

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## Committee on Trade in Agriculture

### Summary of Points Raised at the Meeting of the Committee Held on 2-3 April 1985

#### Note by the Secretariat

1. At its resumed meeting on 2-3 April the Committee continued its detailed consideration of the Recommendations adopted at the 40th Session of the CONTRACTING PARTIES (L/5753). The present note summarizes the main points raised in the course of the Committee's consideration of paragraphs 1 (c), 2 and 3 of the Recommendations.

#### Sanitary and Phytosanitary Regulations and Other Technical Barriers to Trade

2. In the course of the Committee's discussions a number of general observations were made on the suggestions contained in paragraph 51 of AG/W/9 regarding the minimization of the adverse trade effects of sanitary and phytosanitary regulations and other technical barriers to trade. In several of the views expressed it was noted that the scope for improved procedures, aimed at minimizing the adverse trade effects that these measures can have, would tend to be conditioned by certain factors. These included the technical nature of the issues involved; the different geographic, climatic and production situations which prevailed in individual countries; and the fact that both the assessment of a threat to animal or plant life or health and the determination of the preventive or remedial measures considered necessary, were matters which lay within the competence of the relevant national authorities in each country. At the same time, as Article XX (b) itself recognised, such measures could constitute unnecessary or unjustified barriers to trade, which, though not negotiable in the ordinary sense, should be brought within the ambit of appropriate procedures relating to notification and transparency, consultation and dispute settlement.

3. The extent to which it might be possible to deal with the trade distorting effects of such measures otherwise than on a case-by-case basis under Articles XXII and XXIII was a matter on which various views were expressed. The suggestion was also made that consideration should be given to an approach under which, in order to restore a balance of rights and obligations, provision should be made for compensation in cases where concessions were nullified as a result of import prohibitions imposed under Article XX (b).

4. The following suggestions or comments were made as to how sanitary and phytosanitary regulations and related administrative requirements might be brought within the ambit of improved procedures aimed at minimizing their adverse trade effects;

(a) in accordance with Article XX (b) such measures should not be used as disguised restrictions on trade and should not be applied in a manner which constitutes an arbitrary means of discrimination. Moreover imported and domestically produced goods should be subject to the same requirements. While these measures were not negotiable, transparency could be improved as regards the systems applied and the reasons for different measures. A possible consultation mechanism could be established to provide a framework for an exchange of views on these matters;

(b) changing disease conditions in different countries and the fact that countries decide their own standards, militate against the possibilities for establishing common standards. In these circumstances a case-by-case approach in the framework of improved procedures was indicated;

(c) consistently with the Committee's mandate the approach to be elaborated should be as in depth and as broadly based as possible at the multilateral or plurilateral level. A pragmatic start could be made in this direction by undertaking a global analysis of these measures on the basis, inter alia, of counter-notifications submitted by countries adversely affected by sanitary and phytosanitary measures. This analysis would be carried out with a view to identifying the products or sectors affected and to examining how individual countries deal with similar situations. Such a procedure could make it possible to arrive at a common minimum denominator and better assess and minimize the trade effects of individual measures;

(d) the principles and objectives behind sanitary and phytosanitary measures were in a different class from other trade restricting measures. However extensive such measures might be they were not something for which the country applying them should have to pay as a matter of course. Countries using such measures should nevertheless be prepared to consider changes where the national interests involved were capable of being protected in a way that was less harmful to the trade of other countries:

(i) the provisions of the Code on Technical Barriers to Trade provided an example of how what must remain an essentially case-by-case approach could be made more effective. One possibility would be to broaden the scope of the TBT Code to cover "all measures and administrative requirements in force which have the objective of protecting animal and plant life or health."

(ii) a complementary approach might consist in drawing up a "negative list" of practices or modalities which should be avoided when framing or applying sanitary and phytosanitary measures. The basic idea would be that the list would be drawn up in recognition of the fact that, as in the TBT Code, some modalities were more trade disruptive than others and should accordingly only be resorted to where this was unavoidable. For example, countries should avoid specifying sanitary and phytosanitary requirements in terms other than objective performance criteria; they should avoid

departing from accepted international practice and should use international standards where appropriate; and, they should avoid discrimination between countries where comparable conditions existed. The listed practices and modalities would not as such be proscribed. However, countries using measures on the negative list, or intending to do so, would be required to provide advance notification to a transparency body, and would have to explain why it was necessary to resort to the modality in question;

(e) as the question whether a particular disease is a threat to animal or plant life or health was a matter exclusively for health and veterinary experts, the trade policy aspects were limited to a demonstration of whether or not the measures enforced were in fact justified. This in turn was a matter which could best be resolved in the first instance on a case-by-case basis through the provisions of Articles XXII and XXIII. Improved transparency with regard to the justification for sanitary and phytosanitary measures could be achieved through the notification procedures established by the Committee, through the general notification provisions under the Framework Text and through the rules relating to publication and administration of trade regulations under Article X of the GATT. A matter which could also be examined in a general way in the Committee was the conformity of regulations with Article III of the General Agreement;

(f) greater transparency should be established in order that countries should know what other countries were doing in the area of sanitary or phytosanitary measures. To a certain extent notifications should be compulsory. This was not the case at present but could be achieved through a decision of the CONTRACTING PARTIES. The scope of these notifications would need to be determined. For this purpose an ad hoc questionnaire might be drafted which should also cover administrative procedures. The introduction of a procedure for periodic review of notifications and counter-notifications should also be examined. This could be accompanied by efforts to harmonize standards in appropriate fora. In the GATT context consideration could be given to the establishment of a list of practices or modalities which countries should avoid when introducing or applying measures;

(g) the existence of sanitary and phytosanitary measures gave rise to problems concerning both their legitimacy and their impact on trade. Article XX (b) treated these measures as an exception to the general GATT rules on three conditions. At present no prior justification was required even though a complete prohibition of trade might be involved. It was only if such measures were challenged that they had to be justified. In practice it was the country applying the measures which determines for itself and according to its own, often subjective, criteria what risk it was prepared to accept, and the adequacy of measures taken by supplying countries to comply with its requirements:

(i) there was substantial room for progress in the conformity of sanitary and phytosanitary measures with the provisions of Article XX (b). To this end, consideration might be given to the introduction of an obligation to notify and provide a justification for measures under Article XX and, in the case of other technical barriers, under Article III. In the first instance such an obligation might be limited to barriers which involve a prohibition either of imports generally or of imports from a geographical region. The introduction of a periodic review procedure, in particular on the negative impact of these measures on trade would also be appropriate;

(ii) while such procedural improvements might enhance the possibilities available to individual contracting parties to defend their GATT rights, they would be unlikely, given the potential for scientific controversy, to lead to a rapid improvement as regards the conformity of these measures with Article XX. In these circumstances and given the extensive adverse impact that sanitary and phytosanitary measures can have on trade, not only bilaterally but also in terms of their distortive effects on tariff concessions and on the broader balance of rights and obligations under GATT, a new or parallel approach to these problems was called for. The idea would be to restore a balance of rights and obligations amongst the parties concerned by adopting an approach analogous to that followed under other GATT articles. In the same way, for example, that countries resorting to certain measures are required to compensate countries which are adversely affected (Article XIX) or are required to restrict domestic production and provide a certain guarantee of access (Article XI: 2 (c) ), there should also be a corresponding obligation in the case of import prohibitions based on sanitary or phytosanitary grounds to compensate countries which are deprived of the benefits of multilateral concessions by granting concessions on similar or other products.

5. In a number of the views expressed it was noted that trade in agriculture was more severely affected than other sectors of international trade by sanitary and phytosanitary measures, as well as by other technical barriers to trade. While the right of countries to protect legitimate national interests was not contested, the means adopted by some countries to prevent or control the transmission of particular diseases were a great deal more strict, and more adverse as regards their effects on trade, than the practice followed by other countries in dealing with the same or similar problems. Reference was made in this context to the trade impact of different national practices with regard to the prevention or control of the transmission of foot and mouth disease, and also to sanitary and phytosanitary requirements which had not kept pace with technological changes in the trade of certain products.

6. Reference was made as well to the practice of island countries in completely excluding imports as a means of preventing the introduction of exotic diseases and maintaining their longstanding disease free status. It was suggested that what could be regarded as necessary or unnecessary in such situations was directly related to the degree of risk that the countries concerned were prepared to

accept and that this was an issue that should be approached in the light of how other countries perceived and responded to the same problems. In this connection, it was pointed out that those countries which imposed strict regulations were not unfamiliar with the diseases whose introduction they were designed to prevent, and that equally strict standards were applied to their own producers. Furthermore the strictness of certain sanitary and phytosanitary requirements had to be assessed against the highly damaging and dramatic economic consequences that the introduction of certain diseases would inevitably entail. It was also noted that an approach involving the acceptance of a greater degree of risk than a country's technical experts considered appropriate would be to encourage trade in diseased products, and that the very real problems in this area of trade could not be solved by bringing disease free countries down to the level of unfortunate contagion prevailing elsewhere.

7. It was suggested that while unduly burdensome administrative procedures should be avoided, improvements were needed under which it would be possible to review regulations and practices from the point of view of what was necessary and unnecessary and from the point of view of the trade effects involved. A counter-notification process could serve as a useful filter in the identification of measures whose impact on trade was particularly disruptive. It was also suggested that having regard to the nature of the issues involved, any improved procedures for review, consultation and dispute settlement would have to make provision for technical expertise. It was suggested that the Committee itself might provide a permanent forum for periodic review of sanitary and phytosanitary measures and other technical barriers to trade.

8. It was observed that many factors, including different climatic, geographical and disease conditions, had led countries to adopt different levels of sanitary protection and that this was yet another expression of the specific characteristics of agriculture. It was also observed that while diseases or geographical locations might have specific characteristics, it was not possible to draw a conclusion from the variety of regulations applied that agriculture per se was therefore a specific area of trade. Geographical location, it was pointed out, was more a function of comparative advantage than of the specificity of agriculture as such.

9. In this general context, the view was expressed that a parallel approach involving the concept of a waiver or derogation linked to the payment of compensation, was of doubted utility since the GATT itself in effect already provided a waiver or general exception under Article XX (b) and, moreover, the class of measures involved were not as such negotiable. In this view there appeared to be no reason why countries applying or introducing sanitary measures should have to seek an additional waiver, nor any reason why they should have to pay to protect their disease-free status. Another view expressed was that it would be ridiculous that a country should have to pay compensation to protect its livestock industry, and that the Committee should focus its attention on how, in a practical and realistic sense, the trade impact of sanitary and phytosanitary measures and related obstacles to trade in agriculture could be minimized.

10. It was pointed out that a parallel approach aimed at re-balancing rights and obligations as between countries applying prohibitive sanitary or phytosanitary restrictions and those countries affected by such measures, was a matter which would need to be addressed in the context of a future negotiation. It was also observed that the suggested approach was not so far removed from existing practice under Article XXIII. Where a country had committed itself to a concession and that concession was subsequently nullified by sanitary or phytosanitary measures, recourse could be made to Article XXIII even though the measure itself may not conflict with the provisions of the General Agreement. In another view expressed it was observed that Article XXVIII would also be relevant in a case where a concession was impaired as a result of the introduction of sanitary or phytosanitary restrictions.

11. It was noted that some of the foregoing observations and comments were also relevant to the problems associated with other technical barriers to trade and related administrative requirements.

#### Review and examination of policies and measures

12. In general it was considered that the precise scope, objectives and procedures for the review and examination of policies and measures affecting trade were matters that would need to be determined at the appropriate stage in the light of progress made under Paragraph 1 of the Recommendations on access, subsidies affecting trade and on technical barriers. Improved transparency with regard to measures affecting trade and surveillance of the commitments and obligations undertaken within the framework of the approaches embodied in the Recommendations were mentioned as being the general objectives of procedures for review and examination.

13. In several of the statements made, it was emphasized that, having regard to the autonomous character of national policies, procedures for review and examination should focus on measures falling within GATT competence and on the impact of these measures on trade, with other aspects of domestic policies being outside the scope of such procedures. It was observed that the range of domestic policies or measures that might impact on trade and on GATT commitments was rather extensive, and that the issue raised regarding the autonomous character of domestic policies would need to be considered further when the broader framework of rules and disciplines had emerged. In this connection, it was also noted that the GATT meat and dairy arrangements provided for an examination of domestic policies, with the suggestion being made that there appeared to be no reason why similar procedures should not be introduced for cereals and other agricultural products. It was also pointed out that the parameters for the review of domestic policies would be governed by the objectives already set out in the Chapeau to the Recommendations and that, as outlined in Paragraph 54 of AG/W/9, what had to be reviewed was the impact of domestic agricultural policies on trade on the basis of the more clearly defined or reinforced limits and linkages that were to be developed in the Committee.

14. The adequacy of the existing notification procedures and of compliance with those procedures were also discussed. It was emphasized in several of the views expressed that compliance by all participants with these requirements, on a comprehensive and uniform basis, would

constitute an important contribution to fuller and more timely transparency. Reference was made in this regard to the need for fuller compliance with the notification requirements under Articles XVI:1 and XVII, as well as to the publication requirements under Article X. In general it was considered that the adequacy of the existing notification requirements would need to be assessed at the appropriate stage.

15. With regard to the unified system of notification introduced by the Committee, the suggestion was made that the initial format could be improved: (i) by including a general description of national policies and measures; (ii) by providing a more precise indication of the extent of variable levies, minimum import price arrangements and quantitative restriction affecting imports; and (iii) by establishing a cycle for the periodic up-dating of the format notifications (for example, every two or three years). It was also suggested that procedures for reverse notifications should also be taken up in this context.

#### General Considerations

##### Balance of Rights and Obligations

16. In a number of the views expressed it was emphasized that progress towards the primary objective of achieving greater liberalization could not be made if a balance of rights and obligations were to be sought on the basis of the existing rules and disciplines. In particular it would be necessary to ensure that all specific trade measures were subject to equivalent disciplines and to ensure that the balance was not undermined by exceptions, derogations, waivers or grey area measures. This would involve progress being made on all fronts and not just on subsidies at the expense of access, and vice versa. It was also noted that what was sought was an evolutionary change in policies that would result in modifications to levels of agricultural protection, and which would offer some benefits in terms of assured access for imports and competition on fair terms for a share of the world market and market growth.

17. The point was raised that if the approach to be taken in seeking a global balance of rights and obligations was to include the negotiation of restrictions under Article XXIV and other derogations, then all provisional protocols of accession should also be included. The view was also expressed that protocols of accession had been negotiated in order to obtain a balance between the rights and obligations of the new member and the other contracting parties as a whole, and this balance could not a priori be challenged.

18. It was observed that one was starting from a point of imbalance in rights and obligations as between contracting parties. This was evident not only in the variation of binding rates among countries, but also in concessions that had never been fulfilled, in waivers, phytosanitary measures and quantitative restrictions. These problems needed to be addressed first to restore the balance. In the negotiations, some balance on each of the areas could be foreseen but there also needed to be a balance between access and measures on exports. It was stressed in this regard that a multilateral balance was possible only at a global level, and this extended beyond the agricultural sector. The point was also made that while all countries theoretically have the same rights and obligations, some countries were not in the position to demand that others fulfil these rights and obligations, and that therefore the question of balance of rights and obligations was linked to various other issues including safeguards and dispute settlement.

19. Attention was drawn to the distinction between the balance of rights and obligations and the balance of concessions. The concessions exchanged over a series of negotiations inevitably involved, given that the respective negotiating interests were not the same, a degree of imbalance. What was important was that the overall results of these negotiations were finalized and accepted. The balance of rights and obligations on the other hand was something quite different and could be compared to the rules of the road to which all countries were subject. The use made of GATT rules had resulted in a series of practical imbalances. It was possible to imagine, for example, that a progressive elimination of various non-tariff barriers could lead to a situation where a country with relatively high unbound tariffs and prohibitive sanitary or phytosanitary regulations, would nevertheless be in conformity with the letter of the GATT rules in their present form. Whether restrictions under Article XX (b) which completely nullified or impaired concessions gave rise to a right to compensation under Article XXIII was a question that had never reached the stage of being considered by a GATT panel. One view was that Article XX (b) entitled countries to discriminate in the widest sense of that term. Another view was that Article XX (b) permitted a form of selective and quasi-permanent action to be practised but not to the exclusion of compensatory adjustments being required where concessions were nullified or impaired. It was also noted that Article XX (b) could be regarded as a derogation from Article XVI in respect of outlays of public funds to maintain sanitary standards which might otherwise be regarded as operating to increase exports. In this general context it was suggested that one of the objectives of any multilateral negotiation should be to correct the imbalances that had or could arise from the way in which rights and obligations under GATT rules were exercised.

#### Special and Differential Treatment

20. It was pointed out that the special needs of developing countries, which could be either generic or specific, should be taken fully into account in the elaboration of the elements of improved rules and disciplines under Paragraph 1 of the Recommendations. On access the view was expressed and endorsed in a number of the observations made, that greater flexibility was necessary with respect to the condition and criteria to be developed on quantitative and other access restrictions in order to take account of these special needs. This, it was noted, would be particularly relevant in the case of the conditions and criteria relating to the minimum access or proportionality provisions of Article XI. The range of possible approaches might include a general declaration on the food deficits and development needs of developing countries, as well as more specific case-by-case approaches to special and differential treatment.

21. It was noted that an issue that would need to be addressed would be whether developing countries should have to respect minimum access commitments incorporating an autonomous growth element, or whether other more specific conditions might be more appropriate. Reference was made in this regard to situations of temporary surplus; to the need to take account of international commitments undertaken by developing countries in the context, for example, of food security programmes; and to the dependence of certain regions on the production of a single agricultural

product. It was suggested that in these and other areas a degree of flexibility would be required in order to adequately take account of the special needs of developing countries and of their possibilities for negotiating bindings and other multilateral commitments. Reference was also made to the need to take account of the special role of state trading organizations in the development process.

22. With regard to export subsidies and other forms of export assistance it was suggested that there were several possibilities; one there being a general exception in favour of developing countries along the lines of Article 14 of the subsidies Code; another possibility being the negotiation of specific exceptions subject to conditions relating to pricing and market disruption. It was noted that account would also need to be taken of the special needs of developing countries in the context of improved disciplines on the subsidization of agricultural primary products incorporated in processed products. The need to protect exports of unprocessed agricultural products in order to maintain supplies to processing industries in developing countries was also referred to as a situation where flexibility would be required in specific cases.

23. The view was expressed that special and differential treatment should be regarded not as an independent objective but rather as a matter which should be considered once a consensus had been reached on the general rules and disciplines, and on the basis of full account being taken of the rights and obligations involved. Another view was that an approach aimed at achieving greater liberalization and which enabled countries to operate within an international trading framework which reflected principles of comparative advantage, would best serve the interest of all participants including, in particular, those of developing countries. In this view it was considered that the result of the Committee's work should not be to replace a clearly inadequate and economically distorted trading system with a system that is distorted in another direction. In this general context it was observed that taking account of the special needs of developing countries in terms of specific situations and measures would necessitate a degree of flexibility but this should not be seen as being incompatible with the general trade liberalization thrust of the Committee's Recommendations. Another view expressed was that a situation of complete liberalization would not solve any problems and would not benefit developing countries having regard to comparative advantage in areas such as marketing, transport and credit facilities. The observation was also made that special and differential treatment would not be necessary if developed countries respected the existing rules and regulations of the GATT.

24. Reference was also made in the course of the Committee's discussions on this subject to the repercussions that the granting of special and differential treatment could have on bindings that had been negotiated with developed countries, to the limitations that this could have on the scope for such treatment, as well as to the fact that developing countries which did not enjoy preferences could also be adversely affected by special and differential treatment.

Specific Characteristics and Problems in Agriculture

25. It was pointed out that it would be necessary to develop a realistic and constructive approach on the specific characteristics and problems in agriculture by striking an appropriate balance between the pursuit of domestic policy objectives and the trade interests involved. In bringing all trade measures on agricultural products under operationally effective GATT rules, account had to be taken of the historical reality that many countries needed derogations and that the situation in this respect had not basically changed. It was also pointed out that proposals for the complete liberalization of trade in agriculture would eliminate European agriculture. Such proposals did not take account of the fact that not all countries enjoy the same advantages in terms of agricultural production and trade, nor of the fact that for a variety of socio-economic, ecological and security reasons, such countries were entitled to maintain their own agriculture. It was suggested this was a fact which should be accepted in the spirit of a balance of rights and obligations. It was also noted that the scope for positive structural adjustment in the agricultural sector was limited by the lack of alternatives to existing patterns of production.

26. It was pointed out in a number of the statements made that account should be taken in a revision of AG/W/9 of the comments and observations made on this subject and which were recorded, inter alia, in Paragraph 15 of AG/W/12. In this connection it was noted that many of the countries that emphasized the fundamental importance of the specificity of agriculture were also significant agricultural importers, and that the stress placed on this fundamental aspect of the Committee's work should not be regarded as a pretext for open-ended escape clauses or for unrestrained protectionism.

27. It was suggested that the issue that the Committee ought to focus on was whether the specific characteristics and problems for agriculture could be handled in ways that do not interfere with trade. While it was accepted that such problems would affect the pace of liberalization, it was suggested that it would be wrong for them to be used as an excuse to avoid trade liberalization or to prejudice the final outcome of the committee's work. The view was also expressed that the concept of the specificity of agriculture could be more readily accepted if it were also to include the specificity of the agriculture of the large number of countries which needed access to the markets of developed countries.

28. With regard to the question of food security, it was stated that self-sufficiency ratios in excess of 100 per cent in highly protected markets were difficult to reconcile with this notion. It was also pointed out that trade liberalization was not incompatible with food security, and that a stable world market to which all countries could have access in time of need was an important factor in the broader food security equation. The specificity of agriculture and associated concepts could not, it was suggested, be interpreted as meaning that there should be no change, or that the extent to which the specificity of agriculture was already recognized in Article XI: 2(c) should be broadened so as to worsen the existing situation. It was also observed

that while specific characteristics should be taken into account in agriculture, this should not be on a basis that distorted basic GATT principles to the point where trade restrictions are enshrined as an objective. A further observation made was that liberalization was not the only objective set out in the preamble to the General Agreement.

Other matters

29. It was agreed that, for the next meeting of the Committee, the secretariat, in consultation with the Chairman, would prepare a revised version of the document AG/W/9.