

GENERAL AGREEMENT ON TARIFFS AND TRADE

CONFIDENTIAL

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Special Distribution

Multilateral Trade Negotiations

NOTE BY THE SECRETARIAT

It is the understanding of the secretariat that the attached text reflects the present state of thinking of certain delegations on export control measures.

It is circulated in order to facilitate further discussions and negotiations.

DRAFT UNDERSTANDING REGARDING THE USE OF EXPORT CONTROL MEASURES

The CONTRACTING PARTIES recognize that trade measures to control exports, notwithstanding their necessity or legitimacy to meet valid domestic needs as provided under the GATT, can on occasion create unwarranted impediments to international trade. They further acknowledge that the absence of established guidelines and procedures for taking the export control actions permitted under GATT provisions have at times contributed to instability and uncertainty in international trading conditions and could do so in the future. The CONTRACTING PARTIES agree, therefore, that the following commitments with respect to principles and guidelines will be to their common benefit and mutual advantage.

Publication and notification

1. Contracting parties reaffirm their adherence to existing GATT obligations regarding publication and, where relevant, notification, as they relate to the use of export control measures. They undertake, to the maximum extent possible on a prior basis, to notify the CONTRACTING PARTIES of the adoption of such measures (whether made effective by restrictions on quantity or value of exports; licence requirements; duties, taxes, or other charges; State-trading regulations; or other methods) and to ensure their prompt publication consistent with the requirements of Article X. It is understood that notification would of itself be without prejudice to views on the particular measure's conformity with or relevance to GATT obligations.
2. Notifications should indicate the specific purpose of the measure and refer to any relevant provisions of the GATT or agreements under the GATT.
3. Any interested contracting party may notify the CONTRACTING PARTIES of an export control measure taken by another contracting party and may request consultations in connexion with such measure if it is or may be materially affected by the measure.

Consultation

1. Contracting parties should, upon request, afford interested contracting parties an opportunity to consult with them regarding the adoption or implementation of export control measures. Where appropriate such consultations should be pursuant to GATT Article XXII. Any request for consultations should indicate the reasons therefore.
2. The parties concerned should undertake to initiate consultations promptly normally within 15 days of the request, and should normally conclude such consultations within a reasonable period of time, e.g., 60 days.
3. During consultations, parties should as appropriate take into account the particular problems and interests of developing countries.
4. Where differences of view regarding a particular measure have not been satisfactorily resolved through bilateral consultations, the parties concerned may seek the "good offices" of an appropriate multilateral or other body, or individual, for the purpose of facilitating conciliation of outstanding differences with a view to reaching a mutually satisfactory solution.
5. In the event that the above procedures do not achieve resolution of the disagreed matters, it is recognized that specific dispute settlement procedures of Article XXIII of the General Agreement remain available.

Guidelines on particular measures

1. Without prejudice to other GATT provisions, the CONTRACTING PARTIES reaffirm that the provisions of paragraph 1 of Article I apply to any export control measures implemented by any of the methods referred to in that paragraph, including (with reference to paragraph 2 of Article III) the application of internal taxes to exported products. In the case of restrictions on the quantity or value of exports, however implemented, the requirements and procedures of Article XIII are understood to apply.
2. In the case of measures taken under Article XX, the requirement that such measures "are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail" is understood to be equivalent in meaning to the requirements of Articles I:1 and XIII:1.

3. Where a contracting party imposes export control measures under Articles XI, XVII or XX to deal with exceptional situations of general or local "short supply" of a product, i.e., temporary shortages in relation to its normal domestic needs:

(a) Such measures should be stipulated as temporary and expiring, subject to renewal, in preference to measures of indefinite duration; they should be terminated whenever the conditions giving rise to them have moderated sufficiently.

(b) To the extent feasible, such measures should be "degressive", that is, they should be progressively liberalized during their period of application.

(c) With respect to any measure taken under Article XI:2(a), the contracting party should be prepared to offer factual evidence that the product shortages in question are "critical", that the products are "essential" to it, and that the measure will be applied only "temporarily".

(d) With respect to any export restrictions taken under Article XX:(i), the contracting party should be prepared to furnish (i) information on the nature and operation of the governmental stabilization plan establishing a lower domestic price for the material; (ii) a rationale for the determination of "essential quantities" of the material subject to the restriction; (iii) sufficient evidence that the restriction is not operating to increase the exports of, or protection afforded to, the domestic industry benefiting from it; and (iv) sufficient description of the restriction to verify that it does not depart from the requirements of Articles I:1 and XIII:1.

(e) With respect to any export control measure taken under Article XX:(j), the contracting party should be prepared to furnish factual evidence that the products affected are in general or local short supply, and that the measure does not, in the particular circumstances obtaining, deprive contracting parties of an equitable share - on an historically representative basis - of the international supply of those products. It should be established whether the measure is inconsistent with other GATT provisions and therefore subject to termination as soon as the short supply conditions have ceased to exist.

4. With respect to any export control measure taken under Article XX:(g), the contracting party should be prepared to furnish information on the nature and operation of the requisite restrictions on domestic production or consumption of the exhaustible natural resource with respect to which the export control measure has been taken.

5. The CONTRACTING PARTIES agree that the use of export embargoes, however implemented, can cause serious prejudice to normal trading patterns and trade relations by preventing the exportation of even minimum commercial quantities of affected products. Accordingly, they undertake to avoid resort to such measures.

6. With respect to the use of quantitative export restrictions, whether implemented by licence requirements, State-trading regulations, or other methods, the CONTRACTING PARTIES re-affirm the substance, conclusions, and recommendations of the Report of the CONTRACTING PARTIES unanimously adopted on 3 April 1950 ("The Use of Quantitative Restrictions for Protective and Other Commercial Purposes").

7. /Treatment of taxes, duties, or other charges on exports, as foreseen in GATT Articles II, XVII, Ad XVII, XXVIII and XXVIII bis: to be added./

Surveillance

The CONTRACTING PARTIES agree that, in the context of more regular and systematic review of developments in the trading system pursuant to agreements reached in the Tokyo Round, there should be adequate attention to the matters covered by this Understanding. In order to accomplish that function effectively, the CONTRACTING PARTIES may wish to provide from time to time for a smaller body, to review general developments or particular matters and to advise the CONTRACTING PARTIES as appropriate.