

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## Multilateral Trade Negotiations

### Group "Framework"

#### INVENTORY OF THE MAIN ELEMENTS THAT HAVE BEEN THE SUBJECT OF SUGGESTIONS

##### Note by the Secretariat

1. At its meeting of December 1977 the Group requested the secretariat, on its own responsibility, to prepare for its members an annotated list or inventory of the main elements that had been the subject of suggestions made in the Group (MTN/FR/3, paragraph 8).
2. This paper is circulated in response to this request.
3. It summarizes the main proposals or suggestions which have been made in the Group which are contained in documents MTN/FR/W/1 to 10 and 12 to 14. These remain the basic documentation before the Group and reference should be made to them for the full text of proposals or suggestions. It should be noted that some of the suggestions made are tentative in nature and are not formal proposals. This document does not attempt to indicate the degree of support that different proposals and suggestions have attracted, nor the strength of any reservations to them that may have been voiced.
4. This document is circulated by the secretariat on its own responsibility and does not prejudice the position of any delegation, in particular with regard to the elements which should or should not be the subject of negotiation.
1. The legal framework for differential and more favourable treatment for developing countries in relation to GATT provisions, in particular the MFN clause

Main GATT Articles: I, II, XIII and Part IV

#### 1.1 General

A general enabling clause (i.e. not a mandatory clause) should be drawn up which would make differential and more favourable treatment legally feasible in all aspects of trade relations.

A more satisfactory legal basis for differential treatment for developing countries should be envisaged: the modalities for the implementation of such treatment should be the subject of appropriate review and surveillance procedures.

Practical ways should be found of providing additional benefits for developing countries without jeopardizing the MFN principle.

The existing provisions relating to special and differential treatment in Articles XVIII, XVIII bis and Part IV should be consolidated, made more definite and precise and built into the main substantive Articles of GATT.

### 1.2 Generalized System of Preferences

GATT should provide a standing legal basis for GSP.

GATT should provide a greater degree of security for GSP.

A procedure linked to the GATT waiver of 1971 might be introduced which would lead to a more regular and thorough review in GATT of the implementation and development of GSP.

### 1.3 Negotiation of preferential bindings

An enabling clause should be agreed which would provide a legal basis for the negotiation of preferential bindings in GATT between developed and developing countries.

### 1.4 Differential treatment granted by developing countries to one another

Preferential arrangements among developing countries should be treated also as acceptable normal rules of the GATT and not as an exception.

### 1.5 Application of differential treatment in the light of the needs of different countries

Differential treatment should always depend on the particular situation of the various developing countries or groups of countries and should remain in force vis-à-vis such individual countries only as long as the situation continues to justify it.

2. Safeguard action for balance of payments and economic development purposes

Main GATT Articles: XII and XVIII

2.1 For balance-of-payments purposes

2.1.1 Use by developed countries

Developed countries might consider the adoption of a declaration under which they would not impose trade measures of any kind for balance-of-payments reasons.

Developing countries should be exempted from balance-of-payments measures taken by developed countries. Carefully defined exceptions to this rule could be worked out to take account of unusual or grave circumstances.

Developed countries should exclude from the range of products covered by balance-of-payments measures products which are imported mainly from developing countries.

When implementing balance-of-payments measures, developed countries should seek to avoid imposing restrictions that would, to a larger extent than necessary, adversely affect the interests of the developing countries.

2.1.2 Use by developing countries

GATT provisions should recognize the structural factors involved as well as the impact of external factors on the economies of developing countries.

Interpretative notes to Article XVIII:B should permit developing countries, when experiencing balance-of-payments difficulties, to impose surcharges or import deposits of a non-discriminatory nature on bound items. However, quantitative restrictions, surcharges or deposits should not be applied concurrently to the same products or groups of products.

In considering the application of differential measures there should be recognition of the special circumstances of developing countries that have a trade deficit vis-à-vis developed countries.

2.1.3 Improvements in notification, consultation and follow-up procedures

Procedures should be established providing for the notification of all balance-of-payments measures (including third party notification).

Improved procedures should be established for the review of all balance-of-payments trade measures.

The GATT secretariat should prepare objective trade policy oriented studies on measures taken for balance-of-payments purposes. Such studies should include the effect of measures taken on the trade of the developing countries.

The GATT secretariat studies of the measures taken should be of a descriptive type but should not attempt to evaluate the effects of the measures.

Improved procedures for consultation should be directed not merely to ascertaining if the measures taken are consistent with GATT, but also, more importantly, to seeking means of helping the developing country to overcome its difficulties.

In evaluating actions taken by developing countries, the Balance-of-Payments Committee should take account of the special needs of those countries.

"Sophisticated" measures i.e., measures other than quantitative restrictions taken by developing countries should in principle be subject to consultation in the Balance-of-Payments Committee.

Balance-of-payments consultations should examine, inter alia, the implications of a measure taken by other countries which may have contributed to the balance-of-payments difficulties of the consulting developing country.

The simplified procedure for consultations with developing countries should be adopted as a general rule and not as an exception.

Consultation procedures with developed countries taking balance-of-payments action should carefully examine the possible impact of measures on developing country economies.

The Balance-of-Payments Committee should report its conclusions and state fully the reasons behind its decisions.

The surveillance rôle of the Balance-of-Payments Committee should be enhanced to enable it to follow up and review actions that are taken in the light of the Committee's recommendations or conclusions.

## 2.2 Safeguard action for economic development purposes

Greater flexibility should be granted to developing countries in the kind of safeguard action they must take. More equitable criteria and circumstances should be defined under which an affected developed contracting party might choose to take retaliatory action after exhausting proper consultation procedures.

Greater flexibility should be allowed to developing countries under Section A of Article XVIII to recompose periodically their schedules of concessions.

Allowance should be made for the phased compensation for modifications or withdrawals.

Under Section C of Article XVIII a developing country should be enabled to take safeguard action in relation to its exports, and not just its imports.

Criteria should be introduced to ensure that, if and when retaliatory action is taken by developed countries, it does not reach beyond a certain limited scope and seriously damage the economy of a developing country.

## 3. Consultations, dispute settlement and surveillance procedures under Articles XXII and XXIII

Main GATT Articles: XXII, XXIII and Part IV

### 3.1 General

A review of the actual application of Articles XXII and XXIII should be held. This may contribute to the development of appropriate procedures to enable more effective application of these Articles.

### 3.2 Notification

There should be a general requirement whereby all contracting parties would notify restrictive or potentially restrictive trade measures to be taken or which have been taken (including third party notification).

Current procedures should be notified to provide for prior notifications of decisions which affect the trade interests of a developing country.

The Director-General of GATT might be provided with a clear mandate to seek relevant information from individual contracting parties taking decisions which might adversely affect the trade interests of developing countries.

### 3.3 Surveillance

The possibility should be examined for regular and effective international review of trade measures affecting the interests of contracting parties, through some improved provision for regular surveillance and consultation.

Provisions for continued surveillance should be elaborated within existing institutions.

Current procedures should be modified to provide tighter surveillance procedures in favour of developing countries.

Procedures should be established for justification of non-removal of barriers affecting products of interest to developing countries.

### 3.4 Consultations, conciliation and dispute settlement procedures

The operation of GATT panels, used in cases in which contracting parties have not been able to resolve issues on a mutually satisfactory basis, should be made more effective.

The difference between dispute settlement mechanisms in different areas (Anti-Dumping, Textiles) should be borne in mind.

A properly balanced standing surveillance body should be created to investigate complaints and other matters referred to it and to make recommendations for their redress. A breach of obligations under the General Agreement should lead to the automatic suspension of the rights of the offending contracting parties, in relation to all contracting parties.

Current procedures should be modified to provide for improved consultation and dispute settlement procedures in addition to those adopted under the Decision of 5 April 1966 on procedures under Article XXIII.

Current procedures should be modified to provide a greater initiative to the Director-General of GATT to render assistance to developing countries in situations affecting the interests of a developing country.

The possibility should be explored of some greater rôle for the secretariat to assist developing countries in the dispute resolution process.

Additional criteria should be established for the assessment of damage incurred by a developing country as a result of action taken by a developed country.

4. For the purpose of future trade negotiations: applicability of the principle of reciprocity in trade relations between developed and developing countries and fuller participation by the developing countries in an improved framework of rights and obligations under the GATT that takes into account their development needs

Main GATT Articles: XVIII, XXVIII, XXVIII bis and XXXVI:8

4.1 The application of the principle of reciprocity in future negotiations

Article XXXVI:8 should stipulate that developed countries shall not seek, neither shall developing countries be required to make, equivalent concessions in trade negotiations.

Article XXXVI:8 should provide that a developing country would judge the contribution it should make in a given trade negotiation on the basis of the differentiation of treatment offered in its favour, and of the additionality of benefits accruing to it therefrom.

It should be made clear that the term "commitment" in Article XXXVI:8 does not differ from the term "concession".

Additional criteria, other than trade coverage, should be laid down for evaluating relative reciprocity in trade negotiations involving developed and developing countries.

The assessment of reciprocity should be based on the extent to which the implementation of concessions would result in a mutually beneficial situation, rather than on the magnitude of the concessions. Any barrier to the trade of developing countries should be regarded as a negative contribution on the part of the developed country in question.

Amendments to Article XXXVI:8 should codify correct current interpretation of that paragraph.

Given the diversity of development stages among developing countries and of conditions among products, reciprocity should be considered on a case-by-case basis.

Developing countries should be able to defer the implementation of a given concession.

Questions relating to the concepts of "principal supplier", "substantial supplier" and "initial negotiating rights" should be dealt with.

#### 4.2 The application of the principle of reciprocity in future renegotiations

New provisions should be drawn up for dealing with renegotiations of withdrawals or modifications of concessions by developing countries.

Developed and developing countries should periodically review their lists of mutual concessions, in order to preserve the balance of concessions in the light of changing trade patterns.

#### 4.3 Fuller participation by developing countries in an improved framework

Criteria and procedures should be sought for the periodic review of the continued need for special and differential treatment, and for the fuller assumption of GATT obligations by developing countries.

#### 5. An examination of existing GATT rules concerning the application of restrictions at the border that affect exports, taking into account the development needs of developing countries

Main GATT Articles: XI, XVIII and XX

##### 5.1 Clarification of existing GATT rules

An evaluation should be carried out of the existing GATT provisions relating to export controls.

The principle assumed in the GATT that exports would move freely without restrictions should be reaffirmed.

##### 5.2 Notification and consultation procedures

An examination should be carried out of possible rules regarding notification and consultation concerning 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.

Procedures should be developed on the export side that are comparable to those already developed on the import side.

### 5.3 Improvements in existing rules

In the light of the evaluation of the existing rules proposed above the question should be explored of whether there is not a need for greater comparability between GATT rules for handling export restrictions, and those for handling import restrictions, with an implied focus on the question of fair administration of export restrictions.

As a preliminary step the possibility should be examined of developing guidelines or a code of conduct in respect of general prohibition of export restrictions such as those imposed in recent years.