

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## Committee on Trade in Agriculture

### SUMMARY OF POINTS RAISED DURING THE MEETING OF THE COMMITTEE HELD ON 19-21 FEBRUARY 1985

#### Note by the Secretariat

1. At its 19-21 February meeting, the Committee embarked on a detailed consideration of the Recommendations adopted at the 40th Session of the CONTRACTING PARTIES (L/5753). The present note summarizes the points raised in the course of the Committee's consideration of the chapeau and paragraphs 1(a) and 1(b) of the Recommendations. Paragraphs 1(c) and those aspects of paragraphs 2 and 3 not considered at the February meeting are to be taken up, as part of the Committee's first round of discussions on the Recommendations, at the resumed session of the Committee on 2 and 3 April 1985 (GATT/AIR/2119).

#### General Observations

2. In the context of the chapeau and paragraph 4, it was observed in several of the statements made that the Committee's work would necessarily involve a first "research and development" stage, in which a range of options or proposals would be developed as to how the various approaches prescribed in the Recommendations might be elaborated, and a second "selection" stage, in which the object would be to choose which of these options should be eliminated and which should be retained. It was noted that, while document AG/W/9 was a useful basis or point of reference for developing the concepts in the Recommendations, certain elements in the Recommendations, including those in paragraph 3, would need to be more fully elaborated, and that it was important that the approaches outlined should be complemented by proposals and ideas from participants.

3. It was noted in several of the views expressed that the Committee's in-depth examination and elaboration of options would be without prejudice to other possible approaches, and that the first stage of the Committee's work should be sufficiently detailed so as to enable an assessment to be made of concrete possibilities for achieving the overall objective of further liberalizing trade in agriculture on a basis applicable to all participants. It was also noted that the first stage would require a great deal of work and that the subsequent selection process could be compromised unless the various options and proposals were carefully and thoroughly worked out. In these circumstances, it was suggested that the Committee would need to meet on a monthly basis at the working level to carry out an in-depth examination of all the options and perhaps also to make some pre-selection. According to this view, meetings of the Committee at senior policy level would probably be necessary when the stage was reached of making decisions as to which of the options should be retained or further developed.

4. The view was also expressed that it was important to maintain a spirit of consensus and understanding in the further work of the Committee, and of decisive importance that progress should also be achieved in other sectors of the GATT Ministerial work programme. In this regard, it was noted that the Recommendations had been adopted in a spirit of compromise, and that the Ministerial Declaration, which represented an expression of political will at a high level, continued to be relevant. In this view, the basic aim of the Committee should be to find global solutions to the problems of agricultural trade, with the emphasis being placed on those specific phenomena which caused these problems.

5. In this context, it was pointed out that in order to take account of the interests of all participants it would be necessary, particularly when the stage of considering detailed solutions was reached, to give greater precision to, and take full account of, the specific characteristics and problems of agriculture. It was noted that from the outset, the full force of the General Agreement had not been applied to agriculture because it had been recognized that agriculture was characterized by special features and problems. As this situation had not changed, the Committee's aim should be to create a new situation which is beneficial to all parties and not a fresh disequilibrium of rights and obligations. It was also pointed out that the Committee's task was not to negotiate a package, since such a package would ultimately have to be negotiated in the context of an MTN where there would be a broader basis for establishing a balance of rights and obligations. Rather the Committee's task would be to make a report in the light of which ministers would have to decide whether the approaches elaborated would in fact constitute a basis for initiating negotiations directed to the further liberalization of trade in agriculture.

6. It was also stressed that for a substantial number of participants, it was essential that the question of establishing a new balance of rights and obligations should be approached in the overall context of the General Agreement, and that while taking account of other general ideas in paragraph 3, account had to be taken of the equally, if not more important, concept of the special needs of developing countries.

#### Measures affecting Access

##### Quantitative Restrictions

7. A number of suggestions were put forward as to how quantitative restrictions might be brought within the purview of strengthened and more operationally effective GATT rules and disciplines. These are summarized as follows:

A. orientation: to achieve more secure and predictable access by reinforcing the existing provisions of the last paragraph of Article XI:2 through the introduction of a more direct and dynamic relationship between the size of quotas and changes in domestic production:

- (i) the existing criteria for invoking Article XI should remain largely as they are at present and should continue to be linked to the existence of demonstrably effective individual farm production quotas. It would be a major retrogressive step to loosen the existing provisions of Article XI to permit the legal invocation of QRs in support of simple price and/or income support programmes;
- (ii) all new quantitative restrictions would have to be in full conformity with the existing provisions of Article XI;
- (iii) all existing quantitative restrictions, including those maintained under waivers, derogations or exceptions, would be required to conform to the size of quota/change in domestic production relationship under Article XI:2, last paragraph;
- (iv) existing quantitative restrictions not in support of effective supply management programmes, and therefore not in conformity with Article XI:2(c)(i), could be continued under an automatic derogation for a specified period (five or ten years) provided the size of the quota is linked to changes in domestic production and the base ratio established is significantly greater than that which would have prevailed had the quantitative restriction been in full conformity with Article XI. In other words, there would be a penalty in the form of a relatively higher access commitment associated with such derogations. Any extension of the derogation beyond the initial specified period would require the prior concurrence of contracting parties;
- (v) in order to deal, in the case of longstanding arbitrarily fixed quantitative restrictions, with the practical problems associated with the determination of the proportion of imports relative to the total of domestic production which might reasonably have been expected to rule in the absence of such restrictions, recourse might need to be made to an arbitrary rule or formula. For example, for quantitative restrictions in conformity with Article XI:2(c)(i), but not in conformity with the proportionality provisions of the last paragraph of Article XI:2, the base ratio of imports to domestic production should be, say, 10 per cent or the existing ratio, whichever is the higher. It would also be necessary to devise appropriate rules on like and processed products.

B. orientation: to allow market forces to operate to a much greater extent in order to liberalize trade and deal with serious current surpluses and to avoid even more serious prospective surpluses:

- (i) all non-tariff barriers maintained under protocols of accession, waivers, grandfather clauses, state trading, or measures not specifically provided for, such as variable levies and minimum import prices, should be phased out over some period of time;

- (ii) Article XI, which was originally meant to provide for the general elimination of restrictions other than tariffs, should be amended by the deletion of all but paragraph 1 of that Article, so that tariffs would be the only permissible restriction on trade;
- (iii) as unbound tariffs are a problem in agriculture, all unbound tariffs should be bound and should be the subject of a future negotiation.

C. orientation: strengthened and more operationally effective Article XI:2(c) disciplines on quantitative restrictions:

- (i) the categories or types of domestic production or marketing controls that entitle countries to apply quantitative restrictions should be more clearly defined, one possibility being the establishment of an illustrative or indicative list of such controls. For instance, whereas a system of production quotas combined with effective penal levies might qualify as a form of production control, this would not be the case where the purported control consists in maintaining or even reducing a guaranteed price to producers if imports are effectively excluded in one way or another;
- (ii) the obligations in the last paragraph of Article XI:2 with respect to imports should be defined in a clear and operational manner. In particular, it would be necessary to devise a method for establishing what the effective shares of imports and domestic production would be in an unrestricted market. The relative shares of imports and domestic production should be determined, not by negotiation between unequal partners, but in accordance with the principle already embodied in Article XI that there should be equal sharing of the reduced opportunities involved in supply management as between imports and domestic production. In other words, this determination of relative shares should not simply be a matter for negotiation but should be based on the application of criteria embodied in a strengthened Article XI;
- (iii) quantitative restrictions maintained under waivers and other derogations and exceptions should be phased out, with the initial level of access under the phasing programme being negotiable;
- (iv) in no case in the future should derogations or waivers of unlimited duration be granted.

D. orientation: viable and practical rules and disciplines on quantitative restrictions under given realities of trade in agriculture:

- (i) the requirements of the exceptions to the Article XI:1 prohibition should be modified in the direction of indulging the conditions under which quantitative and other related restrictions are permitted, so as to accommodate all quantitative and other related measures under common GATT rules and disciplines;

- (ii) as the existing requirements of Article XI:2(c) were unduly rigid and were not being extensively applied, and as the special conditions and characteristics of agriculture were not well reflected in the present provisions of Article XI:2(c), consideration should be given to modifying the existing Article XI:2(c) criteria and to the inclusion of exceptions related to regional development policies, and to food security in respect of a certain level of domestic production of basic foodstuffs;
- (iii) an examination should be undertaken with a view to mitigating the rigidities of the unduly strict last paragraph of Article XI:2. The manner in which the access provisions of Article XI:2 are applied should be examined not only from the point of view of accommodating all measures maintained under derogations or exceptions, but also from a practical point of view by taking into consideration the objectives of the more extensive range of domestic measures in respect of which recourse to restrictions should be permitted under (ii) above.

8. In general, the Committee's discussions focused on whether the existing principles and criteria of Article XI:2(c) should be retained and strengthened, or whether Article XI:2(c) should be modified, under certain conditions relating to minimum access, to encompass a wider range of restrictions. The suggestion that quantitative restrictions and other non-tariff measures should be eliminated was also considered. In addition, the suggestion was made that appropriate consideration should be devoted to the broader issue as to whether the Article XI:2(c) principles and criteria might serve as a pivot for developing equivalent disciplines on all relevant measures affecting access.

9. In several of the views expressed, it was considered that while the existing provisions were not being effectively applied, it would be a retrogressive step if the Article XI:2(c) criteria were to be loosened or diluted. Minimum or minimal access commitments were regarded as being no substitute for revived and effective rules based on Article XI:2(c) principles. The risk involved in the AG/W/9 approach was that countries could be encouraged to tailor their domestic agricultural policies so as to legally invoke quantitative restrictions. In these circumstances, non-conforming quantitative restrictions should be treated as derogations and made subject to a higher level of commitment in respect of access than would have been the case had the measures been consistent with Article XI:2(c).

10. The view was also expressed that quantitative restrictions imposed under Article XI:2(c) should not be everlasting, but should be freed over time as the internal measures they were designed to protect succeeded in limiting domestic production. In this context, it was noted, in a number of the views expressed, that domestic price and income support policies as such should not be regarded as a legitimate basis for the imposition of restrictions. In this regard, it was stressed that effective restriction of production should continue to be the basic condition for imposing restrictions, with suggestions being made, for an examination of the scope for better definition of the policies that might entitle a country to have recourse to restrictions.

11. With regard to the suggestion in paragraph 7 B above, it was reiterated that in the current serious surplus situation, which could grow exponentially as a result of technological developments, it was imperative that the necessary adjustments should be made by subjecting producers to market forces. It was recognized that a transition to market-oriented agricultural policies would take time and that the steps required to achieve this had not yet been identified. On the other hand, other suggested solutions were unlikely to effectively address the problems faced by agriculture. The AG/W/9 and other suggestions made with regard to Article XI:2(c) would perpetuate quotas and would be unlikely to result in a liberalization of trade. It was pointed out that an approach based on production controls would involve a number of major difficulties. Not only were domestic production controls not negotiable, but there were considerable doubts as to whether such controls would be workable. There were problems in defining what production was, in monitoring production developments on an ex post facto basis, and in determining the level of self sufficiency at which controls might be set. There were also significant problems associated with the economic costs for producers and consumers.

12. In a number of the views expressed, it was noted that while the approach outlined in paragraph 7 B above would, if implemented, solve many of the problems affecting trade in agriculture, and could therefore be supported, there were some doubts as to whether in fact such an approach could command general support.

13. Another view was that it was difficult to see how the 7 B approach could be reconciled with certain basic elements in the recommendations, including the linkage between domestic policies and trade measures, and the three important considerations mentioned in paragraph 3. It was also questioned whether the future balance of rights and obligations should be one in which other countries were expected to eliminate the particular import regimes which they had paid for, and submit to the exclusive disciplines of bound tariffs, in exchange for having one contracting party abide by the normal GATT rules after thirty years.

14. In this connection, it was pointed out that the approach outlined in paragraph 7 B above would, by eliminating non-tariff barriers, have obvious advantages for developing countries and that the tariffs would reinforce the linkages between domestic policies and trade measures more effectively than any other approach. In a number of the general comments on the scope for more operationally effective disciplines on quantitative and other related restrictions, it was emphasized that the approaches to be developed should be realistic and should take full account of the specificity of the agriculture sector, as well as of the other related elements contained in the Recommendations. It was suggested that a realistic approach in this regard would be to modify the existing criteria governing eligibility to have recourse to measures under Article XI:2(c), so that restrictions outside Article XI could be brought within effective GATT rules and disciplines. It was also pointed out that the elimination of quantitative restrictions not recognizably in conformity with contracting parties' GATT obligations was the subject of certain procedures in the Group on QRs and other NTMs, and that this was a matter on which the Committee should also focus.

15. The need to guarantee food security, the impact of fluctuations in world market prices on domestic price and income policies, and the vulnerability and cyclical nature of agricultural production were among the factors mentioned which distinguished trade in agriculture from trade in other sectors. It was also noted that many, if not most, of the trade measures maintained in the agriculture sector were intimately linked to the pursuit of national policy objectives in the areas mentioned and were themselves integral elements of such policies. The legitimacy of these objectives had to be taken as a point of departure in determining which rules should govern trade in agriculture. However, it was indicated that the specificity of agriculture should not constitute a general escape clause from GATT rules and disciplines, nor that there would be an increase in restrictions. Supply management had an important role to play in the linkage between domestic policies and trade measures. Within a more operationally effective framework of rules and disciplines, restrictions should be applied responsibly so as to minimize the adverse trade effects and improve access, especially for products exported by developing countries.

16. In this same context, it was indicated that both an approach based on reserving a proportion of the domestic market for imports and an approach based on generally applied rules, were difficult to reconcile with the specificity of the agriculture sector. If the legitimacy of certain domestic policy objectives were not taken as a point of reference, how would it be possible to evaluate whether a particular measure was justified or not? Furthermore, the establishment of a minimum ratio of imports to domestic production under Article XI would not only lead to a bureaucratization of domestic policies and trade, but would in some cases be unacceptably high and in others too low.

17. Another view was that the Committee should approach the question of the specific characteristics and problems of agriculture in a practical manner. The need to maintain a certain level of domestic production of certain basic foodstuffs, as well as concerns about regional development, were factors common to most countries. From a practical point of view, the special factors or circumstances which were claimed to justify a lower level of commitment in particular cases should be defined or demonstrated by the country concerned. This lower level of commitment should be counterbalanced by a greater commitment elsewhere as part of an overall move towards more liberal trade. It was also pointed out that since the suggestions outlined in paragraph 7 D above did not imply any move towards more liberal trade, they could not be regarded as falling within the general framework of the Committee. It was also suggested that other more liberal and less discriminatory instruments should be used in preference to quantitative restrictions where restrictions were legitimately imposed to protect domestic policies.

18. A number of points were raised concerning the application of Article XI:2(c) to like products, including the question whether, if production of the primary product was controlled, a country would be entitled in its own discretion to extend import restrictions not only to like products but also to processed products and to inputs to the production of the controlled product. One view was that within the context of domestic price and income policies, there were two factors,

prices and costs of production, through which production could be controlled. The scope for limiting production through prices was not extensive, because of political considerations and the need to maintain comparability of farm incomes. In this view, it was suggested that the scope for restricting imports of production inputs as a means of controlling production was a matter that needed to be considered in the Committee. It was also noted that any widening of the scope of Article XI:2(c)(iii) in relation to restrictions on imports of production inputs would have direct implications for tariff bindings. In this regard, the question was raised as to whether Article XXVIII would be intended to apply to a situation where, for example, imports of feedstuffs were restricted as a means of controlling the production of dairy products.

19. With respect to Article XI:2(c)(ii), it was noted that there were likely to be very few situations in which surpluses were temporary as distinct from being structural or chronic. It was noted, however, that in one case, a panel had devised the concept of "a temporary surplus over the recurring surplus" as a means of applying the disciplines of Article XI:2(c)(ii). It was suggested that a definition of what constituted a "temporary surplus" would help to make Article XI:2(c)(ii) more operational. In this connection, it was noted that this provision had been invoked to justify seasonal restrictions in the fruit and vegetables sector.

#### State Trading and Other Related Enterprises

20. The general comment was made that if the activities of state trading and other enterprises which have a monopoly of imports were not dealt with in the approaches to be developed by the Committee, a good proportion of trade in agriculture would escape effective disciplines. In several of the views expressed, the concept as outlined in paragraph 19 of AG/W/9, of extending minimum access commitments to state-trading enterprises whose activities prevented a normal evolution of trade, was considered to be worth developing. It was noted in one view that while there might be problems in applying certain aspects of the last paragraph of Article XI:2 to a form of trading which in itself was a special factor in terms of that paragraph, a link with domestic production would be an appropriate discipline to apply, even where the activities of such enterprises were purportedly governed by commercial considerations. It was also noted that improved transparency would be an important element in developing more effective disciplines in this area.

21. The suggestion was made that one approach might be an interpretative note to Article XVII:1(b) which would specify that whatever responsibilities may emerge in respect of quantitative restrictions from the overall exercise would be equally applicable to state-trading enterprises. It was also suggested, in line with the approach outlined in paragraph 7 B above, that state trading which did not operate as a tariff should be eliminated. Reference was also made to the close relationship in some cases between national policy objectives and the activities of state-trading enterprises, and to the corollary that it may not be feasible to go beyond greater transparency and some provision on non-circumvention of substantive governmental obligations.

### Minimum Import Price Arrangements

22. It was pointed out that it was necessary to make a distinction between minimum import prices whose effects were prohibitive and those which allowed imports albeit subject to a charge where import prices were below the specified minimum.

23. One suggestion was that rather than treating minimum import prices as quantitative restrictions, they should be treated, along with variable levies, as variable import charge mechanisms. In this view, it was considered that, in line with the GATT principle of reducing and binding fixed tariffs, a minimum amount of bound access, equivalent to at least the existing volume of trade, should be provided under minimum import price arrangements and variable levies. The effect would be that up to a certain level, imports would only be subject to a bound tariff; beyond that level, imports would be subject to the normal operation of the minimum import price or variable levy system. It was further suggested that, as part of this approach, a maximum ad valorem equivalent should be imposed on variable import charges, and that as suggested in AG/W/9 there should be a dynamic linkage to changes in domestic production.

24. It was pointed out that the minimum import price was an extremely difficult mechanism to analyse. It was inherently discriminatory. While it possessed certain characteristics of the quantitative restriction, of the variable levy, of the voluntary restraint agreement, and of state trading, it tended not to exist in its own right. As such, it was suggested that minimum import prices should be governed by any improved rules and disciplines on the principal measures. But to the extent that these disciplines did not deal with restrictions based on price limitations, another option would be for minimum import prices to fall under the prohibition of Article XI:1.

### Variable Levies and Other Charges

25. It was noted that as the GATT status of the variable levy had never been established, some better understanding of the status of variable levies should be established before deciding how such measures might be dealt with in the framework of any overall solution. One view was that, depending on the relationship between internal support prices and world prices, levies could either be conducive to trade or could be highly restrictive or even prohibitive. In the latter case, their effects could be the same as, or similar to, those of quantitative restrictions. Another view was that variable levies and counterpart restitution mechanisms, which in essence operated to disconnect internal prices from world market prices, could also have more extensive and prejudicial effects depending on the extent to which internal prices stimulated domestic production. It was also considered that the variability and unpredictability of levies could inhibit or destabilize normal trading conditions.

26. In this general context, the view was expressed that variable levies were no more than unbound tariffs, or could be treated as such. They had been established following Article XXVIII negotiations in which payment had been made for the freedom to establish a tariff at whatever level was considered appropriate. In this respect, the situation was no

different from that of an unbound tariff which at any time could be raised to a prohibitive level. Moreover, while it was correct that levies varied, the variations were not unpredictable. The amount of the levy at any given time was calculable by reference to the fixed element, namely, the internal price.

27. It was noted that there were nevertheless a number of respects in which variable levies differed from unbound tariffs: unlike an unbound tariff, the levy was designed to equalize world market prices and internal prices; levies were subject to constant variation; in practice, there were high levels of bindings in areas where levies were not applied, and vice versa; and, whereas the impact of ad valorem tariffs declined as world price levels declined, the reverse occurred in the case of variable levies. It was also noted that freedom acquired as a result of deconsolidation negotiations under Article XXVIII was not an absolute freedom, since there was a general obligation under Article XI not to impose prohibitions or restrictions other than duties, taxes or other charges, it presumably having been intended that "taxes and other charges" were those referred to in Articles III and VIII of the General Agreement. It was pointed out in this regard that an unbound tariff could nonetheless be fixed at 1,000 per cent.

28. Various ideas were put forward as to how variable levies and other charges might be brought under effective GATT disciplines. In general, these were that variable levies should be treated as non-tariff restrictions subject to Article XI disciplines, including the minimum access provisions of the last paragraph of Article XI:2, and/or that such measures should be treated as unbound tariffs and be subject to whatever regime was developed to deal with, or negotiate on, unbound tariffs. Another suggestion was to phase variable levies out over time and replace them with bound tariffs through a gradual expansion of reduced or levy-free quotas. The further suggestion was made that there should also be a maximum upper limit or bound ceiling to variable levies in order to put a limit on the disparity between international and domestic prices, and to remove the prohibitive element associated with high variable levies.

29. With regard to the negotiability of variable levies, the view was expressed that the same rules, including reciprocity, should apply as in any negotiation on tariffs. Previous negotiations had demonstrated that variable levies were not taboo. At the same time, it was noted that the need to have a balance of rights and obligations, and to take account of the specificity of the agriculture sector, necessarily imposed limits as to how far it would be possible to go in this area.

30. In several of the views expressed, it was stressed that what was being sought as the eventual outcome of the work of the Committee was a basis on which a substantive balance of rights and obligations for agricultural trade could be achieved in a broader negotiating framework. In this connection, it was considered that the essentially bilateral offer and request negotiating techniques of the past, which had disadvantaged developing and other less powerful trading partners, had gone about as far as they could go. It was suggested that it would be unrealistic to expect reductions in variable levies to tradable levels on an item-by-item basis. In this view, what needed to be examined by

the Committee was a linear or semi-linear negotiating formula, which could be applicable to both variable levies and unbound tariffs. It was emphasized that such an approach should not be viewed in isolation but in the context of a broader move towards further trade liberalization in a number of areas, including subsidies, and on the basis that an overall balance of rights and obligations was to be sought within the framework of a negotiation involving other sectors.

31. The view was also expressed that the concept of associating minimum access commitments and ceiling bindings within variable levies and unbound tariffs, could not be taken to the absurd extreme where a high bound tariff involved a lesser degree of commitment under the GATT than a modest unbound tariff. In this regard, it was pointed out that what should be sought was a negotiating formula on unbound tariffs, not a rule that all unbound tariffs must be bound, although in the case of prohibitively high unbound tariffs, as with high variable levies, a case could be made for some linkage with the last paragraph of Article XI:2. A further suggestion made was that in considering the scope for possible action on unbound tariffs, or measures assimilable thereto, discriminatory internal taxes and charges should not be overlooked.

#### Unbound Tariffs

32. In addition to the foregoing points on unbound tariffs, reference was also made to the provisions of Article XXVIII bis under which it is recognized that negotiations directed, inter alia, to the reduction of such high tariffs as discourage the importation even of minimum quantities, were of great importance to the expansion of international trade.

#### Voluntary Restraint Agreements

33. In the discussion on this subject, a number of suggestions were made as to how voluntary restraint agreements might be dealt with, including: (i) an outright prohibition of such measures; (ii) procedures for improved transparency, including notification by affected exporting countries, together with a requirement, reviewable by an appropriate GATT body, for a reasonable and progressively expanding level of access; (iii) the establishment of criteria for the phased incorporation of voluntary restraint arrangements into the multilateral framework; and (iv) an explicit prohibition on voluntary restraint agreements except those which are temporary and are a more liberal alternative to unilateral important action that would otherwise be in full conformity with Article XIX, with the further possible requirement that continuation of such voluntary restraint arrangements beyond three years should require the prior approval of the CONTRACTING PARTIES.

34. In several of the views expressed, it was considered that voluntary restraint agreements were fundamentally at odds with the multilateral and non-discriminatory principles of the General Agreement. Moreover, the inherent bilateralism of such arrangements meant that trading partners whose bargaining power was limited, particularly developing countries, were always the losers. It was suggested that a return to multilateralism in this area would be one way in which paragraph 3 of the Recommendations as it relates to the special needs of developing countries could be responded to in an effective manner. Another view was that given that the range of pressures that could be used to induce exporters to enter into voluntary restraint agreements was virtually

open ended, it would be extremely difficult to deal definitively with such an amorphous measure. Improved transparency in conjunction with an impartial GATT review of a requirement to provide increasing access were, however, considered to be principles that might be explored.

35. Another view was that if quantitative restrictions were to be brought under more effective disciplines, voluntary restraint agreements would also have to be dealt with, since there would be a tendency to opt for measures that were not subject to any disciplines. A further view was that voluntary restraint agreements of a temporary nature had the merit of avoiding a worse situation in terms of alternative action under Articles XI, XIX or XXVIII. While it was considered that better transparency was desirable, some doubts were expressed about subjecting such measures to the full rigour of Article XI, or to the domestic production-linked access provisions of the last paragraph of Article XI:2. It was suggested in this connection that the concept of concerted disciplines might be examined as a possible way of approaching voluntary restraint agreements.

Subsidies in General: Article XVI:1

36. With regard to more operationally effective rules on subsidies in general, including any form of income or price support which operates to directly or indirectly increase exports, the question was raised as to whether the obligation under Article XVI:1 to "discuss" the possibility of limiting subsidization seriously prejudicial to the interests of other exporting contracting parties, might be converted into an obligation to in fact take appropriate remedial action. It was noted that, from a general trade policy or system point of view, one of the questions that would need to be considered was the nature of the "interests" which should be protected from serious prejudice under GATT rules.

37. In several of the views expressed, it was considered that the existing provisions of Article XVI:1, which provided for notification, consultation and an obligation in certain circumstances to merely discuss the possibility of limiting the offending subsidization, did not go far enough. If subsidization in whatever form was demonstrably the cause of serious prejudice to other contracting parties, there should in principle be a remedy. It was noted, however, that while the application of the present rules was prone to a contest of relative economic and political strength, the scope for more precise and operational rules based on equity and economic sense would tend to be limited. As to whether the GATT rules should protect the interests of high-cost subsidizing exporters or low-cost exporters, it was also noted that the interests of all contracting parties had to be taken into account, including those of exporters of small occasional surpluses.

38. One possibility discussed for strengthening the provisions of the second sentence of Article XVI:1, was that an attempt should be made to develop a series of criteria for the determination of serious prejudice by GATT panels. In very broad terms, one suggestion was that where prior bilateral or plurilateral consultations had been unsuccessful, an impartial dispute settlement body would determine, on the basis of reasonably objective criteria, whether or not the subsidy practice in

question caused or threatened to cause serious prejudice. Where serious prejudice was clearly demonstrated, the dispute settlement body would determine, or make recommendations on appropriate remedial action. This was on the basis that non-compliance with the determination of the dispute settlement body might entitle the affected party to withdraw concessions.

39. In this connection, it was noted that an approach along these lines would have to be considered as an adjunct to more operationally effective rules and disciplines on export subsidies and other forms of export assistance, and not as a solution in its own right. It was also noted that although "serious prejudice" was the same sort of nebulous concept as "equitable share", an attempt to develop greater precision through criteria or guidelines on serious prejudice could be one concrete way of coming to grips with those less transparent domestic subsidy practices which are not specifically dealt with under one or other of the approaches to be elaborated on export subsidies as such. It was further suggested that an objective and operational series of criteria on what constituted "serious prejudice" might serve as a common benchmark for all permitted or non-proscribed direct or indirect subsidy practices affecting competition in third markets. At the same time, it was pointed out that there was a certain lack of coherence between the provisions of Sections A and B of Article XVI, but that it could be a less difficult task to devise criteria on serious prejudice than on equitable share.

40. Some doubts were expressed as to whether it would be feasible in the field of agriculture to go beyond improved notification and consultation arrangements under Article XVI:1 to the extent suggested. To do so, it was suggested, would be to go further than existing GATT requirements in other areas of trade. Practical difficulties inherent in attempting to quantify the extent of serious prejudice in a particular case were referred to, as also were similar difficulties in quantifying limits on offending subsidy practices and in assessing any withdrawal of concessions. In relation to the account to be taken of the specificity of agriculture in this context, it was noted that several factors were relevant: the conditions under which the subsidy is granted, with the point of departure being the legitimate objectives of certain domestic policies; the fact that in certain circumstances, such as exceptional harvests, subsidies were the consequence rather than the cause of surpluses; and, the need to assess the combined quantitative and price effects on third markets.

41. In several other views expressed, it was indicated that more precise criteria on serious prejudice would need to deal, in addition to market displacement and price undercutting, with serious prejudice in the form of lower returns to producers who depend on world market prices. It was also suggested that one possibility in the case of domestic subsidy programmes might be to relate subsidized exports to the import behaviour of the country concerned, on the basis that a prima facie case of serious prejudice would exist where subsidized exports exceeded a certain proportion of imports. In this regard, it was emphasized that any criteria developed on serious prejudice would need to be clearly and precisely stated if they were to provide workable guidance to subsidizing exporters and enable them to avoid causing

serious prejudice. As a general comment, it was indicated that the value of any criteria that might be developed on serious prejudice would also largely depend on the efficacy of the GATT dispute settlement procedures. The possibility of a case-by-case evolution of criteria was also mentioned. Another view was that a specialized dispute settlement body was to be preferred to the erratic ad hoc panel system.

42. Several views were expressed on the question of improved Article XVI:1 notification procedures, with views being expressed that such notifications should be as comprehensive as possible. Reference was also made to the question of periodic review of such notifications.

#### Export Subsidies and Other Forms of Export Assistance

43. On the question of coverage, it was indicated, in several views expressed, that all forms of direct export subsidies should be considered, including export credits, credit guarantees, long-term agreements, barter transactions and non-commercial sales, as well as indirect export subsidies or measures having similar effects. In this regard, it was also pointed out that the present Article XVI:3 opted incontestably for a broad definition of export subsidies. In these circumstances, and given that, in this view, all countries subsidized in one form or another, all countries should have to respect the disciplines of Article XVI:3 unless it could be shown that no subsidies of whatever form were applied, or that any subsidies applied did not have the effect of increasing exports. It was suggested that the Committee should address itself to these issues before embarking too far on various possible approaches.

44. It was noted that while most countries subsidized, there were enormous differences in the extent to which individual countries did so. It was suggested in this connection that the Committee should focus its attention on the real problem areas. In particular, any system of improved rules and disciplines should concern itself with various forms of direct export subsidization and with those price and income support policies which constantly and permanently set prices higher than world market levels. Under such policies, producers received a higher support price in respect of export sales, whereas low cost efficient exporters were obliged to survive on lower international prices. It was emphasized that the impact of subsidized exports on the world market returns and competitive opportunities of exporters who enjoyed comparative advantage, raised fundamental questions as to the balance of rights and obligations under the GATT. It was also noted in this general context that in terms of Notes to Article XVI:3, the operation of a domestic income or price support programme was subject to certain constraints or norms: one of these being that such a programme should be operated, through the effective regulation of production or otherwise, so as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties.

#### Improvements in the Existing Framework of Rules and Disciplines

45. A number of suggestions or ideas were put forward as to how the existing framework of rules and disciplines might be improved. One suggestion was that the effect-oriented approach under Article XVI:3 had the advantage of leaving the choice of export policy instruments to the

discretion of the individual country in terms of its particular agricultural policy objectives. It was considered, moreover, that an approach along these lines, which would be based on the exercise of moderation and a sense of responsibility, would also be consistent with the aims and objectives embodied in the Recommendations, including the specificity of agriculture. In this view, it was considered that, in addition to improved notification and periodic review, there could be some value in exploring an obligation to adjust subsidies on the basis of an international finding, as well as in exploring the scope for clarifying the Article XVI:3 concepts. In this latter regard, it was suggested that the Committee would be the appropriate forum in which to discuss the results of the informal work undertaken elsewhere in the GATT on this subject. Another view was that a discussion of this informal work would be instructive in demonstrating the narrow scope for improving the existing rules without also tackling the substantive problems.

46. Another suggestion was that the basic concept to be followed should reinforce the preventive aspects of the existing rules by establishing a number of objective criteria which would enable countries that grant subsidies or other forms of export assistance, to ensure in advance that they do not thereby cause serious prejudice. The following formulation was suggested: "In granting subsidies or other forms of assistance whose effect is to increase exports, the parties are agreed to endeavour to avoid the creation of prejudicial effects by taking the following preventive steps ..." It was suggested that these preventive measures should be aimed simultaneously at the quantitative and the price effects as described hereunder:

A. Quantitative effect

- (a) The real (quantitative) increase in exports of the party granting the subsidy should be within the framework of a pre-determined market share ("equitable share") of the product concerned. To allow objective evaluation of that share, the latter would be determined on the basis of pre-established references: real past performance. In order to eliminate excessively wide conjunctural variations, performance would be expressed in the form of an average for the three most recent years.

To avoid any dispute as to the existence and impact of any export aids in exporting countries, it would be appropriate to calculate the equitable share of each exporter systematically and periodically (at the beginning of each three-year period), whatever the export modalities used.

- (b) This traditional share could be established simultaneously at several levels:
- at the level of the world market;
  - at the level of major geographical areas of destination (e.g. Middle East);
  - at the level of certain countries of destination, which would be only the major importers of the commodity and would be identified on the basis of a pre-established list (e.g. for wheat: China, USSR, Egypt, Morocco ...).

The rule would be that within the limits of its traditional share (at three levels), each exporter would be free to use - or not to use - export aids of various kinds. On the other hand, from the moment when it exceeded that share and, in order to do so, applied any kind of export subsidy, it would have to be able to cite objective factors in justification of the excess (e.g. partial incapacity of other suppliers, supply difficulties on normal market terms for a particular destination ...).

B. Price effect

- (a) The principle is to ensure that the use of export subsidies does not lead to pricing having a depressive effect on normal world market prices.
- (b) This principle is easy to apply to commodities for which there are objective and recognized international quotations (e.g. the Chicago exchange for wheat).

The only problem is to determine where the relevant price is to be recorded: at the point of departure (f.o.b.) or at destination (c.i.f.)?

To avoid a situation where the export aid also covered transport costs, it would be preferable to use the f.o.b. price. In this case, the rule would be that the grant of export aids must not allow the quoting of export prices (f.o.b.) lower than international quotations for the commodity concerned (like quality), taking account of the costs incurred prior to the f.o.b. stage for putting-up, the price comparison being made on the basis of an average established over several months (four or five) in order to offset speculative evaluations.

- (c) On the other hand, for commodities for which there are no objective and recognized international quotations, it is more difficult to select a "reference price":

- in the case of processed products for which there are no specific quotations, the effect of export subsidies, in terms of selling price, could be limited to simply offsetting the difference in costs of agricultural raw material on the world market and on the domestic market.

In order to allow an objective and transparent assessment, the processing co-efficient applied to evaluate the quantity of raw material input could be fixed by negotiation for the principal products and taking into account quality variations.

- in the case of other commodities not quoted internationally and which are not processed products in the strict sense, such as poultry or certain dairy products (cheese), a case-by-case approach could be envisaged.

The objective reference would be determined case-by-case, either in relation to the feedingstuffs or products used (assimilation to processed products), or in relation to certain selected national quotations (assimilation to primary products). Having regard, however, to the diversity of products or commodities, in particular in respect of quality variations which can imply substantial added value (e.g. cheese), it is clear that an objective reference price cannot be established in all cases. It would then be wise to provide that the price rule cannot be applied.

47. A number of preliminary views were expressed regarding the approach outlined above. In summary form these were that such an approach would represent a basic change in GATT rules; that it would privilege the position acquired by export subsidizing countries unless much longer initial reference periods were utilized; that it could freeze and perpetuate the status quo to the detriment of non-subsidizing exporters and would make it difficult for new participants, particularly developing countries, to enter areas of international trade where they enjoyed a comparative advantage; and, that as the approach was based on the operation of subsidies and on effectively freezing market shares, it would drive all exporters to subsidize further for fear of losing their market shares and would thus eliminate any dynamism from international trade. It was also observed that the approach would not contribute to a further liberalization of trade, would ignore productivity changes and would not be compatible with an overall balance of rights and obligations. There was also some discussion as to whether the suggested approach as it related to processed products, was consistent with the existing provisions of Article XVI and the Code on Subsidies.

48. Another suggestion regarding improvements in the existing framework of rules and disciplines was that "more than an equitable share" should be interpreted to mean any share that could not be obtained without the use of export subsidies. In one view expressed, it was considered that such an interpretation of equitable share would in practice amount to a prohibition. It would mean that, for those countries whose exports depended on a restitution of the difference between internal and world market prices, exports would no longer be possible. In this regard, it was also emphasized that such a proposition was untenable since, given that every country subsidized in one form or another, it was first and foremost in the field of exports that the specificity of agriculture had to be taken into account.

49. With regard to the interrelationship between the specificity of agriculture and the GATT rules and disciplines on export subsidies, the view was expressed that domestic policy objectives related to food security, income parity and regional considerations should not have to be pursued at the expense of those exporters who depended on world market prices. It was also pointed out that it could not be demonstrated that export subsidization, other than on a limited scale, in addition to restrictions on access was necessary to maintain domestic agricultural policies. A number of high cost producing countries had managed to do without export subsidization, without the result having been the demise of their agriculture. Another view was that the interpretation suggested could serve as a useful point of reference or criterion in any improved rules and disciplines governing the use of export subsidies and other subsidies affecting exports.

50. It was noted, in one view, that the "more than equitable share" concept had at one stage been thought capable of meaningful definition but that the concept had subsequently been eviscerated in a series of panels. The circumstances in which the concept now had to be applied had also altered. Whereas the Notes to Article XVI:3 related to domestic support programmes which did not unduly stimulate exports, the situation as it had evolved was one of chronic rather than occasional surpluses.

51. It was also pointed out that the operational ineffectiveness of the equitable share concept was particularly pronounced in situations where low cost producers were obliged to match subsidized competition and thus avoid displacement. Although the low cost producers' market share remained unchanged, serious prejudice in terms of lower returns was suffered and there was no encouragement, as a result of the way in which Article XVI:3 operated, for the low cost producer to take the larger share of world markets that his comparative efficiency would otherwise command. The manner in which representative periods were calculated and the role of special factors were also considered to have weakened the effectiveness of the Article XVI:3 disciplines. For these reasons, it was suggested that the equitable share concept was not necessarily unworkable merely because of definitional problems but because the concept itself was inequitable, and was inappropriate as a means of avoiding subsidization seriously prejudicial to the trade and interests of those exporters whose livelihood depended on world market prices and conditions of competition. The suggestion was also made that, under the approaches to be elaborated in terms of paragraph 1(b) of the Recommendations, the equitable share concept should be replaced by operational criteria based on the concept of serious prejudice.

#### General Prohibition Subject to Carefully Defined Exceptions

52. A number of suggestions were put forward on how a general prohibition on export subsidies and other forms of export assistance might be elaborated.

53. One proposal was that all existing export subsidies should be phased out and that new export subsidies should be prohibited. For this purpose, export subsidies would also include direct export credits and other forms of export assistance. Under this approach, everything would be prohibited except food aid. Existing export subsidies would be permitted temporarily so long as a schedule and phase-out rules were established for each subsidy and the export quantity was gradually reduced. It was indicated that this proposal would establish a direct link between domestic programmes and export policies because the elimination of export subsidies would require adjustments in domestic price support programmes. Moreover, it was considered that since surpluses were caused by domestic price support programmes, it would only be right that domestic programmes should be adjusted to remove these surpluses.

54. In the presentation of this proposal, it was noted that there was extreme concern about present chronic surpluses and about the prospect of even more serious surpluses. It was considered that efforts should be increased to prevent or reduce surpluses, which represented a burden on national economies in terms of the economic resource and budgetary

costs involved, as well as the adverse impact they had on international markets. It was pointed out that in the past, stocking techniques and export subsidization had been used as a means of dealing with surplus. Stocking techniques, which were temporary measures predicated on the assumption that conditions would improve, had not worked well in the past. There were no reasons to believe that stocking techniques would be any more effective in the future. Export subsidies on the other hand were considered to be unfair, particularly for developing countries, because they transferred the cost of domestic support programmes to other exporting countries.

55. In several of the views expressed, it was pointed out that the foregoing proposal, which was focused on direct export subsidies, would not lead to adjustments in domestic price support programmes that were based on a two-price system. Nor was it considered that such a prohibition would get to grips with the adverse effects of two-price systems and other indirect subsidies on competition in world markets. In this regard, it was indicated that adjustments to two-price systems and other domestic price support programmes would be addressed in the context of the related proposals on access, but that if access measures other than tariffs were applied, it may be necessary to look at the operation of two-price systems from the point of view of their effects on exports. It was also noted that experience in certain cases had shown that domestic production subsidies could hamper the process of adjustment even under a zero bound tariff.

56. The view was also expressed that the proposal as outlined in relation to export subsidies and access restrictions, was too simplistic and idealistic given the divergence of national policies. If adopted it would preclude the maintenance of any agriculture in European countries, and possibly in other countries as well. It was also considered that such proposals would certainly endanger security of food supply in those countries whose agricultural production was dependent on support. It was for these reasons that it was in relation to Article XVI:1 that the specificity of agriculture had to be taken fully into account.

57. It was indicated, in several of the views expressed, that the general prohibition approach would best respond to the need to limit both the use of subsidies and their prejudicial effects. In particular, it was considered that one purpose of a general prohibition should be to embody what was already contained in Article XVI:2 in more operationally effective rules. It was also considered that a prohibition with exceptions was the most effective means of preventing serious prejudice and of dealing not only with direct export subsidies but with a range of other export subsidy practices on which more effective disciplines were required.

58. One series of suggestions or ideas on a general prohibition with exceptions was based on the premise that consistent net exporters, as opposed to small occasional net exporters, should bear a heavier responsibility for the impact of their export subsidy measures on international trade. The rationale suggested for stricter disciplines in the case of consistent net exporters were that levels of support in such countries were predicated on considerations which went well beyond what might reasonably be dictated by the specific characteristics of agriculture or the maintenance of farm incomes. In this view, it was considered that as neither an effect-oriented approach or a linkage with effective supply management were feasible alternatives, the best method of preventing damage was through a general prohibition.

59. In this connection, it was suggested that non-commercial or discounted sales other than food aid in grant form should be prohibited, along with direct export subsidies and subsidized export credits. Greater precision should also be required on credit guarantees and contractual rules, as opposed to a gentlemen's agreement, should be formulated on the provision of commercial credits. With regard to possible exceptions, it was indicated that an exception might be envisaged in the case of small occasional exporters, possibly linked to access performance.

60. In a further series of suggestions or ideas, it was emphasized that the range of exceptions to a general prohibition should not be such as to embrace all existing export subsidy practices. Food aid donations, provided the rules on surplus disposal were observed, could qualify for an exception but not concessional sales. With regard to the possibility of exceptions linked to domestic supply management programmes, it was pointed out that a problem of principle was involved to the extent that a country honouring its existing obligations under Article XI:2(c) could obtain an unlimited right to dispose of surpluses on international markets. On the other hand, the concept of exceptions based on such a linkage was not to be dismissed out of hand, since it could facilitate gradual adjustments in the way in which domestic agricultural policies were implemented in order to accommodate additional access.

61. In this same view it was suggested that a phasing formula might be considered in the context of an overall approach acceptable to all participants, including those for whom the specific characteristics of agriculture featured prominently, under which there would, from the outset, be some net improvement in trade opportunities as well as improvements in the GATT rules and disciplines.

62. In this view, the phasing formula suggested would be one under which occasional net exporters might be permitted to subsidize exports up to, say, 50 per cent of additional access created. In the case of consistent net exporters it was suggested that the quantities in respect of which there would be an entitlement to use export subsidies would be gradually but progressively phased out in accordance with a basic formula. However, the quantity entitled to export subsidies could be supplemented by an additional export subsidy entitlement linked to the creation of additional import access. It was suggested that this supplementary or counterbalancing entitlement would itself begin to phase out whenever the level of import access remained static for more than, say, two years. The combined effect would be that a net exporting country which provided increasing import access would enjoy a relatively higher export entitlement and a lower rate of degressivity than would otherwise be the case under the basic phasing out formula.

63. The view was also expressed that the general prohibition approach had certain merits in terms of its clarity and precision. It was noted, however, that the Committee should concentrate its attention on the nature and extent of the exceptions. In this connection, it was suggested that the linkage between domestic policies and trade measures should form the basis for a category of exceptions which takes account of the specific characteristics and problems of agriculture. It was further noted, that the general prohibition approach would imply a significant change in the relevant GATT rules and disciplines and would accordingly involve a major concession that would need to be counterbalanced in some way.

64. A further view was that the key elements in the general prohibition approach were the nature of the exceptions and of the disciplines that would govern subsidies applied under exceptions. It was considered that in a practical sense, exceptions could be linked to domestic policies which placed effective limits on domestic production. Thus, if a country imposed real disciplines on domestic production there would, in practical negotiating terms, be scope for a trade-off in the form of a partial relief from the new disciplines that would apply to export subsidies.

65. It was also stated that the Committee should examine the scope for a pragmatic solution under which responsible behaviour on international markets and improved access would be balanced by an exception to a general prohibition. In this general context, it was pointed out that the relevant linkage was not between import and export measures as such, but between import measures and domestic policies on the one hand, and between export measures and domestic policies on the other.

66. With regard to the subsidization of processed agricultural products, one view expressed was that the Committee should examine the scope for a lasting solution which would make it possible in a limited fashion to subsidize the primary component of a processed product. It was suggested that the clear language of Article 9 of the Code on Subsidies should be taken as a point of departure for a solution in order to avoid, inter alia, the perpetuation of a situation in which damaging counter measures could proliferate.

67. As a general comment, it was noted that a prohibition was not a new concept. It was already embodied in Article XVI:3 to the extent that subsidies that resulted in the acquisition of more than an equitable share were prohibited. Certain proposals were designed to achieve a more precise delimitation of the existing prohibition, whereas other proposals sought to extend the scope of this prohibition. Accordingly it was suggested that there was no real dichotomy involved, since under both approaches it was accepted that there should be a certain degree of prohibition and a certain scope for exceptions. It was on these aspects therefore that the Committee should endeavour to achieve a meeting of minds.