

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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RELEVANCE OF THE ARTICLES AND INSTRUMENTS OF GATT TO THE PROCESS OF STRUCTURAL ADJUSTMENT

Note by the secretariat

1. The work programme of the Working Party on Structural Adjustment and Trade Policy, as agreed by the Council at its meeting of 11 June 1981, includes an analysis and discussion of the relevance of the Articles and instruments of GATT, including Part IV, to the process of structural adjustment. To facilitate this task, and without claiming to be exhaustive, this note attempts to identify the main provisions of the General Agreement and of other GATT instruments that have a bearing on structural adjustment. In addition, the Annex contains references to some past GATT activities that may cast some light on the way in which contracting parties have interpreted the relevance of certain GATT provisions for the process of structural adjustment.

2. As indicated in its preamble, the General Agreement is based on a recognition that the reduction or elimination of barriers to trade can contribute to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods. The attainment of these objectives in turn implies appropriate changes in economies in terms of production structures and the use made of resources, i.e. an ongoing process of structural adjustment.

3. In general, it could be said that in providing a framework for negotiating the liberalization of the conditions of international trade, and rules for the maintenance of that liberalization, the General Agreement and other GATT instruments have been powerful forces making for structural adjustment in the direction of more efficient allocation and use of resources. Likewise, it could be maintained that the process of structural adjustment is impeded to the extent that countries protect their domestic industries through the use of tariff or non-tariff measures inconsistently with the objectives or provisions of the GATT.

4. The most specific relationships between the provisions of the General Agreement and of GATT instruments, on the one hand, and structural adjustment, on the other, could be conveniently examined with reference to:

- (i) GATT provisions and instruments designed to achieve the lowering of barriers to trade;

- (ii) provisions aimed at maintaining and consolidating the reduction of trade barriers achieved;
- (iii) provisions governing departures from the GATT rules maintaining and consolidating the reduction of trade barriers;
- (iv) provisions in the General Agreement or other GATT instruments which explicitly deal with structural adjustment.

The GATT has, of course, to be looked at as a whole and certain provisions may have relevance to more than one of these headings. In addition, there may be provisions in the GATT which do not fall specifically under any of the above headings, but which may be relevant to the concept of structural adjustment. Thus, Article XXIV of the GATT is based on the recognition that freedom of trade may be increased through the closer integration of the economies of countries parties to free trade areas or customs unions.

GATT provisions and instruments designed to achieve
the lowering of barriers to trade

5. As stated in its preamble, the General Agreement has as one of its main objectives the "substantial reduction of tariffs and other barriers to trade". Article XXVIII bis of the General Agreement provides for the CONTRACTING PARTIES to sponsor tariff negotiations from time to time. In pursuance of this, the CONTRACTING PARTIES have launched successive rounds of trade negotiations. Concessions made are bound in the Schedules annexed to the General Agreement, as provided for in its Article II.

6. Article XI requires the elimination of quantitative restrictions on imports and exports except where these are permitted on certain specified grounds. This Article has provided the legal basis on which contracting parties have been required to remove quantitative restrictions maintained by them. In addition, the liberalization of non-tariff measures has also been taken up in rounds of trade negotiations sponsored by the CONTRACTING PARTIES, especially in the Tokyo Round. In this context, it might be noted that the Agreement on Government Procurement and the Agreement on Trade in Civil Aircraft have specific trade liberalization provisions. The Agreement on Government Procurement applies the principles of national treatment and non-discrimination to certain government procurement contracts and provides for further negotiations aimed at extending the coverage of the Agreement. Under the Agreement on Trade in Civil Aircraft, signatories undertake commitments aimed at the elimination of duties and, to the fullest extent possible, the reduction or elimination of trade restricting or distorting effects.

7. The provisions of Part IV of the General Agreement and of the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries have a relevance for the impact that GATT provisions on trade liberalization may have for structural adjustment. Article XXXVI:8, in conjunction with the relevant paragraphs of the Decision, lays down certain ground rules for reciprocity in trade negotiations between developed and less-developed contracting parties. The Decision also contains provisions concerning the fuller participation of less-developed countries. In the principles and objectives of Part IV contained in Article XXXVI, the contracting parties agree that 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, and that 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. Under Article XXXVII:1, the developed contracting parties agree to the fullest extent possible to accord high priority to the reduction and elimination of barriers to such products, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and processed forms.

Provisions aimed at maintaining and consolidating
the reduction of trade barriers achieved

8. Most of Part II of the General Agreement and also of the non-tariff measure codes negotiated in the Tokyo Round can be seen as important in this respect. Without attempting to be exhaustive the following might be more particularly mentioned:

- Article II concerning the binding of tariff concessions;
- Article III on national treatment on internal taxation and regulation;
- Article VII on valuation for customs purposes together with the Agreement on Implementation of Article VII which aims to provide a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary and fictitious customs values;
- Article XI on the general elimination of quantitative restrictions;
- The Agreement on Import Licensing Procedures which aims to ensure that import licensing procedures do not in themselves impede international trade;
- The Declaration of 19 November 1960 Giving Effect to the Provisions of Article XVI:4; and the provision of Article 9 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, under which non-developing country signatories agree not to grant export subsidies on products other than certain primary products;
- Article XVII which, inter alia, requires State enterprises or privileged enterprises to make purchases or sales involving either imports or exports solely in accordance with commercial considerations;
- The Agreement on Technical Barriers to Trade which aims to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and methods for certifying conformity with technical regulations and standards, do not create unnecessary obstacles to international trade;

- The GATT provisions on notification, consultation, dispute settlement and surveillance and the Understanding adopted by the CONTRACTING PARTIES in November 1979 on this subject; a contracting party may have recourse to the consultation and dispute settlement procedures of Articles XXII and XXIII if it considers that a benefit accruing to it directly or indirectly under the General Agreement is being nullified or impaired or that the attainment of any objective of the General Agreement is being impeded as a result of: the failure of another contracting party to carry out its obligations under the General Agreement; or the application by another contracting party of any measure, whether or not it conflicts with the provisions of the General Agreement; or the existence of any other situation.

- the "standstill" provisions regarding trade barriers affecting the exports of developing countries as contained in Article XXXVII:1;

Provisions governing departures from the main GATT rules

9. The main thrust of certain safeguard measures as far as structural adjustment is concerned is that the measures should be temporary and not employed in such a way as to give rise to or sustain fundamentally uncompetitive structures that would require the long-term maintenance of levels of protection inconsistent with a contracting party's GATT obligations.

- (i) Under Articles XII and XVIII:B relating to restrictions to safeguard the balance of payments, contracting parties applying such restrictions are required to progressively relax them as the conditions which gave rise to them improve. Moreover, in carrying out their domestic policies, they are expected to have due regard to the need for maintaining or restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of avoiding an uneconomic employment of productive resources (Article XII) or of assuring an economic employment of productive resources (Article XVIII:B). The Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted by the CONTRACTING PARTIES in November 1979, inter alia, reaffirms that restrictive import measures taken for balance-of-payments purposes should not be taken for the purpose of protecting a particular industry or sector and expresses the conviction of the CONTRACTING PARTIES that the stimulation of new investments that would not be economically viable in the absence of such measures should be avoided.

- (ii) Under Article XIX, emergency action on imports of particular products is limited to the extent and for such time as may be necessary to prevent or remedy the serious injury, or threat thereof, that gave rise to the action. In the Tokyo Round, the examination of the adequacy of the multilateral safeguard system considering particularly the modalities of Article XIX that was undertaken considered a number of aspects of particular relevance to structural adjustment, including possible requirements concerning degressivity and time-limits and whether safeguard action should be linked with obligations regarding adjustment

assistance. Discussions and negotiations are continuing in the Committee on Safeguards, taking into account the work already done, with the aim of elaborating supplementary rules and procedures regarding the application of Article XIX, in order to provide greater uniformity and certainty in the implementation of its provisions.

10. Under GATT provisions concerning anti-dumping and countervailing duties, export subsidies and import restrictions on agricultural or fishery products, the main aim of the rules is to ensure that the actions permitted do not artificially distort competition:

- (i) Under Article VI of the General Agreement, contracting parties may apply countervailing or anti-dumping duties where dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry or to retard materially the establishment of a domestic industry. The Article makes clear that the amount of the anti-dumping or countervailing duty should not be greater than the margin of dumping or subsidy in respect of the product concerned. Important objectives of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade and of the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade are to ensure that anti-dumping and countervailing practices respectively do not constitute unjustifiable impediments to international trade.
- (ii) Article XI:2(c) of the General Agreement allows import restrictions on any agricultural or fisheries product to be employed where these are necessary to the enforcement of certain governmental measures. A condition of the application of any such restrictions is that they should not be such as to reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions.
- (iii) Although the General Agreement requires contracting parties to seek to avoid the use of subsidies on the export of primary products, it does not prevent a contracting party from employing such subsidies. However, it does stipulate in paragraph 3 of Article XVI that such subsidies "shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade" in the product concerned. Under the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement, signatories agree to a more precise definition of the ways in which export subsidies on primary products may give the exporting country more than an equitable share of world trade. The position concerning domestic subsidies is examined in paragraphs 14 and 15 below.

11. Certain other GATT provisions enable contracting parties to raise tariffs or other barriers to trade on a more permanent basis and hence assume more lasting changes in production structures:

- (i) Article XXVIII enables a contracting party to withdraw or modify a tariff concession through a process of negotiation and agreement with other contracting parties with negotiating rights on that concession. Paragraph 2 of the Article states that "in such negotiations and agreement, which may include provision for compensatory adjustment with respect to other products, the contracting parties concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in the General Agreement prior to such negotiations". Thus, while structural adjustment in individual sectors may be affected, the overall impact of trade commitments on the process of structural adjustment is to be maintained.
- (ii) Article XVIII enables, under certain conditions, a less-developed contracting party, in order to promote the establishment of a particular industry, to modify or withdraw a concession included in its Schedule (Article XVIII:A) or, where no measure consistent with the other provisions of the General Agreement is practicable, to deviate from the other provisions of the General Agreement to the extent necessary (Article XVIII:C). Under the Decision of the CONTRACTING PARTIES of 28 November 1979 on Safeguard Action for Development Purposes, the CONTRACTING PARTIES agree that a less-developed contracting party may also use these provisions to modify or extend existing production structures with a view to achieving fuller and more efficient use of resources in accordance with the priorities of its economic development. The Decision also provides for increased flexibility in the use of Section C of Article XVIII. Section D of Article XVIII enables other contracting parties, the economies of which are in the process of development, to apply to the CONTRACTING PARTIES to use measures not consistent with other provisions of the General Agreement in respect of the establishment of a particular industry.

GATT Articles and instruments that explicitly
deal with structural adjustment

12. In Article XXXVII:3(b) of Part IV of the General Agreement, developed contracting parties undertake to "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". The interpretative note to this provision indicates that the "other measures" mentioned "might include steps to promote domestic structural changes, to encourage the consumption of particular products, or to introduce measures of trade promotion".¹

¹The Annex to this document refers to the work of the Group of Experts on Adjustment Assistance Measures established by the Committee on Trade and Development in pursuance of its responsibilities vis-a-vis Part IV of the General Agreement.

13. The basic objectives of the Arrangement Regarding International Trade in Textiles are to achieve the expansion of trade, the reduction of barriers to such trade and the progressive liberalization of world trade in textile products, while at the same time ensuring the orderly and equitable development of this trade and the avoidance of disruptive effects in individual markets and on individual lines of production in both importing and exporting countries. Paragraph 4 of Article 1 states that:

"Actions taken under this Arrangement shall not interrupt or discourage the autonomous industrial adjustment processes of participating countries. Furthermore, actions taken under this Arrangement should be accompanied by the pursuit of appropriate economic and social policies, in a manner consistent with national laws and systems, required by changes in the pattern of trade in textiles and in the comparative advantage of participating countries, which policies would encourage businesses which are less competitive internationally to move progressively into more viable lines of production or into other sectors of the economy and provide increased access to their markets for textile products from developing countries."

In paragraph 5 of Article 1, it is stated that the application of safeguard measures under the Arrangement should assist any process of adjustment which would be required by the changes in the pattern of world trade in textile products.¹

14. The Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade aims to ensure, *inter alia*, that the use of subsidies does not adversely affect or prejudice the interests of any signatory and that relief is made available to producers adversely affected by the use of subsidies within an agreed international framework of rights and obligations. The Agreement also aims to bring more transparency to the practice of granting subsidies in general and provides for procedures aimed at the speedy, effective and equitable resolution of disputes, including through the establishment of a consultation and conciliation procedure.

15. Under Article 8 of the Agreement, signatories recognize that subsidies may cause adverse effects to the interests of other signatories and agree to avoid causing, through the use of any subsidy, injury to the domestic industry of another signatory, nullification or impairment of the benefits accruing directly or indirectly to another signatory under the General Agreement or serious prejudice to the interests of another signatory. Under Article 11 of the Agreement, signatories also recognize that subsidies other than export subsidies are widely used as important instruments for the promotion of social and economic policy objectives and do not intend to restrict the right of signatories to use such subsidies to achieve these and other important policy objectives which they consider desirable. Among such objectives noted is:

¹Reference is made in the Annex to this document, to the discussions on structural adjustment under the auspices of the Textiles Committee.

"to facilitate the restructuring, under socially acceptable conditions, of certain sectors, especially where this has become necessary by reason of changes in trade and economic policies, including international agreements resulting in lower barriers to trade."

The other objectives cited in this connexion may also have relevance to structural adjustment, being concerned with regional policy, manpower policies, research and development, development plans of developing countries and redeployment of industry in order to avoid congestion and environmental problems. In Article 14 of the Agreement which provides for greater flexibility for developing countries in the use of subsidies, signatories recognize that subsidies are an integral part of economic development programmes of developing countries.

ANNEX

Past activities of GATT in the area of structural adjustment

1. The question of structural adjustment and adjustment measures has been discussed in various GATT bodies. In November 1962, reference was made to these questions in the Programme of Action proposed by a number of developing countries in Committee III. The Committee on Trade and Development, in continuation of the work initiated in Committee III, set up a Group of Experts on Adjustment Assistance Measures to report on the measures being applied, or proposed to be applied, by the industrialized countries for assisting adjustments in the changing structure and pattern of production, so as to permit an expansion of international trade in products of interest to less-developed countries and to provide larger opportunities for imports from these countries. A summary of the work of the Group of Experts, which held a number of meetings between 1965 and 1972, and of the discussions in the Committee on Trade and Development itself, is contained in Annex 7 of L/5086.

2. In the field of textiles, the question of adjustment assistance measures has been an issue of discussion, first in the Cotton Textiles Committee and later in the Textiles Committee established under the Multifibre Arrangement. Developing countries have advocated that instead of resorting to protective measures developed countries should readapt their industries through the use of adjustment assistance measures. Also, the Group of Three in its first report addressed itself to the question of accelerating the pace of the readaptation process in the textiles industries of developed countries in the context of the expansion of competitive exports from developing countries. During the life of the MFA, a number of reports have been made on adjustment assistance measures maintained by participating countries (see COM.TEX/W/25, 36 and 65). Most recently, in December 1979, the Textiles Committee established a Working Group on Adjustment Measures to carry out a detailed examination of such measures with reference to the objectives set out in Article 1(4) of the MFA. The report of the Working Group is contained in COM.TEX/22. The Working Group compiled also a summary of information (COM.TEX/21), based on replies from participating countries, on the status of the textiles and clothing industry, on expansion and reorganization of the industry, on adjustment measures and policies relevant to Article 1(4) and on the access to markets made possible by the impact of autonomous adjustment processes as well as government adjustment measures and policies. The Textiles Committee adopted the report in May 1981 and requested delegations to co-operate in keeping the information in the summary as complete and up-to-date as possible in order to enable the Committee to assess the situation periodically.

3. The problem of structural adjustment has also come up in the MTN in the discussions relating to import restrictive measures, in particular safeguard actions taken under Article XIX of the General Agreement. References to the adjustment of domestic industries to import competition are contained in proposals concerning the safeguards issue tabled by the United States (MTN/SG/W/11), by the European Communities and the United States jointly (MTN/INF/12), and in the last secretariat working draft of a possible safeguards code circulated in April 1979 (MTN/SG/W/47).

4. It should also be mentioned that the Joint Working Group on Import Restrictions, in its report of March 1971 (L/3391/Rev.1), and the Agriculture Committee, in the report of its Working Group 3 set up in 1970 (Annex III to L/3472), touched upon the problem of structural adjustment and related assistance measures.