

RESTRICTED

AG/W/15

16 December 1985

Special Distribution

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Trade in Agriculture

SUMMARY OF POINTS RAISED DURING THE MEETING OF THE COMMITTEE HELD ON 24 OCTOBER 1985

Note by the Secretariat

Introduction

1. At its meeting on 24 October 1985, the Committee continued its elaboration and in-depth examination of the approaches embodied in the Recommendations adopted at the 40th Session of the CONTRACTING PARTIES. The Committee also considered and adopted a report to the 41st Session of the CONTRACTING PARTIES. The present note summarizes the main points raised in the course of these discussions.
2. A statement made at the outset of the Committee's discussions by the representative of a group of participants is attached at annex.

Measures affecting access

3. In one view expressed, a number of reservations were reiterated about what was described as the narrowing focus of the preferred options in the Draft Elaboration, and in particular regarding the focus given to the relaxation of the disciplines of Article XI as a means of dealing with non-tariff import restrictions. While some form of greater access might constitute an inducement for regularizing major exclusions from the current trade regime for agriculture, there were considered to be too many flaws in this concept to warrant putting all the eggs in this one basket. Major importers already offered minimum access commitments, and they also operated domestic measures "designed to stabilize or control" domestic production which could be said to be consistent with the disciplines referred to in paragraphs 10 to 17 of the Draft Elaboration. In these circumstances, the result could be to merely legalize existing measures and to make it easier for additional products currently subject only to tariffs to be controlled in future by quantitative restrictions or other non-tariff barriers. It was indicated that even if this option were to prove negotiable it would not necessarily lead to any significantly increased liberalization of trade. The Committee should therefore retain and develop more "ideal" solutions, particularly the "tariffs only" option contained in paragraphs 32 to 34 of the Draft Elaboration.

4. It was also considered, in this view, that a second best alternative would be to retain the disciplines of Article XI as they were and to seek other avenues for liberalizing non-conforming quantitative restrictions and other non-tariff barriers such as variable import levies and state-trading restrictions. The objective should be to induce individual importing countries to move from illegal

restrictions to other measures, such as tariff quotas, that may be less restrictive and more open to negotiation. Similarly, improved access under variable import levy systems could be provided through levy exemptions or reduced levies for specific quantities. The voluntary export restraint problem on the other hand could not be seen in isolation from a general solution on safeguards.

5. In another view endorsing what was described as the sound sense of the tariffs only approach, it was pointed out that treating agricultural trade no less equitably than other sectors would involve ending Article XI at its paragraph 1 and also rolling back whatever protective mechanisms were in place. In this connection, it was noted that existing provisions of Article XI were in fact rather tough: quantitative restrictions were only imposable where a contracting party restricted domestic production below the level that would exist if trade were not restricted, and if the proportion of imports to domestic production that would prevail under free trade was preserved. Such a regime if adhered to would, it was suggested, be only slightly less constraining than a total prohibition of quantitative restrictions. The problem was not in the existing disciplines as such but rather that contracting parties had employed various means to evade these disciplines. In this view, the only solution was for contracting parties to bring their measures into conformity with the existing disciplines.

6. With trade now being conducted in a rather different environment it was being argued, however, that what was needed was a pragmatic approach. In this regard, the question was raised whether it was appropriate to permanently weaken rules which represented perfectly valid principles, and whether it would not instead be preferable to fit any essentially pragmatic adjustment into transitional arrangements pending re-application of existing or strengthened rules. A guiding principle in the formulation of any such arrangements should be the trade restrictive effects. If a trade-impeding mechanism was as restrictive as a quota it should be subject to an equivalent level of discipline. Otherwise there would be no point in having any discipline at all since countries would switch to whatever restrictive mechanism was not covered by the discipline.

7. It was also observed that access played a key role in driving the whole process of adjustment and that this needed to be fully recognized. It was submitted that had contracting parties adhered to the access provisions of Article XI, the surpluses generated by uncompetitive production would never have existed, nor would there have been the stimulus to massive subsidization which had led to severe distortion of international markets. Access therefore had a crucial role to play not only in creating opportunities for trade in the traditional sense but also in generating a more rational basis for trade generally and in getting at the root of the subsidies problem. It was suggested that it would therefore be important to weigh carefully the broader implications of any pragmatic approach on the access side, in terms of its consistency with the approaches to the problem of unfair competition in world markets. It was also suggested that account would need to be taken in any approach aimed at pragmatic adjustment of the requirement for greater liberalization in the most heavily protected sectors. It was also considered, in this view, that contracting parties manifestly in breach of the provision of Article XI should have a correspondingly greater adjustment burden than others.

8. It was pointed out that, without rejecting the principle of greater liberalization or seeking additional means of protection, minimum access commitments might be applicable in certain cases but not to all products covered by quantitative restrictions. In this regard it was reiterated that the application of minimum access commitments to non-tariff measures other than those covered at present by Article XI was a matter on which a clear reservation had been registered at the previous meeting of the Committee. It was observed moreover that the only beneficiary of what was described as a regime of forced imports and exports would be the transport sector. Another suggestion made was that minimum access commitments should be based on consumption rather than production.

9. It was pointed out that there were a number of ideas and suggestions that had been made in the course of the Committee's work and that these should be included in any revision of the Draft Elaboration, so as to cover all the possible options. Furthermore it was noted that the development of new approaches was not excluded, one possibility mentioned being to start with the dispute settlement procedure and to see what this might lead to in the context of access. In this perspective it was considered that there were a number of points which needed to be more fully addressed in the Draft Elaboration. First of all there was a need to spell out the conditions which would lead to a real opening of markets in the case where, under Article XI, measures to restrict production were applied in conjunction with quantitative restrictions on imports. Another case to be considered was where restrictions were applied in the absence of restrictions on domestic production. In this context, reference was made to the situation where, although access was nominally unrestricted, technical barriers of the type mentioned in paragraph 1(c) of the Recommendations were employed to ensure that imports did not unduly disturb the domestic market.

10. In this view, other aspects which needed to be addressed in more detail were the problems relating to the operations of marketing boards and their trade effects, and in particular, how these effects might be handled in the context of access; the problem of how import restrictions inconsistent with Article XI and measures maintained under temporary or other waivers and derogations could be brought into greater conformity with Article XI; the problem of "directly substitutable products" in the context of the utilization of the primary commodity whose production was restricted; the problem of temporary surpluses which arose in situations in which there was already a chronic surplus; and the need to devise an approach which was less radical than a prohibition on the cumulation of Article XI:2(c)(i) and (ii) restrictions but which nevertheless prevented abuse.

11. The suggestion was made that the distinction in the Draft Elaboration between "restriction of production" and "effective regulation of production" could be developed in a way that would reflect the strictness and balance of Article XI in a more operational formulation of the minimum access concept. "Restriction of production" would be considered to occur whenever production was lowered below the level that would have prevailed under conditions of free trade, i.e., in full conformity with Article XI as it stood. "Effective regulation of production", on the other hand, would apply in those categories in which

contracting parties gave effect to minimum access commitments on the following basis. The minimum access commitment would incorporate two main elements: (a) an across-the-board minimum access opportunity - say 20 per cent of the domestic market - to be phased in over no more than eight years, and applicable to all contracting parties irrespective of the technicalities of the protective regime in place; (b) where the contracting party maintained internal prices above world prices and had a self-sufficiency ratio in excess of 100 per cent, an additional access opportunity would be warranted.

12. It was explained that the additional access opportunity would be intended to reflect the fact that contracting parties in category (b) would be imposing a proportionately greater burden on world agricultural trade than others, and the fact that such overproduction could only have been achieved through avoidance of the dual disciplines of Article XI:2(c). It was suggested that it would therefore be appropriate that contracting parties in category (b) should undertake a correspondingly greater obligation consisting of the 20 per cent minimum access opportunity plus percentage by which self sufficiency exceeded 100 per cent.

13. A number of compensatory provisions were suggested in order to take account of the relatively greater adjustment that would be imposed on contracting parties in category (b). These were: (i) that the phasing-in period for minimum access commitments could be lengthened from eight to twelve years; (ii) that while such contracting parties would be obliged to meet the 20 per cent minimum access, they would have the option of either meeting the "additional" minimum access opportunity corresponding to the margin by which their self sufficiency exceeded 100 per cent, or of "offering", on an autonomous basis, to reduce domestic production by an amount corresponding to the margin in excess of self sufficiency. This latter action would be voluntary and not subject directly to GATT disciplines. It would simply be the case that, in the absence of the reduction in domestic production, the automatic increase in access would take place.

14. It was indicated that the foregoing suggestions were an illustration of how the minimum access obligations of Article XI:2 could be elaborated to achieve a variety of specific objectives, and of how the minimum access concept could be framed in a manner that basically reflected the structure and balance of the existing disciplines. It was also pointed out that an approach along these lines would provide elements for the approaches on subsidies and for developing the linkage between Articles XI and XVI. In this context, questions were raised as to how production under conditions of free trade would in practice be determined, and as to how these suggestions would apply to restrictions associated with marketing boards and state trading enterprises.

15. With regard to the section of the Draft Elaboration on state trading and other related enterprises, it was pointed out that, in the particular situation referred to, state trading did not exist within the meaning of Article XVII. From the moment of their establishment the enterprises in question became legal persons and carried out independent economic activities in accordance with the relevant laws and

regulations. Such enterprises were normal participants in economic life. Their activities were based on profit interest, and they enjoyed no privileges in relation to any other actor in the national economy. Nor were they empowered with any administrative authority. The ownership of the means of production did not imply privileges or monopolies, or a privileged situation for such enterprises in the national economy.

16. In this same view, it was considered that while the ideas in the Draft Elaboration should be subject to pragmatic and thorough examination, the description of state trading and related enterprises appeared to go well beyond the meaning and philosophy of Article XVII. In particular, the description proposed did not cover the legal and de facto status of the enterprises concerned. They had no "controlling influence" over imports nor was any control of imports delegated to them. In this view, it was indicated that there might nevertheless be certain products or product groups where imports or exports were carried out for the time being by one enterprise, although per se this did not have restrictive trade effects. It was stressed that these situations were related to certain products or product groups and not to specific enterprises. In such cases, it was suggested, it had to be recognized that the logic of the approach on improved market access in the Draft Elaboration might have some relevance and should be carefully considered.

Subsidies affecting Trade

17. With regard to paragraphs 52 to 100 of the Draft Elaboration, it was indicated that there were serious reservations regarding the market sharing elements of Option A and the "trade-off" in Option B. In this view it was considered that, as presently elaborated, Option B would secure the prohibition of all subsidies which "operate to increase the export of any agricultural product" at the cost of legalizing all two-price systems, irrespective of whether such systems complied with the existing GATT requirement that they were operated, or were designed to operate, so as not to unduly stimulate exports (Footnote 2 to Article XVI:3).

18. While in this view the trend in the Draft Elaboration towards tighter rules on subsidies was a move in the right direction, it was considered that conclusions other than those which had emerged were to be preferred. In this respect a preference was expressed for a blanket prohibition on direct and indirect export subsidies which operate to increase exports of agricultural products: in other words an extension of the Article XVI:4 prohibition to agricultural products with a transitional period. It was suggested that this might be realized in the form of an illustrative list of prohibited export subsidy practices similar to the present Annex to Article 9 of the Subsidies Code. In this regard it was noted that the price effect criterion in Article XVI:4 had not been carried into the Subsidies Code. It was also noted that one advantage of this preferred approach would be to retain the present GATT rules relating to two-price systems.

19. A second best solution it was suggested would consist of a strengthened Article XVI:1 encompassing serious prejudice arising from price depressive effects, increased global export levels and individual market displacement, coupled with a prohibition on direct export subsidies and the retention of the present GATT rules on two-price arrangements. It was submitted that, a third best solution might consist of a strengthened Article XVI:1 coupled with a pragmatic arrangement to deal with direct export subsidies. Such an arrangement might comprise the proposal based on movements in domestic support prices and consumption (AG/W/14, paragraph 64); or the approach suggested under which the use of direct export subsidies should be limited to a quantity equivalent to minimum access commitments (AG/W/12, paragraphs 60 to 62); or, an attempt to define "equitable share" by reference to "special factors" in accordance with the approach followed in SCM/53. The present GATT rules on two-price arrangements would be retained under this third best solution.

20. The suggestion was made that the concept of global displacement and a linkage between prices and serious injury should be incorporated in the proposals for reinforcing Article XVI:1 and the related procedures for demonstrating serious prejudice outlined in paragraphs 61 to 64 of the Draft Elaboration. With regard to global displacement, it was indicated that the situation envisaged was one where, although there was a substantial increase in the overall level of subsidized exports, this was not necessarily reflected in specific markets. In such a case it was considered that it should be sufficient, in order to establish *prima facie* serious prejudice, to demonstrate that there was subsidization and that there had been an increase in total exports. The onus of proof would then be on the respondent to show that the increase in exports was not the result of subsidies or assisted operations. In the absence of such a justification, it was submitted, global displacement of other exporters would be taken to have been established, with the result that there would be a concomitant obligation on the respondent to take immediate remedial measures.

21. With regard to a link between prices and serious prejudice it was pointed out that a decline in prices could not be considered, in and by itself, as giving rise to an onus of proof. In these circumstances, it was submitted that it would be appropriate to define a number of elements or indicators which, if established, either individually or together, would constitute *prima facie* injury through prices. These elements might include: an increase in subsidized operations in third markets; an increase in stocks associated with a price support system that was not geared to trends in domestic consumption; an increase in subsidies granted either globally or in relation to specific markets. Other indicators might need to be established. What was of fundamental importance, however, was to devise the means by which it would be possible to establish, within the framework of improved dispute settlement procedures, a link between adverse price effects and injury.

22. In the application of these indicators, it was suggested that a distinction needed to be made between traditional and sporadic suppliers and between subsidizing and non-subsidizing exporters. A reference period for determining trends (say three years) and criteria for determining relative prices would also need to be considered. For some products, the existence of recognized international commodity exchange

quotations would enable a comparison to be made between subsidized export prices and competitive prices. For certain other products, it was suggested that the reference price might be calculated on the basis of a weighted average of the export prices of non-subsidizing suppliers, with the weighting formula also taking account of quality and other relevant factors. In situations where neither of these techniques could be used, and the market was supplied by subsidizing and non-subsidizing exporters, it was suggested that the onus of proof should be on the subsidizer to demonstrate that its export price to a specific market was reasonable.

23. With regard to suggested distinctions between certain types of subsidies affecting exports and between subsidizing and non-subsidizing countries, it was observed that the Recommendations were concerned with all direct and indirect export subsidies and other forms of export assistance. If all measures having a direct or indirect effect on exports were to be taken into account, assistance not necessarily connected with exports as such but which nevertheless played a role in the price of exported products would need to be covered, including assistance in such areas as marketing, transport and insurance, as well as assistance to producer organizations. The question was raised as to whether such factors as price differences between supposedly subsidized and non-subsidized exports, or increases in stocks or quantities marketed, could be regarded as sufficient or exhaustive indicators in the context of an exercise whose general purpose was to determine how it might be possible to get a grip on all measures having a direct or indirect effect on exports.

24. In this view it was indicated that the ideas previously outlined with regard to equitable market shares, prices and serious prejudice could not be left to one side and had to be taken up as one possible and necessary option in a future document. It was also considered, having regard to the scope for governmental assistance to such bodies, that a more thorough examination was needed of the role and operations of marketing boards in this general context. Other aspects of the Draft Elaboration which were considered in this view to require further detailed examination were: the definition of criteria or indices relating to processed products in the context of a producer-financed export subsidy exception; the manner in which the financial responsibility of the producer might come into play and the mechanics of such a system; the need for greater precision with regard to the suggestions in paragraph 77 of the Draft Elaboration on non-commercial sales, in particular how in practical terms a linkage could be defined between commercial and concessional sales; and, the key issue of how in the context of export subsidies generally the problem of substitution products was to be taken into account.

25. As to which countries subsidized and which did not, it was pointed out that most developing countries were not in a position to subsidize their exports and moreover that for a number of countries such practices were not permitted by the IMF. It was also explained that the suggestions outlined in paragraphs 20 to 22 above were designed to provide a clearly defined and more operational framework for dispute settlement. While it was not considered necessary to attempt to define special factors, it was noted that criteria or indicators other than those outlined might be relevant. As to whether the suggestions made

were to be considered as falling under Options A or B, or under some combination of these options, it was indicated that under any one of these proposed regimes it would be obvious which countries were subsidizing their exports and which were not.

26. The following preliminary comments were provided in response to a number of the points raised in connection with the proposal outlined in paragraph 64 of AG/W/14. As to how the proposal would in practice fit into Option B and as to whether the proposal might instead either complement or replace the equitable share concept in Article XVI:3, it was indicated that the objective was to suggest a mechanism for establishing a relationship between levels of support for domestic production and world prices with the aim of achieving genuine liberalization. These ideas had been prompted by concern that the financing of export subsidies solely by producers would not lead to a situation where genuine liberalization was being achieved. The suggestions made could be regarded as an exception under a prohibition or they could be fitted in elsewhere. However the idea that these suggestions might complement equitable share was not regarded as particularly attractive. The reasons why the equitable share rule had been jiggered were well known, and this was something that should be corrected rather than complemented. The proposal was intended to cover a wide range of products. As to how the proposal would treat the subsidization of raw material components incorporated in processed agricultural products, it was indicated that as such subsidization was not legitimate the issue was not one that the proposal should address. It was also indicated that the proposal was not intended to relate only to export subsidies financed from budgetary means.

27. Other points raised in connection with the proposal in paragraph 64 of AG/W/14 were: whether and if so how the proposal would apply to countries which did not operate two-price systems but whose exporters' competitiveness was nevertheless influenced by income support arrangements and/or by a privileged position in their internal market; whether the same disciplines as those envisaged in respect of countries using export subsidies would also apply to countries where there were marketing boards or where exports were ostensibly managed and financed by the producers themselves. In either of these situations, it was suggested, scope existed for government assistance in various forms and for enhancing returns from the domestic market and thus the competitiveness of exports. It was also considered, in this view, that the application of self-sufficiency ratios in these situations, as well as in the case of net surplus countries, would be problematic. The question was also raised as to whether in practice the negotiation of self-sufficiency ratios would be less difficult than getting to grips with the problem of equitable share. It was also observed that the proposals in paragraph 64 of AG/W/14 did not take account of the problem of substitution products in the sense that producers could be doubly penalized or squeezed as a result of competition from imports and reduced export possibilities.

28. With regard to the "policy guideline" approach outlined in paragraphs 68 to 71 of the Draft Elaboration, the view was expressed that the object should be to elucidate and render operative the principles on which the existing equitable share discipline was based.

The 1948 CONTRACTING PARTIES determination, the 1955 Working Party Report and the 1966 Review Panel, developed the core perception that the assessment of equitable share should be guided by the distinction between shares that were artificially acquired and those that were based on an economic basis. It was suggested that, drawing on the reasoning of these reports and determinations, four basic criteria should be laid down in an interpretative note to Article XVI:3 to serve as principles to be applied by panels in determining whether more than an equitable share had been acquired. It was suggested that in essence such an interpretative note would provide that:

"A share of world export trade will be deemed to be more than equitable where that share:

- (a) exceeds the share which might reasonably be expected to prevail in the absence of the subsidy; and/or
- (b) is inconsistent with the objective of satisfying world market requirements of the commodity concerned in the most effective and economic manner; and/or
- (c) is acquired or is being maintained with the effect of depressing prices or preventing price increases that would otherwise have occurred; and/or
- (d) otherwise contributes, through its existence or effects, to the hindrance of the objectives of the General Agreement, disturbance to the normal commercial interests of contracting parties, or serious prejudice to another contracting party."

29. It was suggested that a *prima facie* case of more than equitable share would be established if the subsidized share of a contracting party breached any one of the foregoing criteria. Such an approach, it was submitted, would give decisive priority to the principle that trade should be conducted on the basis of rational economic principles, and that those who compete for markets should do so on an equal (unassisted) basis. In other words, "equitable share" should be defined on the basis of the elementary principle of equity that no party is given a privileged position. A basic common sense understanding should be applied in any strengthening of the equitable share criterion. To do otherwise, it was submitted would be to twist the meaning of "equitable" out of all relation to the well-established meaning of that concept.

30. It was indicated that the foregoing suggestions were put forward for consideration along with other ideas presented for effectively strengthening the existing framework. Reference was made in this connection to the need to further consider the idea of abandoning the equitable share concept in favour of a body of operationally effective rules and guidelines on serious prejudice, as well as to the desirability of fleshing out the suggestions recorded in the first half of paragraph 54 of AG/W/14.

31. A number of observations were made with regard to the work of the Committee on Trade in Agriculture and to the discussions in the Committee on Subsidies on agricultural export subsidies, with the suggestion being made that a pragmatic means of dealing with these interrelated issues in a more co-ordinated way should be found in order to avoid a scattering of responsibilities. It was explained that the point of this suggestion was that there should be one place to discuss the question of subsidies affecting trade in agriculture. In this general context, it was pointed out that the Committee on Subsidies had a restricted membership and its role was confined to facilitating a solution to the specific problems involved in two panel reports, whereas the work of the CTA, in which all contracting parties were called to participate, was generally regarded as being part of a preparatory process for a broader negotiation. The view was expressed that many of the ideas in SCM/53 had been taken up in the Draft Elaboration and would therefore be considered along with the other suggestions and proposals that had been made. It was also pointed out that the CTA had succeeded in making substantial progress in dealing with all the interrelated problems affecting trade in agriculture, and that there was a risk, if this coherence were not maintained, that the situation as regards agriculture in the GATT would simply revert to where matters had stood in 1982.

32. The Chairman invited participants to reflect on his personal opinion in this matter which was that it would not be possible to carry out the work of the Committee unless the whole area of problems were covered. Otherwise the Committee would have no possibility to balance the different problems - to balance the problem of access with subsidies, to balance the sanitary and phytosanitary issues and so on. This was the way the Committee had worked. It was his personal belief that the work of the Committee could be fruitful if it were able to cover all problems concerning trade in agriculture but that there would be no chance of making progress if this were not accepted by everybody.

32. It was observed that a Preparatory Committee once established would have to make decisions about how to organize its work and that these decisions could have some effect on the work of the CTA. In this view it was considered that it would be premature to make any decisions at the present stage and that the door should therefore be left open to determine how the CTA wanted to carry out its work depending on what events took place in the future.

Report to the 41st Session

33. The Committee adopted the report to the CONTRACTING PARTIES contained in document L/5900.

Other Matters

33. It was agreed, subject to consultations by the Chairman, that the Committee should aim to hold its next meeting towards the end of February 1986. It was also agreed that a revision of the Draft Elaboration should be undertaken by the secretariat.

ANNEX

Statement by the Community
Concerning the Statement of the President
of the United States Regarding EEC Export Policy on Wheat

On 16 October 1985 the United States announced that it intended to institute proceedings in GATT against the Community's wheat export policy. It claims that the EEC has exceeded its equitable share of the market in this commodity and is conducting a policy that leads to lower world prices.

Without entering here into a discussion of substance, the Community considers, first, that for its part it has always pursued an export policy consistent with its international commitments, and, secondly, that it is odd to see the very promoters of the Export Enhancement Program attacking the effects of the policy of another contracting party.

The Community will draw the necessary conclusions as regards action in GATT.

It must point out, however, that this step by the United States is not helping to create the atmosphere needed for the launching of a new round of negotiations and, in the circumstances, the Community is wondering about the significance of such a step and its relationship to current and future work in the Committee on Trade in Agriculture.