

# GENERAL AGREEMENT ON TARIFFS AND TRADE

CONFIDENTIAL

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## Multilateral Trade Negotiations

### NOTE BY THE SECRETARIAT

#### Revision

It is the understanding of the secretariat that Part A of the attached text reflects the present state of thinking of certain delegations on rights and obligations that they believe should be undertaken regarding the use of export control measures under the existing framework of GATT rules. It is further understood by the secretariat that Part B of the attached text sets out the thinking of certain delegations on additional rights and obligations which they believe could be considered in the course of negotiations.

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

#### Draft agreement 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 create 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 has, 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 will be to their common benefit and mutual advantage.

#### PART A

/Pro Memoria: It is understood that the following provisions would be modified, as appropriate, in order to assure their consistency with any agreement that may be reached in connexion with a general understanding or settlement/management of disputes./

#### 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.

#### 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 30 days of the request, and should normally conclude such consultations within a reasonable period of time.

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.

#### Information relevant to consultations

1. With respect to any export control measures implemented by any of the methods referred to in Article I:1, the contracting party shall, upon request, furnish information establishing whether the measure is consistent with that paragraph. If implemented by a quantitative restriction, the contracting party shall, upon request, furnish information establishing that the measure is consistent with the provisions of Article XIII insofar as they are applicable.

2. With respect to any measure taken under Article XI:2(a), the contracting party shall, upon request, furnish information establishing that the product shortages in question are "critical", that the products are "essential" to it, and that the measure will be applied only "temporarily".
3. With respect to any measure taken under Article XX, the contracting party shall, upon request, furnish information establishing that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail.
4. With respect to any export control measure taken under Article XX:(g), the contracting party shall, upon request, 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. With respect to any export restrictions taken under Article XX:(i), the contracting party shall, upon request, 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) information establishing 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 provisions of the GATT relating to non-discrimination.
6. With respect to any export control measure taken under Article XX:(j) the contracting party shall, upon request, furnish information establishing 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 of the international supply of those products. The contracting party shall be prepared to specify whether the measure is consistent with other GATT provisions; if not, it would be subject to termination as soon as the short supply conditions have ceased to exist.
7. A developing contracting party may enlist the technical assistance services of the GATT secretariat in order to assist it in compiling the above information.

#### Surveillance and follow-up

1. 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 Agreement. In order to accomplish that function effectively, the CONTRACTING PARTIES may wish to provide from time to time for a subsidiary body, to review general developments or particular matters and to advise the CONTRACTING PARTIES as appropriate.

2. With respect to the use of quantitative export restrictions, whether implemented by licence requirements, State-trading regulations, or other methods, the CONTRACTING PARTIES recall 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"). They agree to review this report at an early date.

#### PART B

The negotiation of additional rights and obligations could be contemplated, which would address, for example, provisions regarding the way in which, and the purposes for which, export control measures could be used. In the view of certain delegations, acceptance of such additional rights and obligations could be undertaken only if all major countries which would principally benefit from these new rules had undertaken relevant obligations which were considered to provide adequate reciprocity by those countries on which these new obligations would bear.

More precisely such negotiations on export control measures could address:

- (a) the more precise definition of the GATT exceptions which permit the use of quantitative export restrictions, for example, the question of determining an equitable share of the international supply of products subject to restriction;
- (b) re-writing the provisions in the preamble of Article XX to reduce or eliminate the possibility of discriminatory action under it;
- (c) the duration of "temporary" export restrictions being applied in the circumstances provided for in the GATT;
- (d) the base period used and the progressive liberalization of such export restrictions over the period of their application;
- (e) export embargoes, and whether their use should be subject to rules separate from the rules on export restrictions generally;
- (f) the rules which could apply in negotiations regarding the binding of export taxes in the relevant Schedules to the GATT, including provisions relating to emergency action and renegotiation;

- (g) the negotiation of the binding of export taxes on specific products, and their inclusion in the GATT Schedules;
- (h) appropriate consideration of the interests of developing countries.