima facie case that the restrictions are inconsistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the CONTRACTING PARTIES have ascertained that direct discussions between the contracting parties concerned have not been successful.

12. If as a result of consultations with a contracting party under paragraphs 9, 10, or 11, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that serious damage to the trade of another contracting party is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions.

13. In consultations under this Section, the CONTRACTING PARTIES shall have due regard to the factors referred to in paragraph 1 of this Article. Determinations under paragraph 12 shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations.

14. A contracting party may apply, as an alternative or as an addition to import restrictions applied under this Section, import surcharges affecting products which are the subject of concessions included in the appropriate Schedule annexed to this Agreement. The application of such import surcharges shall, however, be subject to the conditions and procedures laid down in this Section in relation to the application of import restrictions.

III. Additional facilities to enable less-developed contracting parties to promote their economic development

15. If a less-developed contracting party finds that governmental assistance is required to promote the establishment or development of a particular industry with a view to raising the general standard of living of its people, but that no measure consistent with the other provisions of this Agreement is practicable to achieve that objective, it may have recourse to the provisions and procedures set out in this Section.

16. The contracting party concerned shall notify the CONTRACTING PARTIES of the special difficulties which it meets in the achievement of the objective outlined in paragraph 15 of this Article and shall indicate the specific measure affecting imports which it proposes to introduce in order to remedy these difficulties. It shall not introduce that measure before the expiration of the time-limit laid down in paragraph 17 or 19, as the case may be, or if the measure affects

imports of a product which is the subject of a concession included in the appropriate schedule annexed to this Agreement, unless it has secured the concurrence of the CONTRACTING PARTIES in accordance with the provisions of paragraph 20; Provided that, if the industry receiving assistance has already started production, the contracting party may, after informing the CONTRACTING PARTIES, take such measures as may be necessary to prevent, during that period, imports of the product or products concerned from increasing substantially above a normal level.

17. If, within thirty days of the notification of the measure, the CONTRACTING PARTIES do not request the contracting party concerned to consult with them that contracting party shall be free to deviate from the relevant provisions of the other Articles of this Agreement to the extent necessary to apply the proposed measure.

18. If it is requested by the CONTRACTING PARTIES to do so, the contracting party concerned shall consult with them as to the purpose of the proposed measure, as to alternative measures which may be available under this Agreement, and as to the possible effect of the measure proposed on the commercial and economic interests of other contracting parties. If, as a result of such consultation, the CONTRACTING PARTIES agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective outlined in paragraph 15 of this Article, and concur in the proposed measure, the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to apply that measure.

19. If, within ninety days after the date of the notification of the proposed measure under paragraph 16 of this Article, the CONTRACTING PARTIES have not concurred in such measure the contracting party concerned may introduce the measure proposed after informing the CONTRACTING PARTIES;

20. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the contracting party shall enter into consultations with any other contracting party with which the concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. The CONTRACTING PARTIES shall concur in the measure if they agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective set forth in paragraph 15 of this Article, and if they are satisfied:

- (a) that agreement has been reached with such other contracting parties as a result of the consultations referred to above, or
- (b) if no such agreement has been reached within sixty days after notification provided for in paragraph 16 has been received by the CONTRACTING PARTIES, that the contracting party having recourse to this Section, has made all reasonable efforts to reach an agreement and that the interests of other contracting parties are adequately safeguarded.

The contracting party having recourse to this Section shall thereupon be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure.

21. Nothing in the preceding paragraphs of this Section shall authorize any deviation from the provisions of Articles I, II, and XIII of this Agreement. The provisos to paragraph 7 of this Article shall also be applicable to any restriction under this Section.

IV. The application of the provisions of Section III to other contracting parties in the process of development

22. A contracting party which is not a less-developed contracting party but the economy of which is nevertheless still in the process of development and which is dependent in large measure on a relatively small number of primary commodities for its export earnings desiring, in the interest of the development of its economy, to introduce a measure of the type described in paragraph 15 of this Article in respect of the establishment or development of a particular industry may apply to the CONTRACTING PARTIES for approval of such measure. The CONTRACTING PARTIES shall promptly consult with such contracting party and shall, in making their decision, be guided by the considerations set out in paragraph 18 of this Article. If the CONTRACTING PARTIES concur in the proposed measure the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the provisions of paragraph 20 shall apply. Any measure applied under this paragraph shall comply with the provisions of paragraph 21 of this Article.

23. A contracting party to which the provisions of the preceding paragraph apply may have resort to the consultation provisions of Article XXIII of this Agreement when the exports of primary commodities by such contracting party are seriously affected by measures taken by another contracting party.

ANNEX III

Amendment Proposed by Brazil

DEVELOPMENT OF TRADE OF LESS-DEVELOPED CONTRACTING PARTIES WITH
CONTRACTING PARTIES HAVING CENTRALLY-PLANNED ECONOMIES

Contracting parties, with centrally-planned economies, in the formulation and carrying out of their future development 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 make 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.

Note: The above provisions concern the limited aspect of trade between less-developed countries and industrialized countries with centrally-planned economies and do not prejudice the urgent formulation of general rules of a more ample character, to discipline trade between countries with different social and economic systems.

ANNEX IV

ARTICLE XXIII

Amendment Proposed by Brazil and Uruguay

In situations provided for by Article XXIII of this Agreement, involving contracting parties recognized as under-developed countries, the CONTRACTING PARTIES shall take prompt action on any representation or proposal made by a contracting party recognized as an under-developed country, delegating the necessary powers to a permanent organ of arbitration of ad hoc composition, and shall immediately take the necessary measures in the light of the decisions or recommendations of the said organ of arbitration.

In examining the case referred to it, the organ of arbitration shall take due account of:

(a) The damage incurred through the incidence of the measures complained of upon the growth of the export earnings and economic effort of the contracting party recognized as an under-developed country;

(b) The means available to the contracting party whose measures are complained of to make good the damage inflicted by their application;

(c) The relative effects of such remedial measures as the injured contracting party may take in relation to the contracting party whose measures have nullified or impaired the benefits deriving from the Agreement which the former contracting party is entitled to enjoy.

If the measures complained of have been applied by a contracting party recognized as a developed country, the organ of arbitration may recommend, in particular, suitable financial compensation.

If, when the question is under examination, the CONTRACTING PARTIES fail to make an appropriate recommendation within a period of months after the initial representation was made, or if the contracting party to which the representation was addressed - on the ground that benefits deriving from the Agreement have been nullified or impaired - fails to comply, within a period to be fixed by the CONTRACTING PARTIES but not to exceed months, with the recommendation adopted, the injured contracting party - recognized as an under-developed country - shall be automatically released from its obligations under the Agreement towards the contracting parties whose action was the subject of the recommendation, and may take all such measures as it deems appropriate to secure due compensation for the damage sustained.

In the event that measures are adopted by developed countries such as to contravene the provisions of the General Agreement and seriously to impair the import capacity of a less-developed country, the latter shall be released from its obligations under the General Agreement, towards the contracting party acting contrary to the provisions of the General Agreement, for the purpose of taking appropriate remedial or retaliatory measures pending the examination of the case by the CONTRACTING PARTIES.

Without prejudice to the provisions of the preceding paragraph, in the event that a recommendation by the CONTRACTING PARTIES is not applied within the prescribed time-limit of months, the CONTRACTING PARTIES shall decide what collective measures shall be taken to ensure compliance with the Agreement.

STATEMENT BY THE REPRESENTATIVE OF BRAZIL
ON ARTICLE XXIII

Mr. Chairman, I will try not to be too long on this problem; the analysis of Article XXIII might take hours. I would refer to some of the basic ideas contained in the report of the Panel on the Uruguayan Recourse to Article XXIII which is document L/1923 of 15 November 1962. This contains a practical interpretation of Article XXIII as it is applied now. On that occasion Brazil had the opportunity of making before the CONTRACTING PARTIES some remarks which were circulated as document L/1940 and which contained the basic reasoning behind the proposal we are making now. Article XXIII, as we all know, should be the main protection of the contracting parties in the case of the nullification or impairment of the benefits it is supposed to receive under the General Agreement. It is a very wide Article because it covers not only the question of non-fulfilment of commitments under the Agreement, and the question of measures fully inconsistent with the Agreement, but it also covers the possibility of other actions that might hurt a contracting party - cause economic damage to it - and which nevertheless are consistent with the General Agreement. We do not intend to change the definition of Article XXIII or to tamper with its spirit. We only wish to make the procedure easier to follow, less cumbersome, and to transfer to paper some of the procedures that have been established in practice but which are not very clear. We have taken into special consideration the question of nullification or impairment of the benefits accruing to a less-developed contracting party. We are dealing with a chapter for the benefit of less-developed contracting parties. We believe that Article XXIII as it is drafted now can answer very well the needs of mutual compensation among the developed contracting parties for any action causing nullification or impairment. The developed contracting parties are more or less equal even though equality is not exact. They can deal with each other and they have bargaining power that is more or less comparable, so they can avail themselves of Article XXIII and can protect their rights in using its provisions. Now, the less-developed contracting parties do not have the same freedom of action. It is not a de jure problem, it is a practical problem. This is why Article XXIII has not been a very popular Article for the less-developed countries. There are very few cases in which this Article has been used. The latest case is that of Uruguay, and it has not been quite solved yet. The CONTRACTING PARTIES have not reached the ultimate limit of all the measures contemplated in the Article.

Now what do we intend to do in this? In our first paragraph we introduce the expression "prompt attention". We believe that in the case of nullification or impairment of benefits accruing to a less-developed contracting party, this should receive priority and we should give prompt attention to any representation or proposal. There should be, perhaps, an amendment to this text because when I say "CONTRACTING PARTIES" here I mean the CONTRACTING PARTIES directly or through the Council. We do not know how one should express it, but whenever contracting parties are meant they should be able to delegate action to the Council to act when they are not in session. Contracting parties shall give prompt attention to all representations and proposals formulated by contracting parties, recognized as being less-developed, and delegate the necessary powers to a permanent arbitration body. We have the present procedure of setting up a panel to take care of any practical case. We propose to make the panel permanent, that is, it should exist on paper. We do not mean to have some people locked up in a room waiting for a request to come up. It should be in our opinion something like the Arbitration Court established by the international treaties of the Hague in 1899; i.e., a list of people available to take part in any panel. Perhaps this could be solved by a later decision of the CONTRACTING PARTIES. The list of the representatives accredited to the Council might take the place of such a list and any country requesting action by the CONTRACTING PARTIES would request that a panel be set up and would nominate a number of representatives. Perhaps each party to the dispute might be able to nominate two members of the panel and these two would choose the chairman. This is the regular procedure in the Court of the Hague. If they did not agree on the chairman each of them might designate another member and those two would agree on the chairman. This is something to be solved later. What is important is the fact that an arbitration body should be available at all times, the composition of which would be appropriate for each case. This arbitration body would take the necessary measures by delegation of CONTRACTING PARTIES and make rulings or recommendations. Any decision, or the rulings or recommendations of this arbitration body should take into consideration the fact that the contracting party suffering the damage is a "less-developed" contracting party. Measures that cause a loss of a million dollars to a less-developed contracting party would mean something to its economy. On the other hand retaliatory action taken by this less-developed contracting party that might diminish the import capacity of a large developed country by one million dollars would mean less than a mosquito bite. There is a distinct difference in their bargaining power and in the possibility of taking any action, therefore, the arbitration body would take into consideration the importance of the damage to the gross export receipts and the development efforts of the contracting parties. Some of the measures undertaken that result in nullification or impairment of benefits accruing to a less-developed contracting party might take place at a certain moment when its development

efforts were concentrated on some very important projects, and the adoption of these measures might result in the cancellation of this project and enormous damage to its development effort. This should be duly taken into consideration. The panel would also take into consideration - see paragraph (b) - the means available for the contracting party to overcome the damage. The said contracting party might not have anything to do to find compensation or protection. Some measures that might not present prima facie evidence of causing great damage, might actually cause this damage because there would be no means available to compensate for it. Under (c) we would consider the relative effects of any compensatory measures on the developed contracting party that caused the damage. Under Article XXIII we have to consider the appropriateness of the compensatory measures taken by the less-developed contracting party that suffered nullification or impairment. If, as we pointed out, the retaliatory action was exactly the same as the initial action, it might not have any effect on the economy of the country that caused the damage. Therefore the effects of any measures adopted by the less-developed contracting party on the economy of the country that caused the damage, should also be considered. What we mean to say under (a), (b) and (c) is that the difference in economic structure and economic power between two countries that are parties to the dispute should be weighed both in regard to the measure that caused nullification or impairment, or to the retaliatory or compensatory action taken by the party that was hurt. We also include the new idea of financial compensation. We know that the recommendations of the panel may start by the recommendation (1) of the withdrawal of the measure; and then by the provision of (2) adequate compensation, and finally by authorization of retaliatory measures. In this last we include the possibility that some adequate financial compensation might represent something equivalent to the initial damage that caused nullification or impairment. A country that was hurt by a trade measure might be compensated by a soft loan, for instance. We do not actually say that compensation should take this form but we have to leave open this possibility. In the last paragraph of this page we provide for a time period for the examination of the matter. This is a very important problem. The procedures under Article XXIII may drag on for so long that they may lose all interest. This is why, perhaps, most less-developed countries have never had recourse to Article XXIII. We say that, after an examination of the matter, contracting parties have to adopt a recommendation within a period of We leave open the number of months, but we believe it should be three months - after the initial representation. When the initial representation comes in, the first time period starts running, so the CONTRACTING PARTIES have to take action within it. If they do not take action within that period the less-developed contracting party is liberated of its obligations under the Agreement. If the CONTRACTING PARTIES do take action and there is a recommendation by the arbitration panel, the second time period comes into effect. If the country affected by the recommendation does not take action within a number of months, the less-developed

contracting party is also liberated of its obligations under the Agreement in order to take compensatory or retaliatory action. This is mere justice, because the CONTRACTING PARTIES cannot force a country to adhere to the letter of the Agreement when benefits accruing to it are not being respected. What this Article means is that in order to restore the bargaining power of the country suffering from nullification or impairment, and in order to permit it to protect itself we have to liberate it from obligations arising from its membership of the General Agreement toward the country who caused the damage. This is the last possible measure, when everything else has failed. If the CONTRACTING PARTIES do not act within the specified period, or if the country that caused the damage does not obey the recommendations, the least that the CONTRACTING PARTIES can do is to liberate the victim from its obligations so that it can act in its own defence.

In the next paragraph, we provide for a more specific case of nullification or impairment, where measures taken by developed countries are contrary to the provisions of the General Agreement and seriously inhibit the import opportunities of a less-developed country. This does not cover the full extent of Article XXIII and it does not provide for the "other situations". This would be the case of "prima facie" flouting of the General Agreement and adoption of measures that are inconsistent with it. In that case, when such measures actually result in serious damage to the import opportunities of a less-developed country, the urgent need for this country to take protective action should be recognized by liberating it from the provisions of the General Agreement in order to take compensatory or retaliatory action whilst awaiting the examination of the matter by the CONTRACTING PARTIES. A country would not be judge in its own case - we only intend to expedite the compensatory or retaliatory action while awaiting final decision by the arbitration panel and the CONTRACTING PARTIES. If the time periods are adhered to, this should be a matter of only a few months. This is nothing more than an extension to Article XXIII of the procedure of Article XIX in which, under special situations, a country is liberated from some of the commitments of the General Agreement in order to protect itself, when imports are increased under such conditions as to cause, or threaten, serious injury to domestic producers. This means that a country should be able to take action whilst awaiting judgment.

The last paragraph covers the case for collective action. Article XXIII is not restricted to individual action that does not conflict with the spirit of the General Agreement; there may or may not be such a conflict. Nevertheless, the compensatory or retaliatory action taken by the less-developed contracting party that suffered the damage is not enough to restore its economic situation. It may need collective action, it may need to resort to CONTRACTING PARTIES in order to ask for authorization to adopt the surcharges,

or something similar, or it may ask that some special recommendation be made collectively in order to restore the balance that was destroyed by the action causing nullification or impairment. We believe the question of Article XXIII should be part of a section of the Model Chapter and it should apply to nullification or impairment caused by developed contracting parties to less-developed contracting parties.

