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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Trade in Agriculture

DRAFT REPORT OF THE COMMITTEE ON TRADE IN AGRICULTURE

NOTE BY THE SECRETARIAT

At its meeting on 30 November 1983, the Committee invited the secretariat to prepare a report on the Committee's discussion so far, highlighting the essential aspects which had emerged from the debate, and to have it distributed by 15 February 1984. In accordance with this invitation, the secretariat has prepared the present note. The document should form the basis for the Committee's work at its meeting in March 1984, at which time the Committee will give preliminary consideration to conclusions to be drawn, (AG/1 and AG/3). It is recalled that full records of the discussions in the Committee in 1983, were contained in the Minutes of the meetings and were circulated as documents AG/M/1 to 3.

Introduction

1. The Committee on Trade in Agriculture was constituted by the Council on 26 January 1983, pursuant to the Ministerial Declaration (C/M/165).

2. The Committee held four meetings in 1983, in March, June, October and November. At its first meeting in March 1983, the Committee adopted a programme of work (AG/1), based on and to be carried out according to the relevant provisions of the Ministerial Declaration as regards trade in agricultural products, (L/5424, SR. 38/9 and Corr.1, and C/M/165). The Committee held a second meeting in June 1983, when it elected as its Chairman, Mr. Aert de Zeeuw (Netherlands), confirmed its programme of work and discussed problems related to the establishment of documentation and the organization of further work.

3. The substantial work of the Committee had been organized in two parts:

Exercise A. Examination of trade measures affecting market access and supplies, including those maintained under exceptions or derogations, (examination referred to under paragraph 1 (i) and (iii) on page 9 of L/5424); and

Exercise B. Examination of the operation of the General Agreement as regards subsidies, especially export subsidies, and including other forms of export assistance (examination referred to under paragraph 1(ii) on page 9 of L/5424).

4. As regard documentation, the Committee noted that for the purpose of carrying out its work, an improved and unified system of notifications should be introduced so as to ensure full transparency (L/5424, paragraph 3 on page 9). Accordingly, the up-dating and completion of existing documentation, notably the Agricultural Documentation, the AG/DOC/- series, was continued according to previously established practice. Furthermore, summarized information on measures affecting trade in agricultural products was compiled concerning forty-five countries, and according to a format requesting, inter alia, reference to GATT provisions (AG/FOR- series). In order to assist the Committee in its work on Exercise B, the Secretariat provided an analytical note regarding Article XVI (AG/W/4). A complete list of documentation made available to the Committee was contained in a Checklist of Documents (AG/W/3/Rev.1 and Corr.1).

5. At its meetings in October and November 1983, the Committee examined trade measures affecting market access and supplies, including those maintained under exceptions or derogations, (Exercise A) applied by the European Communities and the following countries: Argentina, Australia, Austria, Bangladesh, Brazil, Canada, Chile, Colombia, Egypt, Finland, Hungary, India, Indonesia, Israel, Ivory Coast, Jamaica, Japan, Kenya, Republic of Korea, Malaysia, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Portugal, Romania, South Africa, Spain, Sweden, Switzerland, the United States, Uruguay and Yugoslavia. Furthermore, the Committee also started its examination of the operation of the General Agreement as regards subsidies, especially export subsidies, including other forms of export assistance, (Exercise B). In the following paragraphs, essential aspects which emerged from the Committee's discussions under Exercises A and B are highlighted. It should be noted that the two exercises were interlinked, notably with respect to the consideration of export assistance measures, and for practical purposes the debate on such measures has, in this note, mainly been dealt with in the part covering Exercise B.

Exercise A. Examination of trade measures affecting market access and supplies, including measures maintained under exceptions and derogations.

General Observations

6. Throughout the Committee's examinations it was noted that many if not most of the measures maintained were intimately linked to the pursuit of a range of domestic policy objectives. Domestic price stabilization and income support were frequently invoked as providing the basic rationale for applying trade restrictive measures at the frontier. The maintenance of certain levels of production, whether for strategic or other reasons was also considered to be of fundamental importance in the conduct of domestic agricultural support and related trade policies.

7. At the same time it was noted that in many cases the result of these policies had been to stimulate domestic production under conditions which had adversely affected the inter-relationships between production, consumption and trade, as well as the maintenance of the degree of trade liberalization achieved in previous negotiations. In particular it was noted that increased levels of production and self sufficiency had resulted in diminished access to a number of markets and had aggravated conditions of competition in world markets generally. It was noted that trade had nevertheless continue to expand. There were, however, divergent views expressed regarding the conditions under which this expansion had taken place in terms of the objectives and principles of the General Agreement and of contracting parties' perceptions of the overall balance of rights and obligations.

8. It was noted that a basic lack of symmetry and balance had developed in, or had been accentuated by the way in which GATT rules relating to import restrictions and export subsidies had been interpreted and applied. It was also noted that the fact that significant areas of trade remained outside the effective reach of the provisions of the General Agreement, under waivers and other derogations and exceptions, had affected the overall balance of rights and obligations and the observance of GATT obligations generally. In this regard the view was expressed that the impact of other restrictive trade policies on international markets had made it difficult for domestic agricultural policies to be conducted more extensively under GATT rules as currently interpreted and applied.

9. In this general context, the view was expressed that greater adherence to multilateral rules and disciplines under the GATT by contracting parties was, inter alia, dependent on a fuller range of measures being brought under more effective international disciplines. It was also noted that greater liberalization of tariff and non tariff measures was equally important if progress was to be made towards lasting solutions to problems of trade in agriculture. One of the principal issues that may therefore need to be focused on in this general context is the nature of the conditions that would make it

possible to bring substantially all measures affecting trade in agriculture under more operationally effective GATT rules and disciplines. In this regard it was stressed that the maintenance of an overall balance of rights and obligations under the General Agreement was a matter of fundamental importance which had to be taken fully into account by the Committee.

10. It was also noted in the examination of developing contracting parties that the problems they faced were in a number of areas significantly different from those confronting many developed countries. In this regard the view was expressed that these differences and others arising in the context of development should be clearly borne in mind when the Committee reaches the stage of examining problems of a more general nature.

11. At various stages in its examination of the measures affecting trade in agriculture, suggestions were made regarding the possibilities of assessing the impact of measures or trade regimes, either generally in terms of the evolution of imports and exports or in quantitative terms. It was also suggested that as levels of support were a major determinant of the scale of import and export measures required to protect domestic support systems, consideration might be given to the impact of measures and their assessment from this point of view.

12. Points emerging from the Committee's examination of measures affecting market access and supplies are covered under the following headings.

Tariffs

13. Tariff bindings and tariffs generally occupied an important place in most of the regimes examined. It was apparent, however, that most tariffs were not extensively bound and that there were significant disparities as regards the level of tariff bindings as between individual contracting parties. Among the factors mentioned as having a bearing on the extent to which countries relied on bound tariffs as the principal form of protection were: unstable conditions in world markets, the extensive resort by other countries to export subsidies and non-tariff measures; and the perceived need to resort to measures other than tariffs to protect the operation of domestic price or income support policies. Some countries with relatively low levels of tariff bindings indicated that lack of success in securing concessions in the agriculture sector had not warranted more extensive reciprocal binding of their own tariffs. It was also indicated that relatively low levels of tariff bindings were influenced by considerations relating to the economic development needs of the countries concerned.

14. As well as disparities regarding levels of bindings amongst contracting parties examined, it was noted that there tended to be less extensive bindings of tariffs on the major agricultural commodities and relatively more bindings on other items including some processed agricultural products. There were of course some important exceptions to this general observation, where tariffs for certain major commodities were subject to conventional unqualified bindings and where trade appeared to have expanded with fewer impediments.

15. However, a relatively important aspect of the Committee's examination was that tariffs, whether bound or not under Article II, were not infrequently accompanied by a wide range of other trade restrictive measures. In other words, it appeared to be the exception rather than the rule that tariffs were the sole or predominant form of trade regulation. In this regard, one of the points noted was that the issue from the point of view of an efficient trading system was not so much what particular form of protection was adopted but whether the measures in fact adopted, were subject to international disciplines as regards, inter alia, their impact on international trade, their transparency and their characteristics from the point of view of non-discrimination.

16. Tariff preferences, including GSP preferences, also emerged as an important aspect in the Committee's discussions in relation inter alia to Article XXIV and the Enabling Clause. Non-tariff forms of preferential treatment were also mentioned. It was clear that contracting parties held divergent views regarding the extent to which some of these preferences were justified in terms of the relevant GATT provisions.

Levies

17. The examinations confirmed that variable levies were being employed by a number of countries and that these measures were playing an important role in the regulation of international trade. The perception which contracting parties applying variable levies had of such measures was, in general, that their rights under the General Agreement permit or do not prevent them from applying such measures. In some cases, Article XXIV, or negotiations under that Article, together with the associated balance of rights and obligations, were considered to provide the basis for the application of variable levies. In some other cases Protocols of Accession or legislation pre-dating the General Agreement were referred to as providing the requisite basis for the application of variable levies.

18. In this general context attention was drawn to the view that Article XXIV, did not appear to provide a substantive legal basis for measures not otherwise specifically provided for in the General Agreement. At the same time, the view was expressed that a variable levy could be regarded as no different in principle from an unbound tariff which most contracting parties were free to raise or lower as they thought fit. It was also noted that the existence of variable

levies had not prevented certain engagements being entered into, as in the case of levy free quotas or the reduction of levies subject to the observance of certain price disciplines. Moreover in cases where a variable levy was applied in respect of a bound tariff item, the ad valorem equivalent of the bound tariff appeared to be generally regarded as constituting the maximum upper limit on the levy. On the other hand it was also noted that variable levy regimes could be regarded as compromising the ability of countries maintaining such measures to participate in trade liberalization endeavours. The view was also expressed that variable levies were highly restrictive and that their effects were similar to those of minimum import prices in that they resulted in imports being offered for sale at uncompetitive price levels.

19. It was suggested that the Committee should examine the scope for agreed multilateral disciplines on variable levies, it being pointed out in this connection that a major consideration was whether contracting parties could afford to have large areas of trade, whether subject to variable levies or unbound tariffs, not covered by effective multilateral disciplines. It was noted that what would be involved in any discussion of possible rules in this area would be the binding of what is unbound and that any such exercise could not be limited to levies but would also need to encompass unbound tariffs, quotas and quantitative restrictions, in particular, those maintained under waivers.

Other Charges and Internal Taxes

20. The Committee's examinations indicated that a very extensive and diverse range of taxes and other charges were applied by many contracting parties. Article VIII was generally referred as being relevant to the application of many of these charges. Reservations were, however, expressed as to whether in fact some of these charges were being applied consistently with Article VIII:1(a) in particular, which provided that such charges should be cost related and should not constitute an indirect protection to domestic products or a form of taxation on imports or exports. Attention was drawn in this connection to the fact that there were often significant variations in the amount of such charges as between different products. Economic development needs and revenue considerations were noted in some cases as being relevant considerations. It was noted as well that there was a general tendency for many developing countries to apply differentiated charges or levies on exports in order to promote greater local processing of the raw materials they produced.

21. In a number of cases, taxes or charges of a compensatory or supplementary nature were discussed in the examination which were considered, by the countries applying them, to be justified under Article XXIV or for which no specific GATT relevance was advanced. It was noted that compensatory or supplementary charges were often associated with minimum import prices or related currency adjustments. It was suggested that these charges and their GATT relevance should be looked into by the Committee.

22. In addition to concerns about the range and diversity of these other taxes and charges applied; their cumulative effect and their compatibility with relevant GATT provisions, there was evidence of a broader concern regarding the non-discriminatory application of internal taxes and charges with respect to imports in terms of the requirements of Article III.

Minimum Import Prices

23. It was noted that minimum import prices figured rather prominently in a number of the trade regimes examined. Minimum import prices were generally associated with internal price support measures and in some cases as well with the imposition of other charges or amounts on imports to ensure the observance of these minimum prices. It was also noted that minimum import prices were in some instances associated with voluntary restraint agreements.

Licensing and Quantitative Restrictions

24. In very broad terms, it emerged from the discussions that a number of countries regarded some form of production control as a sufficient basis in itself for invoking Article XI, whereas, in principle, the requirements of Article XI:2(c) are rather more stringent, particularly as regards the maintainance of imports relative to domestic production. As well as Article XI a number of other GATT provisions were considered to provide the necessary basis for the measures applied, including Articles XII, XIX, XX and, in the case of developing countries, Article XVIIIB. In the case of balance-of-payments related restrictions, it was noted that one of the problems was to distinguish between measures legitimately taken for BOP reasons and measures taken for other reasons, including the protection of non-competitive domestic producers.

25. Another area of licensing and quantitative restrictions which figured prominently in the discussions was the question of seasonal restrictions and the related question of the compatibility of these practices with the existing provisions of Article XI. The practice of making imports of a product conditional on the purchase or use of like domestic products was also raised in this context. Concerns regarding transparency and non-discrimination in the administration of licensing requirements and quantitative restrictions in terms of Article XIII also figured prominently in the discussions. The close relationship in all these areas with the activities of state trading enterprises, marketing boards and other bodies or agencies was noted as a matter requiring further discussion.

26. With regard to restrictions on exports under Article XI:2(a), most of the measures considered in the Committee's examinations related to those designed to protect governmental food supply arrangements in developing countries and to complement policies designed, inter alia, to promote further processing of locally produced materials.

27. In general it was evident from the Committee's examination and discussions that the gap between the requirements of GATT and actual practice with respect to licensing and quantitative restrictions, was such that some consideration by the Committee of the scope for possible improvements in the application of existing GATT rules and disciplines, in particular Article XI:2(c) would appear to be desirable. Not only did perceptible differences of interpretation regarding the existing GATT requirements exist, but the range of possible alternative justifications invoked would suggest that meaningful progress was unlikely to be achieved in a number of areas in the absence of more operationally effective GATT rules and disciplines in the area of licensing and quantitative restrictions.

28. In the course of its examinations the Committee encountered a significant range of restrictive measures maintained under various exceptions and derogations from the full application of the General Agreement. Extensive references were made to grandfather clauses and mandatory legislation pre-dating the GATT, to protocols of accession and to waivers, including the United States Agricultural Waiver. It was noted that only some of these derogations and exceptions were subject to regular review in GATT.

29. It was suggested that the Committee should undertake a broad examination of waivers and other derogations and exceptions which enabled measures affecting trade in agriculture to be applied without being subject to normal GATT rules and disciplines.

Voluntary Restraint Agreements

30. The Committee's examinations indicated that voluntary restraint agreements had assumed a greater prominence in trade in agriculture and one of the principal suggestions emerging from the debate was that the whole subject of voluntary restraint agreements should be examined in the Committee. Some of the factors considered relevant to the issue of voluntary restraints were their inherently or potentially discriminatory character, the general lack of transparency associated with some of these agreements, and the weakening effect that extensive resort to such arrangements could have on the operational effectiveness of and respect for other GATT rules and disciplines relating to the use of restrictive measures. On the other hand, it was also noted that voluntary restraint agreements had generally made it possible to maintain trade at levels that might not otherwise have been feasible.

Article XXIV and other Preferential Arrangements

31. As already noted, a number of measures not explicitly provided for in the General Agreement, were considered by the contracting parties concerned to be justified in terms of agreements or negotiations under Article XXIV. The Committee's examinations confirmed the long-standing divergence of views on these and other related issues, including the discriminatory application of non-tariff measures generally. A proposal made in this general context was that in view of the widespread participation of contracting parties in Article XXIV agreements, the

Committee should examine the overall effects of these agreements on international trade in agriculture and assess the legitimacy of the discriminatory policies these agreements entail. It was considered that this examination should cover other preferences as well. Article XXIV(5) was noted as being one of the matters on which any broad examination of that Article should focus.

State Trading

32. It was evident from the Committee's discussions that there was a general reluctance to classify the activities of the extensive range of governmental or quasi-governmental bodies and agencies as state trading enterprises under Article XVII. Nevertheless, it was clear that in many countries, both developed and developing, trade in agriculture was extensively regulated through the activities of bodies ranging from governmental agencies through marketing boards, associations and co-operatives. In some cases, involvement on the part of these bodies was direct, whereas in some others, the functions exercised appeared to be largely administrative. In certain cases, there appeared to be a more or less significant involvement in licensing or quota fixing and allocation activities, as well as domestic and export price formation. The extensive involvement of state trading and other bodies in export trade generally and in particular in bilateral and long-term supply agreements involving special conditions of sale, was considered to warrant an examination of the role and activities of these bodies in relation to the relevant GATT provisions. In this regard it was noted that Article XVII required state trading enterprises, in their purchases or sales involving either imports or exports, to act in a manner consistent with the general principles of non-discriminatory treatment provided foryin the General Agreement for governmental measures affecting imports or exports by private traders.

33. Given the diverse nature and activities of the various bodies and agencies reviewed in the course of the Committee's examinations, it was suggested that consideration be given to the adequacy of Article XVII and to the manner in which its provisions could be more effectively applied in the agricultural sector.

Emergency Measures

34. The Committee's examinations covered a number of measures in respect of which the provisions of Article XIX were referred to as being relevant. It was noted that the possibilities for safeguard action in respect of agricultural trade were not limited to Article XIX and that action under Article XI:2(c), for example, was also relevant. Generally speaking however, it was not apparent that temporary safeguard action in the sense of Article XIX was frequently resorted to, one of the supposed reasons being that in certain cases, quantitative and other restrictive measures maintained rendered reliance on Article XIX action unnecessary or less attractive.

Sanitary and Phytosanitary Regulations

35. One of the main points to emerge from the Committee's examination of measures maintained under Article XX(b) was the concern that sanitary and phytosanitary measures were often unduly restrictive and in some cases afforded a blanket protection which tended to render tariff and other concessions nugatory. In this regard, it was noted that Article XX required that such measures should be "necessary" to protect animal or plant life and health and should not be applied in a manner which constituted a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevailed, or a disguised restriction on international trade. It was also noted that procedures existed for reverse notification of these measures.

36. The view was expressed that the Code on technical barriers to trade had not advanced matters, so far as certain aspects of sanitary and phytosanitary measures were concerned. It was also pointed out that the essentially technical nature of the issues involved could limit or preclude progress in dealing with what some might regard as the unjustifiably restrictive aspects of sanitary and phytosanitary measures in GATT. Having regard to the impact that these measures could have on trade it was suggested that sanitary and phytosanitary measures should be the subject of broader consideration in the Committee, including the procedures for reverse notification and consultation.

Other Technical Barriers to Trade

37. The suggestion made with respect to technical barriers to trade, in particular, marketing standards, packaging and labelling requirements, was that the Committee should explore whether the notification and consultation procedures under the Code on technical barriers to trade were working, and whether, in the field of agriculture, it might be possible to improve existing procedures.

Exercise B. Examination of the operation of the General Agreement as regards subsidies, especially export subsidies, and including other forms of export assistance

General observations

38. It was stressed that the Committee had been established for the purpose of making recommendations with a view to achieving greater liberalization in the trade of agricultural products. It was also stressed that the Committee should conduct its examination under Exercise B broadly, looking at all forms of export assistance as it had been directed to in the Ministerial Declaration, at Article XVI and any other relevant GATT provisions and resolutions, as well as at the impact of subsidies on trade and on returns and prices attainable on the market-place. Moreover, the Committee should not focus exclusively on past history or problems of interpretations, but on how to improve international disciplines on subsidies. In addition it was noted that in carrying out its work the Committee must take full account of the special needs of developing countries.

39. To the question of whether the operation of the provisions of the General Agreement as regards subsidies on agricultural products was considered to be effective, Committee participants responded in the negative. A number of reasons were advanced for this. Different interpretations had been given to the GATT rules to fit diverse national interests which did not contribute to international cooperation. The case-by-case application of the rules was regarded as having been unsatisfactory due to the lack of clear findings. One reason given for this difficulty was that panels were being asked to make rulings on definitions and concepts which had been deliberately left vague by earlier negotiations; for example, "equitable share". The rules on primary products attempted to discipline the effects of export subsidies rather than limit their use. The difficulty of producing acceptable evidence to demonstrate prejudice or the effects prohibited by the rules, was mentioned. Moreover, the rules were not a sufficient protection from subsidies because the rules did not act until after the damage had taken place. It was also stated that the results of the Subsidies Code had been negative as far as improving the disciplines of Article XVI and making its interpretation more precise, given the lack of definite conclusions among Code signatories. However, it was also pointed out that the Code had represented a step forward and should not be overlooked or dismissed.

40. The ineffectiveness of the rules on subsidies was said to have acted to encourage the use of subsidies by an increasing number of countries. Examples were given of the order of magnitude in the trend towards greater subsidization. The resort to other forms of export assistance like non-commercial transactions or transactions under

special conditions was also noted. Export subsidies were seen as having had a destabilizing effect on agricultural trade, thwarting liberalization. The link between subsidies and national policies was referred to, and more precisely the impact of agricultural support programmes on production decisions of individual producers. It was the level of support, regardless of which particular technique of subsidization was used, which was felt to determine largely the scale of the import and export measures required to protect the domestic support system. Therefore this was considered to be at the root of agricultural trade problems.

41. It was stated that domestic support policies had depressed world prices and distorted supplies by generating surpluses which moved directly to commercial markets via intervention agencies or other channels. Subsidies had permitted certain net importers to become net exporters. The effectiveness of international commodity agreements, in some cases, had been frustrated by subsidization.

42. As to possible solutions or recommendations the Committee could make, the negotiability of these proposals would have to be borne in mind. Subsidies of all types should be addressed, and this in a multilateral context in the GATT. All countries should share in the burden of adjustment: in the advantages as well as the sacrifices. The position of the recipients of subsidized imports needed to be considered. The problems of agricultural trade needed to be examined globally: substantive obligations which limited the prejudicial effects of national policies involving subsidies or other aids should be sought and progress made as well on market access. The Committee should come to some agreement on measurable disciplines, and try to re-establish the balance of rights and obligations.

43. It was suggested that the Committee envisage a total trade package on agriculture, based on a few basic principles which might include the following: (a) All export measures could be bound and subject to maximum limits; (b) All import measures could be bound. For example, all import quotas could be increased to a minimum size equivalent to a minimum percentage of domestic disappearance. All quotas could be subject to some form of growth provision. Similarly, variable import levies could be required to provide a certain volume of access under a bound tariff, with the base quantity subject to a growth provision; (c) Individual support price levels in all countries could be bound so as not to exceed an internationally agreed reference price by a certain margin.

44. Another suggestion was that the Committee seek a commitment from every contracting party to do much more than had been done to date to avoid the use of export subsidies. The rules on primary products could be strengthened by being interpreted as limiting the use of export subsidies, rather than trying to limit the damage caused by subsidies. In determining equitable share, any other factors besides export subsidies must so outweigh the effect of the subsidies, that they would completely explain away the causal link between the subsidies and the resulting market shares. Those adversely affected by export subsidies should not be required to demonstrate the effects of those subsidies on trade when the obligation to avoid the use of subsidies (and thereby avoid their effects) lay with the subsidizing country.

Article XVI:1 first sentence: notifications

45. It was recognized that not all contracting parties were fulfilling their obligation to notify under Article XVI:1. Moreover many of the notifications that were submitted were incomplete in a number of respects. There was a lack of information on export credit, on so-called grey area measures, like non-commercial transactions and countertrade or similar operations, on direct export subsidies, and on indirect subsidies. Non-commercial transactions were notified to the Consultative Sub-Committee on Surplus Disposal where usual marketing requirements were discussed, but not to the GATT. Countertrade, barter, buy-back and other operations of this kind were becoming increasingly important in sales for export and in penetrating markets. Not all transactions of this kind might involve a subsidy within the meaning of Article XVI:1, but information would have to be given to the contracting parties in order to make such a judgement. In addition, not all notifying countries were supplying information on the incidence of the subsidy, the quantitative trade effects of the subsidy, and the amount of the subsidy, as required under the questionnaire.

46. Inherent in this situation were the difficulties in defining a subsidy and in determining specifically which measures were covered under the notification obligation of Article XVI:1. It was ultimately the contracting party itself which decided what had to be notified. There was agreement in the Committee that notifications should be as complete as possible and that there was room for improvement in the present state of transparency.

47. A point discussed in the Committee was whether the line should or could be drawn between subsidies which had a trade effect and those with little or no trade effects. Article XVI:1 did not speak of all subsidies but any subsidy, including any form of income or price support, which operated directly or indirectly to increase exports or to reduce imports. Direct subsidies granted at the stage of exportation tended to be notified in general, however subsidies granted at preceding stages, such as at production were less so. There was support for the position that price and income support measures should be notified under Article XVI:1, but not all agreed that these measures should in turn be notified as measures affecting exports on the Committee's format. They could sometimes encourage domestic production and result in exports without any direct government transfers. Domestic price or income support could also limit importing possibilites in the country concerned by increasing domestic prices, and reducing demand. The country-by-country examination under Exercise A had shown that countries who adopted an integrated series of measures by setting aside their domestic market from international trade, could be seen to apply, in effect, what amounted to be a price support system.

48. Reference was made to the difficulties of reporting on and quantifying indirect subsidies involving infrastructures such as hydro-electric projects or aid to agricultural schools, or subsidized fuel to farmers. There were several types of indirect subsidies and some were indirect to different degrees. The following definition of a subsidy was advanced: a transfer of government resources to a specific

area of economic activity in a way which may be discriminatory to alternative potential domestic recipients of this type of transfer. Such a definition would leave out subsidies not designed to benefit one specific user, such as aid to agricultural schools. The view was expressed that it might not be of much interest to contracting parties to know exactly what the amount of subsidies paid by a country to such a school would be, since the effect of the subsidy was so dispersed that it would be almost impossible to re-allocate those credits for any particular exportation.

49. But sometimes, in cases where certain exporting countries had extremely diversified exports, it would seem necessary to know to what extent price support which was granted for socio-political reasons had engendered a certain volume of production, which necessarily would find an outlet at one moment or another on the world market. It was also suggested that all contracting parties be asked to notify under Article XVI:1 the sum total of their direct payments from government treasuries to the agricultural sector even if this included subsidies of the second or third degree like grants to research. Governments would notify then all their expenditures related to agriculture rather than having the choice of what subsidies to notify.

50. Besides the above-mentioned suggestions that contracting parties agree to notify all forms of subsidies that operate to increase exports or to reduce imports, including specifically all income or price support measures, as stated in Article XVI:1, and that contracting parties notify all government expenditures for agriculture, the following other suggestions were advanced to deal with the question of what kinds of subsidies should be notified and how to get better and more complete information under Article XVI:1. It was suggested that the Committee, with the assistance of the secretariat, identify and draw up a list of measures applied on exports, on the basis of notifications under Article XVI:1 and Exercise A, and possibly of reverse notifications. This list could guide contracting parties as to what types of measures should be notified under Article XVI. It was pointed out that an illustrative list of export subsidies existed already in the Subsidies Code, although it might be more appropriate for a list specific to agricultural trade encompassing subsidies other than those accorded at exportation to be drawn up by the Committee on Trade in Agriculture. On the other hand, doubts were expressed as to the feasibility of drawing up a complete list, and whether such a lengthy task would be useful.

51. Attention was drawn to the fact that the current questionnaire had been drawn up over twenty years ago. It was suggested that the questionnaire be reviewed to determine whether it met the needs and objectives of the present time. It might be necessary to update and modify it, especially as regards agriculture. Moreover, countries might be requested to report on what their policies would be in the year ahead. Another suggestion was that in notifying subsidies, the distinction should be made between those measures which had a direct effect on exports, and those whose effect was indirect, or which affected importing opportunities.

52. It was also pointed out that Article XVI:1 first sentence contained elements which might be considered of a subjective character. To make the scope of this provision clearer, an interpretative note might have to be decided upon.

53. Given that governments were more concerned about subsidies on products of export interest to them, a more pragmatic approach to notifications and defining subsidies, might be a system of reverse notifications. It was recalled that Article 7:3 of the Subsidies Code had already instituted such a procedure. The Committee could also use this method to analyze the measures and to see whether they constituted a subsidy within the meaning of Article XVI:1. On the one hand, a certain danger was seen in institutionalizing a system of reverse notifications, in that certain contracting parties might consider that this would dispense them from notifying. On the other hand, it was pointed out that having such a system might bring about a greater meeting of the minds as regards identifying the trade impact of the particular subsidy, and this short of recourse to the dispute settlement procedures of Article XXIII.

54. In addition to the issues of what kind of subsidies should be covered by Article XVI:1 and how to improve the reporting procedures of that provision, it was also noted in the Committee that transparency was not an end in itself but that the purpose of the notifications was closely linked to other provisions. It was stated that notification should not prejudge whether the measure notified was a subsidy under Article XVI:1, nor its status under other provisions. However, without full notifications from all contracting parties, it was asked how contracting parties could determine whether the provisions of Article XVI were being respected. The view was expressed that notification was a means to an end, and that the substance of paragraph 1 of Article XVI was to determine whether or not a subsidy was causing serious prejudice to another contracting party. It was suggested that a regular review process of the notifications by contracting parties was needed, similar to what had been conducted in the Committee. Such a surveillance could lead if not to a definition of subsidies, at least to an early warning of measures that were going to have a disruptive effect on other countries' trade, a better view of the areas with which participants needed to concern themselves, and perhaps a negotiation of better rules on the application of measures. On the occasion of this review, reverse notifications could take place, as well as an effective analysis of the effect of the subsidies on trade. It was suggested that this review take place on annual basis. However, another view was that a review would be useful only every three years, given that full notifications were required under the questionnaire every three years.

55. Finally as regards notifications, attention was drawn in the Committee to the fact that this issue was not limited to Article XVI:1 alone. The agricultural work programme, as defined by the Ministerial Declaration, had specified that an improved and unified system of notification should be introduced so as to ensure full transparency. State-trading mechanisms could affect other countries' exports. Were the Committee to decide that a review of the obligations of Article XVI

should be established, it might be useful to join on to this on the same occasion, a review of the obligations under Article XVII, to the extent that they had an influence on export trade. It was also suggested that the Committee review whether the information on other aspects of agricultural support and border measures, for example quantitative restrictions, needed to be up-dated and whether obligations to notify these other measures were needed.

Article XVI:1 second sentence: "it is determined", "prejudice" and "the possibility of limiting the subsidization"

56. There were three questions relating to this provision that were addressed by the Committee. The first was who was to make the determination of prejudice. The second was the assessment of the prejudice. And the third was whether the obligation to discuss the possibility of limiting the subsidization implied that the subsidizing contracting party must take action to limit the subsidy in question.

57. As regards the first question, it was noted that the provision did not specify who was to make the determination. The secretariat document (AG/W/4) referred to the fact that the CONTRACTING PARTIES (by adopting a report of a working party established in 1948) had agreed that consultations under Article XVI:1 second sentence could proceed upon the request of a contracting party without a prior international determination of prejudice, though they did not amend the provision to make this explicit.

58. It was stated with reference to the second question that elements of fact and not subjectivity should be present in the determination of prejudice. One view was that the discussion could be engaged only if it were determined that a subsidy caused or threatened to cause prejudice, and not if it were just felt that a subsidy could cause prejudice. There was a link between Article XVI:1 second sentence and paragraphs 2 and 3. Subsidies affecting imports were only covered by paragraph 1. Contracting parties had admitted in paragraph 2 of Article XVI that export subsidies either direct or indirect might have harmful effects in principle, and as a consequence contracting parties had established a limit on those subsidies in the form of the equitable share obligation. If a country were to obtain a share that was more than equitable, prejudice would be caused. But if it were determined that one did not exceed more than one's equitable share, one was in the clear. Moreover, the Subsidies Code had added to the rule of equitable share, the concept of price undercutting. Another view, however, was that implicit in paragraphs 1, 2, 3 and 5 of Article XVI was that subsidies inherently had a de-stabilizing effect on the trading interests of others and therefore there was an obligation to take action to prevent those effects. The equitable share obligation did not mean that serious prejudice could not occur before equitable share had been obtained. The term prejudice as used in Article XVI:1, second sentence included competition among exporters on third markets. It was stated that importers could also be hurt by subsidies accorded by other countries as regards the disposal of products on the importers' domestic market.

59. As regards the third question, it was stated that even where it was determined that prejudice was being caused it did appear possible to take refuge in a strict literal interpretation of the obligation to discuss the possibility of limiting the subsidization. The distinction between "must" and "should" was noted and as long as an obligation was not explicit, contracting parties were likely to interpret it to meet their own interests. However, it was also felt that there was a basis for arguing that the offending subsidizing country should feel a sense of obligation not only to discuss but to act. Seriously prejudiced contracting parties should have a reasonable expectation that a subsidizer would take remedial steps rather than continuing to cause serious prejudice. Reference was made to previous instances where there had been a finding of prejudice. The issue had been not the need to take action, it was stated, but how extensive the action should be. The view was expressed that a determination of prejudice constituted nullification and impairment under Article XXIII:1 paragraph b, as well as under Article 8 of the Subsidies Code. Therefore, the onus should be on the party against which the complaint had been brought to rebut the charge. A simple exercise of discussion did not resolve the case, and ran the risk of seriously eroding the General Agreement. Reference was made to the report of the London Preparatory Committee of the Havana Charter wherein it was noted that the word "limiting" meant not only maintaining subsidization at as low a level as possible but also a gradual reduction in the subsidization where appropriate. However, reference was made to previous consultations under Article XVI:1 wherein some countries had asked for a total ban, on subsidization by the party concerned. It was felt that the provision should not mean that a contracting party would have to take such action as would prevent it from exporting any longer.

60. It was stated that the discussion in the Committee had shown that there were clear differences of interpretation as to the meaning of the obligation under Article XVI:1 second sentence. There was a deficiency in the Article and the Committee needed to focus on the problem. It was suggested that where it was an affected country that determined there was prejudice, this would be subjective and could be subject to a contrary view. Therefore, the discussion in such a case could be oriented towards deciding whether or not a prejudice existed, rather than towards a direct solution of limiting the subsidization. However when the contracting parties, either through a panel or working party, determined that prejudice existed, this could not be put into doubt. In this context it would not be a matter of simple discussion or consultation, but it would be expected that the contracting party would take the necessary steps to remove the prejudice or threat thereof.

Article XVI:3 "equitable share"

61. To the questions as to whether the equitable share principle embodied in Article XVI:3 was sufficiently well-defined or interpreted and whether this provision was an effective discipline on export subsidies, the response of participants was generally negative. It was stated that the rules were imprecise in that they prohibited the effects of subsidies rather than limiting their use. Article XVI:3

recognized the prevalence of agricultural export subsidies without condoning them. Where they did exist, the provision represented an attempt at obviating injury to trading partners. The trouble with equitable share was seen to be that it was a false precision. It sounded scientific but just meant fair, and largely referred to subjective notions.

62. It was pointed out that the case-by-case application of the rules had been unsatisfactory. It was impossible to grasp a general line of case law in the decisions of panels, some of which had given divergent interpretations. The limit had been reached when one panel had stated that it could give no interpretation, seeing that Article XVI had been interpreted so divergently. It had been relatively easy for panels to determine whether a subsidy existed, whether there had been an increase in the market share of a country and a decrease in the market share of its competitors, on the basis of facts and statistics. But it was more difficult to determine a world market price (for the purpose of determining price undercutting under the Subsidies Code). Moreover, panels had not been able recently to establish clearly the causality between the subsidization and the increase in the market share. This was because of the growing distortion of trade patterns caused by government intervention and the amplification of the role of special factors which complicated the possibility to pass judgement.

63. The Subsidies Code had been a recent attempt to bring precision to Article XVI by introducing such concepts as displacement and price undercutting, and by providing that a given market share pattern should be carried over into new markets. However, it was stated that Article 10:3 of the Code had not grappled satisfactorily with the price impact of export subsidies, especially where subsidies lowered the overall price levels on the market, forcing other suppliers to reduce their prices and returns to protect their market share. Article 10 had fallen short of the clear guidance as regards Article XVI that its drafters had hoped they would achieve. On the other hand, it was stated that maintaining a share with subsidies did not necessarily mean that a country had more than an equitable share of world export trade. Moreover, the interpretative note to Article XVI:3 did not prevent a country which had not subsidized in the past to grant a subsidy to obtain a share of the world market.

64. It was noted that the Ministers had asked the Committee to examine the effectiveness of Article XVI, with the ultimate goal of making recommendations with a view to achieving greater liberalization in the trade of agricultural products. Greater liberalization, it was felt, could not be achieved via a greater use of export subsidization. One view was that the Ministers had not asked the Committee to write new disciplines. Though there had been divergent interpretations of Article XVI:3, this did not mean it should be re-written, but it could be made clearer. Examples of where there could be a better definition or clarification of the concept of equitable share was how special factors could be considered as well as the scope of "world export trade": whether the latter was limited to commercial transactions, or also extended to non-commercial transactions, whether trade on the world

market on the whole should be considered, or also on an individual market. Another view, however, was that it would appear virtually impossible to come up with an elaboration or a clarification, or a drafting around the problem of the equitable share principle, which was a subjective concept, thereby translating it into something operationally meaningful and quantifiable. Ministers had asked the Committee to come up with concrete recommendations which could include envisaging a change in the GATT rules. The Committee must tackle the basic problem of domestic support policies. In addition it was suggested that the Committee consider the desirability of establishing symmetry between the GATT provisions on imports and those on exports. Article XI:1 prohibited quantitative restrictions, and its paragraph 2 authorized exceptions under certain conditions. Similarly, it could be envisaged that subsidies on the export of primary products be prohibited, and that a certain number of limited and precise exceptions to this prohibition be instituted.

"Primary product" and Article XVI:4

65. The Committee addressed the questions of what constituted a primary product and what were the obligations of contracting parties as regards the subsidization of the primary product component of a processed product.

66. As regards the first question, it was pointed out that a definition of primary products was included in the Notes and Supplementary Provisions to Article XVI. It had been more or less understood when contracting parties had approved this definition, that any problems that might arise would be handled on a case-by-case basis. It was stated that it might be difficult to go further in clarifying this definition. However, there did exist a grey area of certain products, for example wheat flour, which were inbetween primary and non-primary products, and it was suggested that contracting parties could establish a list of products which constituted a primary product.

67. As regards the second question, one view was that Article XVI:4 and Article 9 of the Subsidies Code clearly prohibited export subsidies on processed products. Moreover a panel finding in this connection had confirmed the obligations of the contracting parties under these provisions. The rules were clear, but the problem was that certain practices had been in force which had not been contested in the past. But this did not mean that a new rule was in place. Another view however, was that through their notifications of subsidies on processed agricultural products, countries had recognized implicitly that their systems were compatible with their obligations under Article XVI and the Subsidies Code. Long-standing practices that had prevailed before the Tokyo Round negotiations could not have been changed by the negotiation of the Subsidies Code without explicit discussion and agreement among the negotiators on the matter. The subsidization of the primary product component was allowed as long as the subsidy did not exceed the level needed to compensate the difference between the higher domestic price and lower world market price for the agricultural raw material component used in the manufacture of the processed product. However it was also

stated that the subsidization of the primary product component raised four major economic or trade incoveniences: (a) it was difficult to know at what stage the subsidization should stop, (b) the processed product, clearly a non-primary product, escaped from the rules of Article XVI:3, (c) an extraordinary bureaucratization was involved at the border, and (d) the subsidization had led to fraud and contraband. To transfer the stage of the subsidy from the processed product to the primary product might mean that the GATT provisions were respected formally but the benefit to agricultural trade as a result could be questioned.

68. As to suggestions for dealing with this issue, one view was that the subsidization of the primary product component of an exported processed product be purely and simply prohibited as they were clearly so under Article XVI:4 and Article 9 which should not be re-negotiated. Another view was that if these practices should be allowed, some disciplines should be applied to the subsidy. The concept of equitable share existed but it would seem difficult to apply this in practice to the processed product. There could be a rule that the subsidy granted on the processed product be no higher than the equivalent of that on the primary product component. Reference was made by analogy to what existed under rules of origin, wherein the added value determined the origin of the product, as well as to the drawback system which permitted the refund at exportation of the duty paid on the imported content of a manufactured product. It was also pointed out that if the practice of subsidizing the primary component of a processed product were to be considered as legitimate, this would mean that Article XVI would have to be re-drafted to provide a specific paragraph concerning the disciplines on processed product. This would also mean that contracting parties would be embarking in a re-negotiation of the Article.