

GENERAL AGREEMENT ON TARIFFS AND TRADE

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STATEMENTS MADE BY THE REPRESENTATIVE OF THE EEC
ON 30 JUNE AND 1 JULY 1977

Item 1

1. The discussion which has been initiated this morning deals more and more specifically with item 1, and I should like to convey to you some comments by the Community on this point and also on item 4 which, in our view, is related to item 1.
2. At our February meeting, we already stated that the question of differential treatment with respect to the m.f.n. clause seems to us to be a promising topic and we were prepared to study the ways and means to grant the insistent request by the developing countries for recognition of the principle of differential treatment in more appropriate legal terms. I would like to try to elaborate further today our position on this point in the light of statements made by other delegations which we have noted and studied carefully while conveying to you even at this early stage some of the Community's thinking.
3. The starting point is what our ministers agreed to in Tokyo: differential measures, special and more favourable treatment in those sectors of the negotiations where this is feasible and appropriate, and further on, the ministers also recalled that, within this context, the least developed among the developing countries should receive special treatment. While differential treatment appeared for the first time within the GATT framework in the Tokyo Declaration as a notion accepted by all, this notion in fact covers not only the measures which might be taken in this or that sector of the negotiations (there are several such sectors), but also measures already implemented and, in a way, authorized and consecrated by the GATT.
4. Article XVIII and its revised 1955 version provided the first outline. At the time when Part IV was drafted, a fairly substantial trend of opinion already favoured a more legally pronounced treatment (it is in fact interesting to study some of the proposals made at the time); but it is only when the Generalized System of Preferences was developed outside the GATT framework that such ideas materialized and led to the waiver which was in fact the confirmation by the GATT of what had taken place elsewhere. At the same time, a series of other arrangements were made whether in the form of the Triangular Agreement (which as a matter of fact must be reviewed before the end of March 1978) or of the Protocol of the Group of 16.

5. One can conclude therefrom that there are already many forms of differential treatment, some that are already implemented and others that could possibly be, if the circumstances arose, or even - who knows - outside the MTN framework (for instance the Bangkok Agreement). But many developing countries are of the opinion that the General Agreement does not at present afford for such differential treatment a legal basis that could be regarded by all as fully satisfactory. We are prepared to state that the establishment of a more satisfactory legal basis for differential treatment for developing countries should be envisaged.

6. Several methods may be envisioned. Conceivably, it would certainly not be too late to do what could perhaps have been done in 1964, when Part IV was drawn up and make for the necessary additional precisions in this field. But while we are prepared to move along these lines, we must stress a number of points and I believe that in so doing we are joining a substantial trend of opinion.

7. The EEC is of the view that differential treatment cannot in any way be considered as a binding or automatic arrangement and that any form of preferential bindings would appear highly inappropriate from the legal or the practical point of view. Any form of preferential bindings would, in fact, run counter to the reasonable interest of the contracting parties as a whole and their efforts to further development and assist specifically those countries that need it most. We have already said elsewhere, and we wish to repeat here, that such a system of bindings would not favour the improvement and the maintenance of the GSP and would not support the concept which is at the very basis of the GSP, i.e. that the GSP must always be adjusted in the light of the needs of the developing countries, which, by nature, are undergoing continuing change. It is absolutely necessary to avoid any confusion between this aspect and the question of a more satisfactory legal basis, because such a confusion would hamper progress along the lines which I have indicated and which we consider to be desirable.

8. We wish to make it clear that, while moving in this direction, we must, as many delegations, in particular the United States delegation, have stated, stress that the purpose of such differential treatment should be to facilitate the trade of countries which receive such treatment and not to raise obstacles to the trade of others; that such treatment must not be an obstacle to the pursuit of the liberalization of obstacles on an m.f.n. basis or to the improvement of the management of the international framework for the conduct of world trade. We are also of the opinion that the modalities for the implementation of such treatment should be the subject of appropriate review and surveillance procedures; that they should always depend on the particular situation of the various developing countries or group of countries and that, quite obviously, they should remain in force, vis-à-vis such individual countries only as long as the situation continues to justify them, taking also account of the fact that not everybody can receive preferences.

9. These latter aspects are, of course, related to item 4 of this group's agenda. Differential treatment should not lead to an irreversible fragmentation of the GATT that would be sanctioned by a permanent institutional differentiation between the rights and obligations of two categories of contracting parties.

Item 4

10. Article XXXVI:8 deals with the relations between developed and developing countries but one must bear in mind that these general terms cover a considerable variety of situations: some countries referred to as "developed" countries may not in fact be much further developed than some so-called "developing" countries, and the recent crisis has shown that changes in economic circumstances can rapidly lead to a change in the relative situation of these countries, either because their natural or other resources suddenly appreciate or because other countries, on the contrary, are adversely affected by a deterioration in continuing price relationships. When examining Article XXXVI:8 the question arises as to whether a new wording could take account of this medley of fast-changing situations.

11. We believe that the suggested amendments that would tend to confirm what we believe has been a correct application of the letter and the spirit of Article XXXVI:8 on our part could be examined. We have not attempted through our behaviour to obtain equivalent concessions from the developing countries, neither did we expect any. The EEC is prepared to examine such proposed amendments, and we agree on this point with the position of the delegation of the Nordic countries.

12. Brazil, in its more specific proposals, suggests methods of calculation for a lesser type of reciprocity. It seems to us that these suggested calculations tally in fact neither with the spirit of Article XXXVI:8 nor with recent developments, because under these suggestions we would be moving further away from the tariff field into other fields, where the calculation of reciprocity is increasingly difficult.

13. On the other hand, are the contributions or concessions which the developing countries could make, in particular those which have considerably advanced over the last few years, really so limited as people say? When this organization came into being in 1947, the successive rounds of negotiations between the - at that time - developed countries related to very substantial measures of protection which, in general, covered the whole of the customs tariffs and, quite frequently, the negotiating parties exchanged reductions and advantages that did not in fact cause any undue hardship, because these countries were far from having reached the hard core protection measures which safeguard sensitive and difficult sectors. The

developing countries of today, we agree, need protection and some flexibility in the choice of the modalities for and changes to their frontier measures. But, in many cases, these countries could reduce their level of protection without really biting into the quick of their economies, because, as was the case with the developed countries in the earlier stages of the GATT, a series of measures are being maintained for historical reasons without any real economic justification. Countless obstacles with cumulative effect compound the lives of importers and exporters and lead to additional costs which are shifted on to the consumers. The complexity of import regulations also facilitates all kinds of undesirable practices. It should therefore be possible for many developing countries, without deviating from the letter and the spirit of Article XXXVI:8, to make contributions in the form of a simplification and modernization of their commercial policies. Some have already done so of their own initiative, without even waiting for a more appropriate occasion, because they realized that this was in their own interest.

14. We are not convinced either by the arguments used by some developing countries which say: "We shall contribute to the Tokyo Round only to the extent that we obtain additional, i.e., preferential, advantages". We believe that the measures which the developing countries could take erga omnes also deserve to be considered and that all those present here should endeavour to contribute to the success of our negotiations. Success depends also on what the developing countries can do, in their own economic interest and in the interest of the expansion of trade between the developing countries themselves. In this respect, we have heard it said on many sides that the reason why the negotiations conducted under the Protocol of the Group of 16 have been so difficult is, in particular, that, apart from the tariffs which were the subject of these negotiations, there were many other obstacles that did not enable the participating developing countries to be really aware of what exactly they were giving and receiving. We appeal for greater transparency in the trade policies of the developing countries because this would also favour trade between such countries.

Item 2

15. At the February meeting, the EEC has already had occasion to express its preliminary views on this point. I should like, today, to give additional information relating more specifically to those aspects that are of interest to the developing countries.

16. The EEC can recognize the need for greater flexibility and tolerance in the choice of balance-of-payment measures taken by the developing countries. In this spirit, the EEC is prepared to envisage that,

for instance, through the introduction of interpretative notes to Article XVIII:B, the developing countries, when experiencing balance-of-payments difficulties, should be allowed to impose surcharges or import deposits on items for which bindings have been undertaken. It would be understood that all the conditions and all the criteria laid down in the relevant provisions of the General Agreement concerning the use of quantitative restrictions for balance-of-payment reasons should be deemed to be applicable in the case of the "sophisticated" trade measures which would be authorized.

17. We believe, for example, that these measures should be applied so as to avoid unnecessary injury to the trade and economic interests of any other party and not to prevent token imports. Such measures should be attenuated as the situation improves and eliminated when the situation no longer justifies their maintenance. In this field also, these measures, unless authorized under other provisions of the GATT, should be of a non-discriminatory nature and, on this point, we share the view that the restoration of bilateral balances through specific measures would deviate unduly from the existing provisions of the General Agreement. Quantitative restrictions, surcharges or deposits should not be applied concurrently to the same products or groups of products, for the simple reason that an accumulation of such measures does not seem to be justified on grounds of protection, complicates further the situation and eventually leads to additional costs to the importing country. The multiplicity and accumulation of such measures further leads to all kinds of practices and to misuses in all countries, whether developed or not, regardless of the efforts made in order to prevent or prohibit them fully. Lastly, as far as these measures are concerned, it is necessary to maintain the consultation arrangements concerning the general balance-of-payments situation and to evaluate their impact on the country concerned as well as their possible effects on third countries.

18. As regards procedures, these "sophisticated measures" should in principle be referred to the Balance-of-Payments Committee for consideration. This does not rule out the possibility that, in particular cases, a country might prefer another device and that, in view of any specific situation, reliance might be had on another forum. As regards the subject of these consultations it has been usefully recalled in the document submitted by the Nordic countries that, under existing GATT provisions, a consultation may also deal with the implications of a measure taken by other countries which may have contributed to the balance-of-payments difficulties of the consulting country. Article XII:4(e) has also been mentioned quite rightly because it has been clearly established (see BISD, Volume 3, page) that the provisions of this sub-paragraph and of its interpretative note also apply in the case of Article XVIII:B consultations. It is quite normal that a consultation should examine inter alia these measures, but as we said last time, provided a consultation with one country is not turned into a consultation with all other countries. This is one of the aspects which can be

considered, but we could imagine others. Thus, for instance, it does not seem to us totally unjustified to consider whether the country experiencing balance-of-payments difficulties does not contribute to such difficulties itself as a result of production and export policies which prevent it from benefiting from foreign exchange earnings that would contribute to the restoration of its balance-of-payments equilibrium. These are not hypothetical cases. Furthermore, it would be in the interest of the consulting country itself, if as a general rule, the full consultation procedure were maintained because, as the EEC has already had occasion to state, the tenor of a consultation depends to a large extent on the attitude of the consulting country, which may benefit from the consultation. The simplified procedure should therefore remain exceptional and apply more particularly to countries in the very early stages of development which may not be equipped with the administrative set up - a very light set up indeed - which may be required to enter into full-fledged consultation.

19. The proposal has also been made that the GATT secretariat should prepare a study of the measures taken. We agree with this proposal, on condition that the study should be of the descriptive type and cover all the sectors concerned, the percentages of imports adversely affected, etc., but once again, experience shows that these basic data themselves are not often available, or are available in imperfect form. One must therefore often be content with a very approximate type of work. But when one suggests that the GATT secretariat should evaluate the effects of these measures the secretariat is in fact requested to undertake a hazardous exercise which, in view of its specific nature, is based primarily on assumptions regarding the future evolution of foreign exchange rates, the evolution of inflation in the country in difficulty, demand elasticity, substitution ratios or any other refinements in which university professors are particularly proficient. Conclusions based on such a complex of assumptions will inevitably give rise to heated and challenging discussions depending on the contending interests at stake. It is not in the interest of GATT to move along those lines.

20. As regards now the developed countries, it has been proposed that the trade measures which they impose in order to safeguard their balances of payments should in no case be applied to products originating in developing countries. This would in a way be a rule imposed by the General Agreement. The Community has some experience in this field and it must be recognized that, when a developed country is in a situation which requires that it should impose trade measures to protect its balance of payments, it is nearly always impossible for that country to envisage extensive exemptions from the outset. The problem could be settled in the spirit of Article XXXVII:3(c). The history of this paragraph shows that, when it was drafted, the authors had in mind the possibility for developed countries to exclude from the range of products covered by balance-of-payments measures, products which are imported mainly from developing countries and are often, on the whole, primary commodities or staple items. Greater precision can be attempted in this direction so that this provision be borne in mind in a clear and continuing manner when such cases arise.

21. Lastly, as regards balance-of-payments problems which lead to difficulties between developed countries, the EEC has already reiterated its views at the February meeting. It is also suggested to adopt procedural arrangements for "sophisticated" measures imposed by developed countries. We have the gravest misgivings in this respect because we believe that the establishment of procedures to deal with such measures would make for some sort of semi-legalization of those measures, whether or not intentional. Unless I am mistaken, only one developed country applies one "sophisticated" measure or measures. But we are still going through a period of recession while the monetary situation is difficult and dangerous. The upheavals which have affected the world economy are far from being over and we may perhaps be in a more delicate situation today than before. In spite of this, however, hardly any such measures are applied for the time being. Is it, therefore, necessary, at this stage, to pass judgement and suggest that, in any case, such measures will be imposed again and that therefore they must, in a way, be legalized through the adoption of a procedure? In addition, recent developments in the choice of the techniques applied show that the Governments - perhaps under the influence of discussions held at the IMF - seem to incline to measures which are primarily of a monetary and foreign exchange nature. These relate not only to fluctuating exchange rates but also to action in relation with foreign exchange regulations, such as immediate payment for imports (which is not a previous deposit). If this tendency were to be confirmed, the GATT is not the most appropriate forum to control this type of development. The only action that GATT could take in this field is to ascertain whether these monetary measures do or do not involve some typically commercial aspects that really fall within its province.

22. Mr. Chairman, considering all these uncertainties, we remain convinced that it would be improper to legislate in the field of procedures, considering all the drawbacks involved. The forthcoming months will perhaps throw some additional light on this matter, but we believe that it would not be appropriate to do for the developing countries, even simply via a procedural adjustment, what should be done in the case of the developing countries.

Item 3

23. When this group was set up in February last, we already expressed the views of the EEC on this matter. After briefly reiterating these views, I should like to make a few additional comments on the suggestions which have been made with a view to the introduction of differential treatment in this field.

24. As we have already stated, the question of the settlement of disputes is already under discussion, but in a specific way, in the various Multilateral Trade Negotiations groups and sub-groups; the Group "Safeguards", "Standards",

"Subsidies and Countervailing Duties", etc., where it is desirable to examine the questions which arise in this field and may vary from topic to topic. As the terms of reference of this group provides that the group must not interfere with the activities of other groups, there is a danger that it might do so if, at this stage, the group were to initiate a discussion of the problem. We have also recalled that this is a matter which is being dealt with in the Group of Eighteen and should continue to be discussed there, because a discussion between the Contracting Parties is particularly appropriate in that forum.

25. Everything which hinges on the settlement of disputes within the GATT framework has never been codified, except by a 1966 decision, to which I shall refer further on. The absence of any codification is probably due not to chance but to a deliberate policy which has been followed from the outset and has consisted in cautiously establishing a mechanism, a series of practices which are not formally defined and are dictated by pragmatic considerations and as a result of which this conciliation mechanism has developed and reaped a striking number of successes accompanied, one must confess, with some failures. In this field, any undue codification or even straightforward codification may very well yield results opposite to what we are all aiming at. It seems, in fact, that the difficulties were rather due to the complexity of the matter which was the object of the dispute, or to problems related to the political will of the governments concerned. In other words, this is a matter of behaviour rather than of binding obligations. There is already within GATT a certain degree of inter-governmental or international co-operation which does not, however, reach the degree attained within other more closely integrated frameworks. But, even there, considerable difficulties are nevertheless found to exist in the field of the settlement of disputes, of conciliation in cases of alleged or actual violations, whatever the existing legal provisions.

26. The GATT has a set of non-codified practices which are well known to contracting parties and have sometimes given rise to innovations, but not always successfully. This must be taken into account in order to make progress in this direction. The EEC does not rule out consideration being given to the possibility of making some adjustments to these unwritten practices; but we believe that this kind of consideration would be more appropriate within the framework of discussions between contracting parties which have a long-standing experience of GATT and are aware of everything that is delicate, even explosive, in these procedures for the settlement of differences, and of the need to proceed with considerable caution in this field.

27. I now come to the suggestion to introduce differential treatment in these matters relating to the settlement of disputes. The EEC envisages considerable difficulties in this area. Should it be decided a priori that a party which is being questioned should by definition enjoy a privileged position? We are being told that the aim would simply be to restore equilibrium, because the developing countries do not have the same facilities as advanced countries. It is true that the developing countries, as indeed some developed countries, have undertaken few commitments, for instance, in the field of bindings, and that it is therefore less easy for them to make withdrawals, the retaliatory weapon par excellence. Many contracting parties have not even granted any tariff concessions and are therefore not in a position to do what sometimes amounts to a mere gesture to impact public

opinion, that is, to withdraw legal commitments. This does not prevent certain countries, and not only developing countries, from sometimes relying on a whole range of very numerous and rather hidden measures of restriction to affect this or that supplier, without their action being notified or formally published. It would therefore be rash to lay down as a principle that the developing countries never have any possibility to act. The introduction of a principle of privileged treatment might imply some partiality and would not make for a better functioning of the procedures for conciliation and the settlement of disputes which, as has already been indicated, depends on the full adhesion and support of all the countries concerned.

28. One may in fact wonder why the developing countries have never resorted to these procedures and never relied on them in order to settle disputes between themselves. They have never used the 1966 procedures which unduly codified situations that were not amenable to codification. Why is this so? The reason, no doubt, is that problems which the developing countries may face in their trade relations do not lend themselves easily to legal solutions, and perhaps also partly because many developed countries, while sometimes experiencing difficulties vis-à-vis this or that undertaking, have as far as most of them, if not all, are concerned, taken many unilateral measures in favour of the developing countries, a situation which in fact is in addition to the question of legal relationships. The question of differential treatment for the settlement of disputes is worthy of consideration, but this is probably not an area where, in the view of the EEC, such treatment appears to be feasible and appropriate.

Item 5

29. I would wish to recall that the EEC attaches importance to this matter. We believe that, in the field of export restrictions, consideration should be given to the possibility of greater transparency and increased international discipline, in particular through compliance with existing rules and the adoption of adequate procedures. The suggestion, which was already made in February by the United States delegation, to review existing GATT provisions in the field of export restrictions should be followed and implemented at our next meeting. This should not give rise to difficulties that would be met by categorical attitudes, as this would only be a matter of reviewing an existing situation.