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GENERAL AGREEMENT ON TARIFFS AND TRADE

WORKING GROUP ON MTN AGREEMENTS AND ARRANGEMENTS

Report to the Council

Revision

I. INTRODUCTION

1. The CONTRACTING PARTIES decided at their fortieth session in November 1984 (L/5756):

- to invite the Committees or Councils established under the MTN agreements* to examine in special meetings the adequacy and effectiveness of the agreements and the obstacles to their acceptance which contracting parties may have faced, and to give non-signatory contracting parties the opportunity to express their views at these meetings;

- to request the Secretariat to consolidate the observations made and any conclusions reached in the special meetings and furnish a report which would subsequently be examined by a Working Group open to all contracting parties;

- to mandate the Working Group to report to the GATT Council at its meeting of July 1985; and

- to ask the Council to consider the matter, including any further steps that might be taken, having regard to the 1982 Ministerial Declaration.

2. In March, April and May 1985 all of the Committees and Councils established under the MTN agreements held special meetings in accordance with this decision. The Secretariat consolidated the observations made and the conclusions reached at these meetings in document MDF/12. The Working Group met on 21 and 27 June and on 5 July 1985 to examine the Secretariat's consolidation. The present report summarizes the main points made in the Group's examination of document MDF/12. A list of the countries that participated in the Working Group is contained in Annex I to this report.

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*In this report the term MTN agreements covers also MTN arrangements.

II. GENERAL OBSERVATIONS

3. Some members of the Working Group expressed the view that the Group should take into account the decision of the CONTRACTING PARTIES in which they reaffirmed their intention to ensure the unity and consistency of the GATT legal system (BISD 26S/201). The conformity of each of the MTN agreements with the General Agreement and the possibilities for reintegrating them into the General Agreement should be evaluated by the Group. The majority of the contracting parties had not participated in the negotiation of the agreements and were, partly as a result of this, not able to understand fully the agreements' impact on their own trade interests. This had been exacerbated by the fact that the MTN agreements had led to the creation of bodies which met sometimes in private session and which reported on their activities to the CONTRACTING PARTIES only in the most summary fashion. One member of the Group asked whether the creation of separate bodies to administer the agreements did not constitute a violation of the principle of unconditional most-favoured-nation treatment. She said that on the eve of a major multilateral trade negotiation in the GATT, which could lead to further agreements separate from the General Agreement and thus to an even greater fragmentation of the GATT legal system, the Working Group's examination was of far-reaching importance.[1]

4. Other members said that the need for agreements separate from the General Agreement had arisen because not all contracting parties had been willing to assume additional obligations under the GATT. An amendment of most of the provisions of the General Agreement required the consent of sixty of the ninety contracting parties. It was preferable to let those contracting parties that were willing to assume more obligations sign separate agreements rather than to wait until sixty contracting parties were ready to accept the same disciplines. None of the MTN agreements was contrary to the GATT, and none of them abridged the contracting parties' rights under the General Agreement. Any contracting party which felt that an MTN agreement was implemented in a way contrary to the General Agreement could bring a complaint under Article XXIII of the General Agreement. Under all of the agreements benefits were accruing to non-signatories; this applied in general even to the Agreement on Government Procurement which regulated a subject matter that fell outside the General Agreement's most-favoured-nation clause. This, and the desire to avoid the additional disciplines imposed by the Agreements, explained to a large extent the lack of interest of some countries in the MTN agreements. Most meetings of the Committees and Councils were open to observers and all contracting parties could become observers. The documentation made available to them enabled them to fully acquaint themselves with the operation of the agreements. Where the developing countries faced administrative difficulties in this respect, technical assistance was readily available. The coexistence of the MTN agreements and the General Agreement

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[1] Paragraph 3 reflects views expressed by, inter alia, Jamaica in the Working Group. The full text of the statement by Jamaica is reproduced in Annex II.

could not be said to have eroded the GATT legal system. Some members added that, on the contrary, the absence of such agreements, in particular in the safeguards area, had led to a certain erosion.

5. Diverging views were expressed on the overall adequacy and effectiveness of the MTN agreements. Many members expressed the view that the agreements had, on the whole, led to positive results. While they could all be improved - and in some cases consultations or negotiations in that direction were under way - they had all contributed to an increase in trade policy disciplines and thereby to a strengthening of the multilateral trading system. One member of the Group noted that difficulties which had been attributed to the operation of the MTN agreements often stemmed not from the specific provisions of the agreements but from a failure to observe the obligations they imposed. Another member pointed out that all major problems which had arisen in the operation of the agreements were related to agricultural trade. A success of the work of the Committee on Agriculture should therefore have a beneficial impact on the operation of the agreements.

6. Another view was that the MTN agreements had not slowed down the trend towards protectionism and, in some cases, had even contributed to it. Some contracting parties were basing their decisions to impose voluntary export restraint agreements on the provisions of the agreement on anti-dumping. The non-application provision of the agreement on subsidies was used by one of the signatories as an instrument to extract from developing countries commitments on their export subsidy policies and had therefore become a source of additional discrimination. Not less, but more, countervailing and anti-dumping duties had been imposed since the Tokyo Round. The disciplines in the field of agriculture had been eroded. This constituted a major obstacle to the acceptance of countries that had mainly agricultural export interests.

7. One member of the Group said that his government, even though it was in fact following the substantive rules set out in some of the MTN agreements had not accepted them because of the procedural requirements under the agreements. An alleviation of the administrative burdens arising from the agreements would no doubt induce non-signatories to accept them.

8. Several members of the Group said that the special meetings of the Councils and Committees had not revealed the obstacles to acceptance that developing countries were facing. One member stated that it was still not clear to him why, for instance, some least developed countries could join the agreement on customs valuation and not other, more advanced, developing countries. Other members felt that the reports on the special meetings did not fully reflect the non-signatories concerns. Many developing

countries with small missions could not attend all meetings. Moreover, the reports on the special meetings were reports of the signatories and therefore did not necessarily reflect the views of non-signatories. The Working Group was, in their view, the first opportunity to evaluate the MTN agreements in a forum in which signatories and non-signatories had an equal voice.

9. One member pointed out that developed countries with even smaller missions than those of some developing countries had participated in all the special meetings of the Committees and Councils.

10. Several members cautioned that it would be both unhelpful to the efficiency of the work of the Group and misrepresentative of signatories' experience of the agreements to suggest that benefits had accrued to developed countries only. These members noted that, on the contrary, there was substantial evidence to show that both developed and developing country signatories shared common objectives, enjoyed identical benefits and confronted many of the same problems.

III. OBSERVATIONS ON INDIVIDUAL MTN AGREEMENTS

(a) Agreement on Technical Barriers to Trade

11. This Agreement was generally considered to be working well and to have met the expectations of its signatories. Several members stated that the complexity of the matters regulated by the Agreement and the administrative changes it required were the only obstacles to their acceptance. They expressed gratitude for the technical assistance which various signatories had offered to facilitate their acceptance of the Agreement. One member said the customs union to which her country belonged was engaged in standardizing activities and her country could therefore not decide unilaterally to accept this Agreement. Mention was made by one member of the unclear circumstances which prevented one non-contracting party with observer status from joining the Code. Other members felt that this question was not covered by the Working Group's terms of reference.

12. One member, supported by others, proposed that the signatories to the Agreement grant a time-limited waiver from certain obligations under the Agreement for all developing countries wishing to participate. Other members pointed out that Article 12:8 of the Agreement gave the Committee on Technical Barriers to Trade the power to grant, upon request, specified, time-limited exceptions from obligations under the Agreement, a power which had already been used once. No additional procedures were needed.

(b) Agreement on Government Procurement

13. It was pointed out that, with this Agreement, the GATT had entered into a new field. Taking into account the generally positive experience gained so far, the parties were now engaged in negotiations under Article IX:6 to broaden and improve the Agreement.

14. Some members of the Group stressed the multilateral nature of the procedures set out in the Agreement for the entity negotiations between the parties to the Agreement and countries wishing to accept it. Two members said that their countries' efforts to participate had failed because their entity offers had not been found acceptable. They suggested that the parties, in responding to entity offers of developing countries wishing to accept the Agreement, should pay greater attention to the development, financial and trade needs of these countries in accordance with the principles set out in Article III:3. Another member said his authorities were considering the recently revised entity offers of some developing countries in a positive light but did not consider purely symbolic offers sufficient. Relatively limited entity offers by developing countries might be acceptable in the context of a gradual expansion of their entity lists in accordance with an evolutionary clause.

(c) Agreement on Interpretation and Application of Articles VI, XVI and XXIII

15. One member of the Group, supported by others, requested that the Group examine the compatibility, both with this Agreement and the General Agreement, of the practice of one signatory to obtain from developing countries commitments on their export subsidy policies which, under Article 14:5 of the Agreement, were of a unilateral and autonomous character. This member also referred to the problems relating to the invocation of the non-application clause (Article 19:9). The signatory concerned responded that the Group would be over-stepping its mandate if it examined this issue. The question of the legal nature of the commitments made under Article 14:5 could be determined only by the Committee on Subsidies and Countervailing Measures. Whether his authority's policies were in conformity with the General Agreement, could only be decided by the CONTRACTING PARTIES. He also pointed out that the developing countries were not less well represented in the agreement on subsidies than in other MTN agreements. These policies therefore obviously did not constitute an obstacle to acceptance.

16. Several members of the Group disagreed. For them the need to make commitments on their export subsidy policies was the major obstacle to acceptance. This need arose because one contracting party did not abide by what they saw as its obligation to grant unconditional most-favoured-nation treatment. The link between Article 19:9 and 14:5 was against the spirit of the Agreement. Article 14 was meant to be self-contained: if the developing

countries assumed additional obligations under Article 14:5 they obtained certain benefits under the other provisions of Article 14. The practice of the one signatory to link Article 19:9 with Article 14:5 therefore set aside the results of the negotiations on Article 14. Some members referred in this context to a proposal of a procedural nature made by the Chairman of the Committee on Subsidies and Countervailing Measures (SCM/W/86/Rev.2), the objective of which was to overcome the difficulties for developing countries to accept the Agreement.

17. One member felt that the fundamental issue was how Articles 8, 9 and 10 of the Agreement could be made more operative. The dispute settlement procedures had ceased to function; basic interpretative issues had therefore remained unresolved. In the area of agriculture, the Agreement, just as the GATT, had produced no results. There were in particular no effective disciplines to prevent unfair subsidy practices in third markets. Another member added that the breakdown of the Agreement's subsidy rules in the field of agriculture had set the stage for an increase in export subsidization. One member stressed the importance of the Committee on Agriculture in resolving the issues that had arisen under the Agreement and the GATT in general. Another member said that the Committee on Subsidies and Countervailing Measures had failed to demonstrate the political will to resolve the issues and it remained to be seen whether the Committee on Agriculture would facilitate their resolution. One member also stressed the importance of the conformity of national legislation and practices of signatories with the Agreement.

(d) Arrangement Regarding Bovine Meat

18. Several members of the Working Group, while stressing that the Arrangement and its objectives remained worthy of continued support, were of the view that several of the objectives of the Arrangement had not yet been met, such as the dismantling of obstacles and restrictions, the promotion of expansion, liberalization and stabilization of international trade in meat and livestock, improved international cooperation with a view to greater rationalization and more efficient distribution of resources in the meat and livestock sector, and additional benefits for developing countries. These members were of the opinion that the lack of result of the recent Working Party set up by the International Meat Council to examine the existence of a serious imbalance or threat thereof in the international bovine meat market, provided evidence of a deficiency in the way the Arrangement was working. They believed that, although it was inevitable that differences of opinion existed among participants, a full and constructive analysis of the issues had been prevented by some participants, contributing to the inability of the Working Party to reach agreement on proposals for solutions. This called into question the extent to which any real progress could be made in solving problems in the world bovine meat market when issues

could be addressed and solved only on the basis of consensus. Some members also noted the negative flow-on effects that subsidized sales of beef had on the level of production and exports of both developed and developing countries; the latter were especially adversely affected due to their debt problems.

19. Some members did not share these views. They considered that, although several of the objectives had not yet been reached, the overall balance of the work undertaken in the International Meat Council and in the Meat Market Analysis Group was positive. It was said that the lack of results in the Working Party on Bovine Meat stemmed from a fundamental difference of views in regard to the willingness to examine all elements that could have an influence on the current situation. In the absence of a common view on the appraisal of the situation, it was difficult to find solutions. This problem could not be resolved through a modification of the decision-making procedures.

20. The basic problem of the Working Party on Bovine Meat was, in the view of some members of the Working Group, that some participants wanted to give an exaggerated importance to certain factors, such as subsidies, in explaining the current market situation at the expense of such other factors as product cycles, differences in sanitary conditions and competition from other types of meat. Some other members of the Working Group did not accept that they had exaggerated the importance of certain other factors but stressed that subsidies were the main problem in the international meat market and that the Working Party had discussed in considerable detail the other factors influencing that market. In the view of these members, these factors could not explain away the effect of subsidies; moreover, the draft recommendation considered by the Working Party had taken into account not only subsidies but also the other factors influencing the meat market. - It was recalled that these issues concerned the International Meat Council which was pursuing its work on them.

(e) International Dairy Arrangement

21. Several members of the Working Group expressed the view that, while the Arrangement had worked fairly well until 1984, it had not been adequate to deal with the difficult market situation for dairy products which had occurred in that year and which had persisted since. That situation was characterized by distorted markets, the presence of large surplus stocks (notably of butter), stagnant consumption, the persistence of protectionist policies and the application of export assistance by some exporters. In particular, a sale of butter by one participant towards the end of 1984, inconsistently with the provisions of Article 3 of the Protocol Regarding Milk Fat, had caused great concern. The adoption of a resolution in November 1984 (DPC/13) had the effect of suspending partially the price provisions for milk fat and provided the

opportunity for participants to take action to safeguard their position. No substantial progress had been made towards a greater liberalization of world trade in dairy products. Some members considered the Arrangement to be a positive instrument in spite of these shortcomings.

22. The view was expressed that there had been a lack of political commitment to ensure the observance of the provisions of the Arrangement and this had resulted in an erosion of its effectiveness. It had become necessary to make efforts to restore the credibility of the Arrangement and this would require an adequate degree of political will to be demonstrated by the participants responsible for the situation.

23. One member of the Working Group pointed out that on 31 May 1985 a set of decisions was adopted concerning the rescinding of the resolution of November 1984 (DPC/20), the adjustment of certain minimum prices and the disposal of large stocks of milk fat, thus solving the difficulties which had occurred in 1984. Therefore, the creditability and the efficiency of the Arrangement had been largely restored and could be further improved through the collaboration between its participants. He pointed out that the judgement on the sale of butter in 1984 should take into account the spirit of the recent modification concerning the disposal of stocks. He further mentioned that the effectiveness of the Arrangement could also be affected by the disposal of stocks of non-participants, i.e. outside of its disciplines. Several members expressed the hope that the difficulties of 1984 had been overcome and that a new basis for collaboration had been found.

24. One member of the Working Group considered that the International Dairy Arrangement, which provided only for minimum prices, should include provisions on maximum prices as well so as to ensure a balance between the protection of the interests of exporters and of those of importers. Other members replied that this issue should preferably be discussed in the framework of the Arrangement. Proposals for adapting or modifying the Arrangement could also be made in any possible new round of multilateral trade negotiations.

25. Two members of the Working Group said that their governments had withdrawn from the Arrangement because in their view it lacked credibility and had not operated adequately or effectively.

(f) Agreement on Implementation of Article VII

26. The members of the Group shared the favourable evaluation of this Agreement by the Committee on Customs Valuation (MDF/12, paras. 21-24).

(g) Agreement on Import Licensing

27. The members of the Group agreed with the generally positive assessment of this Agreement by the Committee on Import Licensing (MDF/12, paras. 25 and 26). One member felt, however, that the Agreement did not provide sufficient flexibility for developing countries to adapt their national licensing systems to the requirements of the Agreement. He suggested therefore that provision should be made for acceding countries to delay for a period of five years the full application of the provisions relating to time-limits for issuing licenses under automatic licensing systems. He also suggested that the notion of automatic import licensing would need clarification. Other members did not consider that a general five-year derogation as proposed was necessary; they were convinced that, if an individual country felt that it required a derogation, the Committee on Import Licensing would consider the request in a positive spirit. In respect of the definition of automatic import licensing, they suggested that this matter could be pursued in the Committee.

(h) Agreement on Trade in Civil Aircraft

28. The opinion was expressed that this Agreement had worked satisfactorily. One sign of the constructive attitude of the signatories was the recently agreed expansion of the product coverage. The benefits of the tariff reductions agreed under the Agreement accrued also to non-signatories and this might to some extent explain the lack of interest of some contracting parties in accepting the obligations under this Agreement. Countries intending to develop an efficient aircraft industry should, however, have a long-term interest in participating in the Agreement.

29. It was stated that the absence of non-signatories at the special meeting of the Committee on Trade in Civil Aircraft should not be interpreted to mean that there were no non-signatories interested in the Agreement.

(i) Agreement on the Implementation of Article VI

30. Several members of the Working Group said that the information available to them did not permit them to evaluate the adequacy and effectiveness of the Agreement. They suggested that the Secretariat undertake a statistical analysis of its operations. Other members felt that the Agreement had significantly discouraged unjustified anti-dumping measures and had ensured the application of transparent procedures. A statistical analysis of anti-dumping actions, by itself, could not determine the effectiveness of the Agreement as the number of such actions depended not only on the Agreement but also on the economic environment and as it would be impossible to segregate these two factors in such an analysis.

Several members considered the reviews of anti-dumping actions and the adoption of guidelines for anti-dumping procedures to be particularly positive features of the activities of the Committee on Anti-Dumping Practices.

31. Some members said that the special meeting had not shed any light on the possible obstacles to acceptance which the developing countries were facing. Other members explained that in their countries the anti-dumping legislation had been inoperative. One member stated that, given the high rates of inflation in his country, the adoption of anti-dumping legislation was not considered to be opportune by his authorities. Several members replied that it was not necessary to have anti-dumping legislation to be able to participate in the Agreement; the lack of such legislation therefore did not constitute an obstacle to acceptance.

ANNEX I

WORKING GROUP ON MTN AGREEMENTS AND ARRANGEMENTS

List of participants

Argentina
Australia
Austria
Brazil
Canada
Chile
Colombia
Cuba
Czechoslovakia
European Communities
  Commission and Member States
Egypt
Finland
Hungary
India
Indonesia
Israel
Jamaica
Japan
Korea, Rep. of
New Zealand
Nigeria
Norway
Pakistan
Peru
Philippines
Romania
Singapore
Sweden
Switzerland
Thailand
Trinidad and Tobago
Turkey
United States
Uruguay
Yugoslavia

Observers
Bulgaria
China, People's Rep. of
Mexico
Panama

ANNEX II

Statement by Jamaica on 21 June 1985 in the Working Group on MTN Agreements and Arrangements

The Background to the adoption of the MTN Agreements and Arrangements is instructive, not only in the manner in which the negotiations leading to the adoption were carried out, but also as regards the institutional machinery which has been established to monitor their application.

I say instructive, because we are once again on the eve of major multilateral trade negotiations, in which subjects not now covered by the General Agreement are being contemplated. There is the distinct possibility that these new negotiations will lead to additional "Agreements and Arrangements", or some other similar mechanisms, thereby further extending the parallelization and fragmentation of the GATT.

Instructive also, because the implementation of these Codes, at least as far as the less developed contracting parties are concerned, have followed the pattern set by the negotiations leading to their establishment. It is no surprise to me that the exercise we are now called upon to undertake - of reviewing the implementation of the Agreements and Arrangements, six years after their establishment - arose out of the concern expressed by a number of less developed contracting parties in acceding to the various Codes, and to the possible prejudice to their GATT rights.

Even during the negotiation of the MTN Codes, less developed contracting parties already expressed doubts about whether the Codes as then drafted could be consistent with the General Agreement. The LDCs further were hesitant to undertake obligations in acceding to Arrangements without fully understanding the implications for their own trading interests. Clearly, the gap in their understanding arose because they had to a large degree not been party to the initial negotiations. Some less developed contracting parties indicated at the time of the adoption that they were even unable to authenticate the texts submitted for final decision. The lack of transparency of the conditions under which observers could participate. I recall that there were proposals for provisions to exclude observers from "secret" or "closed" sessions. It was at the insistence of some less developed contracting parties that negotiations were reopened to modify these rules governing observers. The result was a limited improvement of the rights of non-signatory contracting parties to follow matters in these Arrangements which could, after all, affect their interests.

There are some LDCs, including my own delegation, which still remain to be convinced that the institution of separate mechanisms to monitor the Arrangements and Arrangements did not constitute a breach of the unconditional application of the General Agreement.

We remain equally unconvinced that the operation of these Agreements does not impact adversely upon the regular budget of the GATT.

This Working Group is expected to examine the reports submitted by the various Committees and Councils established under the MTN Agreements on the adequacy and effectiveness of these Agreements and the obstacles to their acceptance. Such examination should take into account the decision of the CONTRACTING PARTIES of November 1979, reaffirming their intention to ensure the unity and consistency of the GATT system. In paragraph 3 of that decision, the CONTRACTING PARTIES noted that the existing rights and benefits under the GATT of contracting parties not parties to the MTN Arrangements would not be affected by the operation of these Arrangements.

Now how does one assess "consistency and unity" of the GATT? The operation of each Agreement and Arrangement should be evaluated in terms of its conformity with the General Agreement. (The Code on Subsidies seems to present the greatest difficulty here.) The mechanisms established for administering the Arrangements, such as the separate dispute settlement mechanisms must be looked at, in terms of their unity and consistency with the General Agreement. Here again, I suspect that the Subsidies Code may present the greatest problems.

It seems to me that the kind of thorough and objective evaluation which such a review necessarily would entail is not facilitated by the Secretariat's document MDF/12 which is merely a summary of the reports of the various Committees. I feel that the Secretariat should make its own views known in this respect. In the absence of a truly objective evaluation any conclusions reached by this Working Group can only be very preliminary and superficial in nature. The question arises: where does the GATT go from here? Should not the Codes be brought into conformity and reintegrated into the GATT system? Should not this be considered an important and critical element in any new round of multilateral trade negotiations?