

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

Negotiating Group on GATT Articles

NEGOTIATING GROUP ON GATT ARTICLES

Note on Meeting of 21-23 May 1990

1. The Negotiating Group on GATT Articles held its eighteenth meeting on 21-23 May 1990 under the chairmanship of Mr. John M. Weekes (Canada). The Group adopted the agenda contained in GATT/AIR/2991.

2. The Chairman informed the Group that the following documents had been issued since the last meeting:

- A note by the Chairman containing revised drafts of Decisions on Articles XVII and XXVIII. This note had been circulated on 17 May 1990.

- Another note by the Chairman containing a paper on Article XXIV, which included drafting language on a number of points. This note had been circulated on 21 May 1990.

Agenda Item A: Consideration of issues arising from the examination of specific Articles

Article II

3. The Chairman recalled that there were two issues to be considered under this Article, the first being the draft decision on Article II:1(b) on the recording of other duties or charges in schedules of concessions, and the second the proposal by the United States on the possibility of levying a uniform import fee for trade adjustment purposes.

4. On the first point the representative of Brazil informed the Group that his authorities were now lifting the reservation placed on the draft decision by his delegation in December 1989 at the fourteenth meeting of the Group. The representative of Chile said that his delegation disagreed with the juridical approach which had been followed; Article II being in Part I of the General Agreement, to modify it would require unanimity, and a simple consensus decision might not be adequate for this. His delegation was therefore obliged to place a reservation on the draft decision. The Chairman recalled that the secretariat had produced at the request of the Group a document dealing inter alia with possible methods of putting the draft decision into effect (NG7/W/61). The Group had agreed that the legal form of the decision was a matter to be decided at a later stage, in the context of the conclusion of the Uruguay Round, and this was made clear in a footnote to the draft decision. The juridical approach was therefore not prejudged.

GATT SECRETARIAT

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5. In reply to the Chairman's invitation to offer additional comments on the second point, the representative of the United States reiterated the interest of his delegation in the possibility of levying a uniform import fee for trade adjustment purposes; such a fee, by mobilising public support for trade liberalisation, would promote the expansion of trade, in addition to its beneficial effects for workers affected by international competition.

#### Article XVII

6. The Chairman recalled that at the last meeting the Group had discussed two drafts of a Decision on State-Trading Enterprises, one dated 23 April and the other dated 3 May. In the light of these discussions he had circulated, on his own responsibility, a revised draft on 17 May. Reporting on the informal discussions of this revised draft the Chairman said that the Group had made some useful progress, though it was clear that some more adjustments would be necessary. A further draft would be circulated shortly.

#### Article XXVIII

7. The Chairman recalled that the Group had agreed that the secretariat should prepare a revised draft decision incorporating the points made at the last meeting. This revised draft, prepared on his own responsibility, had been circulated on 17 May 1990. Reporting on the informal discussions of this revised draft the Chairman said that although the Group was making some progress it would be necessary to incorporate points emerging from the debate in another revised draft, which would be circulated shortly and would be discussed at the next meeting.

#### Article XXV:5

8. The Chairman recalled that at the last meeting the Group had had a preliminary discussion on the draft decision circulated on 23 April 1990. The point had then been made that any decision of the kind proposed in paragraph 4, whereby existing waivers would be terminated by an agreed date, could only be considered in the light of results in other areas of the negotiations. The question therefore arose whether a draft decision of this kind, with any necessary amendments, might be put on one side until participants had a clearer view of progress in other relevant Negotiating Groups. Alternatively the Group might consider whether to concentrate on the other elements of the draft decision, dealing with disciplines on new waivers, which would appear to be valuable in their own right. The Group would need of course to be able to inform the GNG and the TNC in July of the status of work on this Article. In response to these comments the representative of a group of participants said that paragraph 4 was a very important part of the Draft Decision.

Protocol of Provisional Application (PPA)

9. The Chairman recalled that at the last meeting the Group had had a first discussion of the draft decision on the PPA which concentrated largely on an issue not dealt with in the draft: the phasing out of specific derogations in accession protocols. It was clear from the statement then made by the representative of Switzerland that this was a particularly difficult issue. It was also clear from the secretariat note (NG7/W/71) that there would be no legal difficulty in taking a decision which would cover only the general grandfather clause in the PPA and in accession protocols; there seemed to be no legal reason, whatever the political arguments might be, why both issues would need to be addressed. The question meriting reflection was therefore whether a decision limited to the elimination of grandfather clauses would not be worthwhile in its own right.

10. One participant expressed preference for an expanded draft decision covering all derogations in accession protocols. There was parallelism between the inclusion of a broader decision under this agenda item and the proposal to terminate open-ended waivers, dealing with existing waivers, in the draft decision under the previous agenda item; his delegation was therefore of the view that for the sake of consistency it would be necessary to include in the present draft decision other derogations embodied in accession protocols. The representative of the European Communities said that he saw considerable value in pursuing the more limited approach suggested in his delegation's proposal. Another participant stated that his country's accession protocol was not on the table in the Negotiating Group on GATT Articles, though his delegation was willing to continue discussions on the basis of the draft decision in its present form.

11. Closing the discussion on this subject the Chairman expressed the opinion that since the fate of certain issues would be decided in other Groups there was a limit to what could be done in the Negotiating Group on GATT Articles in respect of Article XXV:5 and the Protocol of Provisional Application. It was still his view that useful results could be achieved on both subjects; the Group should keep these subjects on the Agenda even while bearing in mind the overall context.

Article XXIV

12. The Chairman recalled that at the last meeting the Group, addressing the suggestion of Japan that the secretariat prepare a draft legal text on Article XXIV, had invited participants having specific points or more concrete suggestions on the subject to bring them to the attention of the secretariat. The delegations of Australia and Canada had put forward in writing specific suggestions on a number of aspects; it was understood that other delegations could do the same during the course of the following days. In the light of this it had been agreed that the secretariat should prepare a paper of a preliminary character on the issues on the table, with the inclusion of drafting language on those points where this was possible.

This paper had been circulated on 21 May 1990. As was pointed out at the last meeting, some of the proposals made had been in very generalised form, and for this reason the secretariat text should be seen as very much a first draft, intended to elicit greater precision in the course of discussion.

13. The secretariat explained that the draft decision was in two parts. The first part merely noted certain points, dealt with in earlier secretariat notes, which had been said to require clarification but on which no specific proposals had been made. The second part consisted of short texts, in the form of draft decisions, intended to give effect to proposals which had been made by Australia, Japan and Canada. It had been found less difficult to express these ideas in drafting language than the secretariat had felt at the time of the last meeting. Nevertheless it should be stressed that these were in no sense presented as common texts; dissenting views had been expressed on most if not all of the issues raised. However, it was hoped that it would be helpful to express in this form the intent of the proposals, as the secretariat understood them.

14. The representative of a group of participants expressed surprise at the preparation by the secretariat of a draft decision at this stage; his recollection of the discussion of this subject at the last meeting was that it had not been thought appropriate to produce such a text. However the preparation of a draft decision on Article XXIV should serve as a good precedent for the preparation of similar texts in other areas of difficulty. His delegation could not accept a number of the interpretations proposed in the draft, which contradicted longstanding policy positions. However, since the draft had been circulated only recently it was impossible to comment on it in detail: a detailed discussion should take place in the following meeting of the Group. Some delegations agreed that the tabling of such a text seemed premature at this stage. Other participants said that the draft was a useful text which would focus and accelerate the tardy deliberations in the Group on this subject.

15. The Chairman said that the secretariat paper had been presented in the hope of stimulating negotiations and not because the Group was on the verge of taking a decision on Article XXIV; it was clear that the positions reflected were those of the "demandeurs". The Group would revert to this matter at the next meeting.

#### Article XII, XIV, XV and XVIII

16. The Chairman said that he was proposing a thorough discussion of the balance-of-payments (BOP) provisions in formal session, because he believed that the Group had to try to reach some conclusions as to whether and how it was going to deal with the substance of the proposals which had been made. The Group had now discussed the BOP issue on many occasions, including several informal consultations, without making any real progress in narrowing the difference of view which was apparent at the outset.

Briefly, the difference was between those who believed that there were problems in the area of trade measures taken for balance-of-payments reasons which need to be addressed in the negotiations, and others who believed that the existing disciplines were working well and that the case for negotiations on the matter had not been made out. At the level of principle, the arguments were very familiar. But it seemed to him that the Group could not, and should not, go on devoting time to repeated statements of known positions. By the third week of July it was required to present to the GNG and the TNC a clear profile of the state of negotiations in this Group, and he therefore had to be in a position to make an assessment of the possibilities in what was clearly the most difficult issue.

17. It was a political reality of negotiations, on this subject and on all others, that countries could not be obliged to enter negotiations if they did not wish to do so. Therefore, when a number of countries said that they were not persuaded of the need to negotiate, it was incumbent on those who were seeking negotiations to make the case as clearly as they could, so that there could be no doubt as to the reasons why they believed the existing situation to be unsatisfactory or as to the nature of the changes which were proposed. Equally, it was incumbent on those who said that they were not persuaded to consider carefully the arguments put to them.

18. He was therefore going to propose an agenda for the discussion - emphasising that this was not an attempt to impose an agenda for negotiation. Whether delegations negotiated was up to them, but he believed he was obliged to try to ensure that the proposals on the table had at least been fully explained and understood. Reading the proposals again, it appeared to him that they boiled down to seven substantive issues. These were:

- (i) Strengthened commitment by developed countries against invocation of Article XII
- (ii) Disciplines on quantitative restrictions and strengthened commitment to prefer price-based measures.
- (iii) Temporariness of measures.
- (iv) Availability of alternatives to trade measures - e.g. macroeconomic policies.
- (v) Incidental protective effects of trade measures.
- (vi) Procedural matters, including the periodicity of consultations, procedures in the BOP Committee itself and anything which may need to be said on dispute settlement.
- (vii) Possibility of giving greater operational force to paragraph 12 of the 1979 Declaration and of facilitating recourse to Article XVIII:C.

19. As it seemed to the Chairman, these were the areas in which the proposals called for change and it was therefore in these areas, if a case for negotiations was to be made out, that the proponents of negotiation should focus their explanations.

20. A number of participants expressed doubt as to the value of discussion on this basis, pointing out that the proposals tabled had already been examined in detail on several occasions. Earlier discussions had made it clear that the proposed changes would bring no benefit to developing countries facing balance-of-payments difficulties, particularly since the economic situation of such countries had in general deteriorated over the past decade. Moreover the agenda proposed appeared to be based on the premise that negotiations were necessary, since it included only the proposals of the "demandeurs" and ignored submissions made by developing countries; but it must be recognised that there was no consensus on the need to negotiate and that further discussion of these proposals was unlikely to produce such a consensus. The real questions that the Group should address were whether there had been any improvement in the conditions facing developing countries such as would justify changes in the BOP disciplines and whether such changes should be in the direction of greater or lesser flexibility.

21. The Chairman said that his proposed outline was indeed concentrated on the proposals for change which had been made because it was on these points that the Group must decide whether or not to negotiate. Further questions meriting reflection, in addition to those raised above, might also be related to possible changes in economic philosophies among contracting parties invoking balance-of-payments measures.

(i) Strengthened commitment by developed countries against invocation of Article XII

22. The representative of the EEC explained that his delegation's proposal that developed countries should accept a strengthened commitment not to invoke Article XII was intended to be purely voluntary. It would however be expected that OECD members and other contracting parties in a position to do so would accept it. The commitment included in the 1979 Declaration had been strongly qualified. Nevertheless, since 1979 the Article had been invoked only three times, and it seemed to be generally recognised that trade restrictions imposed for balance-of-payments reasons were ineffective in developed economies, addressing only the symptoms and not the causes of payments problems. However, the commitment proposed would have value; many developed countries faced heavy and growing current account deficits and the possible use of import surcharges, for example, was sometimes canvassed. Other participants agreed that such a commitment would improve the stability of the trading system by providing increased certainty of access to developed country markets. One speaker suggested that if Article XII were invoked a short though not necessarily rigid deadline for the termination of measures, and intensive surveillance, should be envisaged. Other participants, while supporting the idea of a commitment, said that the possibility for certain contracting parties of restricting imports in special situations - which would vary from country to country - could not be foreclosed entirely.

23. Other participants expressed the opinion that there was no purpose in strengthening a provision which was not used; a strengthened commitment against use of Article XII would simply adapt rules to the present reality. In the case of Article XVIII:B, on the other hand, the proposals sought to force a change which would transform legal rights and did not reflect the perception of a need. The lack of recourse to Article XII was to be expected, given the dominant position of developed countries in many markets and the fact that many of the trade restrictions maintained by them were justified under other GATT Articles or not justified at all. However, other countries would attain developed country status and it was not necessarily desirable to restrict their access to Article XII. It might be questioned whether a tighter discipline on the use of Article XII would not result in further disrespect of other GATT disciplines. When invoked Article XII had in general worked well and it provided for the necessary surveillance. Instead of renouncing Article XII it would be preferable to respect the existing rollback commitment and other GATT obligations and to give proper recognition to the trade liberalisation efforts of developing countries.

24. The representative of the EEC responded that the right of countries which did not accept the proposed undertaking to invoke Article XII would not be affected. He added that surveillance of trade policies would be undertaken in the TPRM and the proposed Safeguards Committee, while grey-area measures should be eliminated.

(ii) Disciplines on quantitative restrictions (QRs) and strengthened commitment to prefer price-based measures

25. Explaining the rationale behind his proposal the representative of the USA said that there was no evidence that the injunction in the 1979 Declaration to give preference to measures which have the least disruptive effect on trade had been respected. Use of QRs to address BOP problems was still the rule rather than the exception and countries frequently chose the most disruptive types of restriction, such as discriminatory licensing and import bans. More discipline was needed to promote compliance with the fundamental GATT principle that countries should strive to limit themselves to transparent, price-based measures. Without seeking to outlaw application of QRs for BOP reasons his delegation had suggested three improvements aimed at achieving reduced reliance on QRs. It had proposed criteria specifying that measures should be primarily price-based and applied as uniformly as possible across products to prevent use of BOP measures to protect selected industries; across the board import or tariff surcharges should be preferred. Developing countries would be able to apply price-based measures for four years, four months, while the guidelines for QRs would be two years, four months. Countries which chose to apply QRs for a longer period under "track two" would be subject to increased scrutiny.

26. The representative of the Community said that his delegation's proposal did not seek to amend Article XVIII:B but rather proposed the replacement of the 1979 Declaration. He recalled that this Declaration had introduced three new ideas: (a) that it was within the competence of the

BOP Committee to analyse all types of import measures; (b) that preference should be given to those with the least disruptive effect on trade - although this notion had not been defined; and (c) that it was necessary to avoid the simultaneous application of more than one type of measures. Since these ideas had not been acted upon a strengthened commitment was necessary. The record was very revealing: 85 per cent of QRs notified to GATT were justified on BOP grounds. This showed that the 1979 Declaration had not brought contracting parties to move away from QRs, but it also appeared that use of QRs had not improved their BOP situation. In nearly all cases the complexity of licensing regimes, often in combination with import deposits or surcharges gave cause for concern. Recent consultations showed the simultaneous application of different measures in seven out of eleven cases. It was recognised that some consulting countries seriously desired to move away from QRs, but his delegation's proposal was in any case not intended to prohibit their use.

27. The representative of Canada said that the joint US/Canadian proposal did not seek to eliminate recourse to QRs but rather to clarify and confirm existing disciplines, since it was clear that they were either unclear or were being ignored. It must be understood that quantitative restrictions did not help solve balance-of-payments problems and indeed, except in the very short term, exacerbated them.

28. Other participants supported the objective of promoting the utilisation of price-based measures through the discouragement of QRs in a revitalised Declaration. It was difficult to accept that there were no situations in which the replacement of QRs by price-based measures would not be advantageous, and an effort should at least be made to identify such situations. Quantitative restrictions were a structural problem in that they led to dependence and were subject to administrative discretion and protectionist use. Several speakers agreed that some flexibility in the use of QRs must be retained but argued that they should become the exception, given their detrimental effects in the long run. In this respect the BOP Committee had an important surveillance function to fulfil.

29. In response to these points a number of participants argued that the distinction between revitalising the procedures in the BOP area through the formulation of a new declaration rather than through the modification of the provisions of Article XVIII:B was artificial, since it was evident that in practical terms the effect of a new declaration would be a de facto modification of the relevant GATT provisions. The 1979 Declaration offered all necessary flexibility to meet the purposes now under discussion. As regards the use of QRs, it was impossible to resort to price-based measures in many cases - and this explained the qualified language in the 1979 Declaration, which did not impose an obligation to use measures of this type. Very often resort to price-based measures was not a realistic alternative because of their inflationary effects and their ineffectiveness in the presence of market imperfections and price inelasticities: the levying of high tariffs on certain luxury items, for example, would not restrain consumption and would therefore be ineffective in allocating scarce foreign exchange to essential uses. Moreover, QRs were not applied



in isolation but in combination with macroeconomic measures and in these circumstances could produce meaningful effects on BOP disequilibria. It was suggested that this pressure against the use of QRs was paradoxical given the reliance of the proponents on QRs in the area of textiles, for example. The use of QRs by countries invoking Article XVIII:B should be seen in the light of the fact that many other countries took similar measures without notifying them or without justification. That developing countries had to use BOP restrictions was a fact of development, imposed on them by economic realities, over many of which they had no control. There could therefore be no question of negotiating away flexibility in this area; indeed, the need was for greater flexibility in the choice of policy instruments to address BOP problems. While market-oriented reforms and stabilisation measures were mutually reinforcing, the policy tools involved sometimes worked at cross-purposes. For example, an exchange rate devaluation might promote exports and improve the current account deficit, but it had an inflationary impact and made the burden of debt servicing greater. Similarly, while replacement of QRs by tariffs would transfer "rents" to the government budget and at the same time lay the basis for import liberalisation later in the reform process, this, however, must be weighed against their substantial social costs in conditions of uneven income distribution. Budgetary correction was not easy when overall resource availability had declined but was next to impossible when the negative transfer of resources resulting from debt servicing reached astronomical figures, and when many individuals were living in extreme poverty. While price-based measures had merits, they were often quite ineffective in addressing short and medium-term problems, particularly for primary producers where both demand and supply elasticities are low. These concerns were largely met by Article XVIII:B in its present form.

30. Some delegations said that the Round should address QRs in all areas including for example agriculture, textiles and the BOP provisions. However, it would be impossible for each Negotiating Group to await results in other Groups before starting negotiations, or no results would be achieved.

(iii) Temporariness of measures

31. The representative of the USA said that since 1975, countries had applied measures justified under Article XVIII:B for an average of 12 years. Ten countries had applied measures under Article XVIII:B continuously for the sixteen-year period beginning in 1975. This did not conform to his delegation's concept of temporary measures. Moreover, countries did not announce schedules for the removal of measures, as they were urged to do in the 1979 Declaration. Permanent measures had been justified by the existence of structural problems, but long-term trade restrictions were counter-productive; they prolonged the problem rather than contributing to its solution by damaging resource allocation and slowing export growth. It was recognised that BOP problems may persist and worsen, and a viable solution should encourage early removal of restrictions without prohibiting longer term measures. His delegation was not trying to remove the discretion enjoyed by the BOP Committee in its

decision making but was proposing that guidelines be established which would encourage countries to phase out BOP measures within a specific time frame: in the short term for developed countries and the medium term for developing countries. Alternatively, countries unable to conform to these guidelines should specify their own plan for phasing out the measures for review by the BOP Committee. The guidelines or liberalisation plans were tools to increase predictability and transparency and to ensure the temporariness of measures. They were not intended as a means to trigger automatic rights to apply countermeasures. Measures in conformity with the guidelines would receive automatic approval, but there was no suggestion that measures outside the guidelines should automatically be disapproved.

32. The representative of Canada said that it was essential to ensure that measures were used for the minimum time necessary, to avoid compounding the problems both of the invoking country and of its trading partners. There were numerous references in NG7/W/46 with respect to the dangers of long-term restrictions and the desirability of keeping their duration to the very minimum. However, in his experience in attending BOP Committee meetings he had never seen a schedule for the liberalisation of trade measures. What his delegation was proposing was essentially confirming an existing discipline, not the prohibition of trade restrictions.

33. The representative of the EEC recalled that Article XVIII:11 stated the need to ensure that trade restrictions should be temporary and that the 1979 Declaration provided for the announcement of a time schedule for the removal of the measures; however, 9 out of the 15 countries currently invoking the BOP provisions had done so on a continuous basis for the last 15 years. A long period of application was not necessarily a sign that the disciplines themselves had been abused. However, the fact that these exceptions had been applied in many cases over long periods of time indicated that they constituted a major derogation from GATT obligations. When confronted with a derogation as important as this, it was necessary to avoid all protective incidence in its application, and to ensure that it was subject to clear conditions and criteria. His delegation's proposal recognised that "no contracting party shall be required to withdraw or modify restrictions on the ground that a change in its development policy would render unnecessary the restrictions which it is applying..". The proposal fixed no time for the elimination of trade restrictions except, for "X" years in the case of QRs. In another vein, in every consultation since 1979 a plan for the removal of restrictions had been mentioned: in 8 out of 11 full consultations held since 1987 a request was made for the inclusion of such a plan. In none of these cases had a response been received - the only positive case occurred in 1986 with the plan implemented as scheduled. The qualification in the Declaration that the liberalisation plan should be presented "whenever practicable" lacked credibility if all parties applying restrictions considered it impracticable to put one forward. Nothing in the proposal prevented departures from the plan provided these were justifiable and surveillance was satisfactorily exercised. A publicly announced liberalisation plan was essential to give traders the signal that the restrictions were not permanent and to preserve an effective BOP Committee. The disinvocation

of BOP provisions had been cited as an example that disciplines were working properly. While it was true that a few disinvocations had occurred, the last case provided grounds to think the opposite. The country in question had been experiencing a considerable current account surplus and in 1987 the Committee reached the view that the BOP situation did not justify the invocation of Article XVIII:B. Despite this the country had vigorously resisted disinvocation. It had been suggested that concern about a possible Section 301 Action underlaid this reluctance, but the prolonged use of BOP restrictions could not be an appropriate response to such a problem.

34. Some participants who echoed the need to limit the duration of measures by means of a publicly announced liberalisation plan, stressed the importance of sending a signal to other parties regarding the temporariness of the protective measures. However the need was also recognised that such plans could not be rigid and should provide for the necessary flexibility.

35. Responding to the comments referring to a recent disinvocation of Article XVIII:B one participant stated that his country had consulted in the BOP Committee in 1987 and in 1989. In the first consultation the Committee had not asked his country to disinvoke Article XVIII:B but to look for alternative measures and to work out a plan for the liberalisation of the restrictions. There were two main reasons why his authorities were reluctant to disinvoke Article XVIII:B in 1989: the first had to do with the absence of guidance on how many years of trade surpluses, or for that matter, what level of reserves was necessary to justify a disinvocation; and the second with the fact that there was no guidance in the GATT on the treatment of residual import restrictions. There was however an understanding that it was not practicable to ask for the immediate phase-out of restrictions which had been in place for a long period of time. Another participant associated himself with the explanations above.

36. Referring to the explanations of the proposals several participants indicated their disagreement with some of the points made. Article XVIII:11 itself recognised that restrictive measures "shall be eliminated when conditions no longer justify such maintenance". This meant that the relevant reference point for determining the duration of measures should be the existence of a BOP problem, that is to say, the level of reserves; no arguments had been put forward as to why this criterion should be abandoned. The use of the qualification "whenever practicable" in the 1979 Declaration and the expression "as conditions improve" were additional indications that flexibility in the phasing out of trade restrictions had been recognised as essential. Recognition of the structural nature of the problems of the developing countries was apparent also in the differences between the provisions of Article XII and those of Article XVIII:B.

37. The duration of restrictive measures was in more general terms conditioned by external as well as internal factors. Examples of the former were the oil crisis, the reduction in financial flows to developing countries, and falling commodity prices. Examples of the latter were the

incapacity to generate internal savings and skewed income distributions. Cyclical problems might be resolved fairly rapidly, but the structural ones only in the long run. Policy measures that promised relief from immediate problems only in the long run were largely meaningless to governments faced with urgent difficulties. Moreover, developed countries themselves had often maintained restrictions over decades in order to "facilitate restructuring" of particular industries, and it must be expected that developing countries would need at least as long. It was difficult to announce in advance a schedule for the relaxation of trade restrictions because of the absence of control over exogenous factors, and given the relativity of the concept of a satisfactory level of reserves it would be impossible to prescribe a norm. The point was also made that invoking countries removed or relaxed trade restrictions as soon as the BOP situation improved, since it was not in their own interest to deny themselves needed imports, so that concern about the duration of restrictions was effectively a non-issue. A recent report by the secretariat had illustrated the perennial problem of QRs, showing that VERs had been maintained since the 1960s with no GATT justification and that the great bulk of restrictive measures in place were designed to protect the interests of major trading countries. In this connection it should be recalled that the average duration of a safeguard measure was around 8 years - one developed contracting party had maintained a safeguard measure on footwear for 12 years - and that the whole system of protection in the textiles sector had been designed to give importing countries a "temporary breathing space" for adjustment.

(iv) Availability of alternatives to trade measures - e.g. macroeconomic policies

38. A number of participants pointed out that both in the General Agreement itself and in the BOP Committee it was recognised that there existed alternatives to trade restrictions which were in principle less disruptive and more efficient in restoring balance-of-payments equilibrium. Trade restrictions could not restore a sustainable balance between spending and savings, nor could they boost international competitiveness. The representatives of Canada and the United States said that although the choice of adjustment policies was for the consulting country, the BOP Committee had a legitimate role in seeking to ensure that the trade sector was not called upon to bear a disproportionate share of the burden, to which inadequate attention had been given in the past. There was of course no intention to assume a role for the GATT in dictating domestic economic policies; Committee recommendations should continue to be directed solely to the area of trade policy. But the nature of these overall economic policies adopted to bring about correction of the imbalance should be taken into consideration in assessing balance-of-payments restrictions. Some other participants associated themselves with these views, though the point was made that the BOP Committee was not equipped to analyse or judge macroeconomic policies.

39. Other participants commented that it was difficult to understand what further role the GATT could have in the area of domestic policies, or how much could be derived from their analysis by the BOP Committee. The point was made that whereas macroeconomic policies operated across the board, reducing the general capacity to import, measures taken under Article XVIII:B were often intended precisely to establish priorities between essential and inessential imports, where resources were limited. It was the function of the IMF to assess and report to the Committee on the macroeconomic policies of the consulting countries, and the Committee was simply required to receive this assessment. A clear demarcation must be maintained between the respective competences of the GATT and the Fund; it would be unacceptable for either to interfere in the domain of the other. Eventual closer coordination between IMF and the GATT should not lead to any cross-conditionality or intensification of conditionality. The role of the Fund was clearly laid down in Article XV and there was no need for any change. "Parallel conditions" in Fund and World Bank programmes often resulted in reduced disbursements from both organisations. This underlined the importance of maintaining a clear separation between the functions of GATT and the Fund. The representative of the Community agreed that the role of the IMF was fundamental; in this respect the Community was proposing no change in current practice.

40. The view was also expressed that the topic under consideration was slightly artificial since it was difficult to have a compartmentalised discussion of policy instruments when dealing with BOP problems. While currency devaluation might help improve trade performance, the scope for adjustment was extremely limited, since the reaction of the export sector to a surge in imports was inevitably delayed. This was generally the case in countries where the export sector was heavily concentrated on a few primary commodities whose supply and demand elasticities were low; even for diversified economies it would be difficult to adjust the current account balance primarily through export expansion if the foreign trade sector was small. All this supported the case for greater flexibility and a wider range of policy options for developing countries in addressing BOP problems.

(v) Incidental protective effects of trade measures

41. The representative of the USA said that although the BOP provisions were never intended to serve as an all-purpose legal umbrella for all types of restrictions, the reality was that many countries invoking Article XVIII:B were using the BOP provisions as a justification for the development of infant industries, to pursue sectoral development objectives, to protect selected industries from damage from imports, etc. Discretionary licensing systems were administered so as to restrict imports of products produced domestically. In addition, certain imports were banned outright, which hardly squared with the obligation in Article XVIII:10 "not to prevent unreasonably the importation of any description of goods in minimum commercial quantities." This clearly amounted to protection of particular industries, which was not the purpose of BOP measures according to the 1979 Declaration. Article XVIII:10 was sometimes

cited as authorising such discrimination, but it sometimes seemed that non-essential imports were defined as any imports competing with domestic production. Discussions in the BOP Committee had revealed an interest in preventing trade restrictions from having an incidental protective effect. Questions had therefore been asked on the possibility of using other measures, on the complex and discretionary character of import licensing systems, on the need to avoid banning certain products, on the use of multiple measures, on the convenience of fostering import substitution through other means, on the inconvenience caused by countries not providing the necessary information required by the Committee, etc.

42. The proposals in this area were intended to clarify the relevant provisions in Articles XII and XVIII and to ensure the implementation of the statement concerning sectoral protection in the 1979 Declaration. One of the criteria for the assessment of BOP measures should be their implementation as uniformly as possible between sectors. Acceptable product exceptions should be clearly specified to provide guidance to consulting countries. Clearly identifiable luxury goods could be restricted more intensively. These changes would help restore the BOP provisions to their original function as an instrument for conserving overall supplies of foreign exchange.

43. The representative of the EEC said that a balance should be struck between discipline and flexibility through the following elements: preference for price-based measures applied in a uniform manner, without questioning the exclusion of certain basic products; acceptance of trade restrictions as a control instrument provided the necessary justification was offered, while recognising that their long-term use would inevitably have protective effects; the examination of quantitative restrictions currently applied for BOP reasons and of possible conditional and temporary measures as a means of accelerating the movement away from quantitative measures.

44. Other participants recognised that trade restrictions could have an indirect protective effect on certain sectors or products in the economy but pointed out that it was in the nature of any derogation that there might be a risk of incidental protection. The important thing to remember was that the objective of the measures was not to favour certain activities but to address a global problem - a BOP disequilibrium. If there were protective effects this was incidental and not an end in itself. Such effects could certainly not be the basis for any change in BOP provisions or procedures. Moreover, the fact that questions had been asked on these matters in certain consultations was not necessarily significant; they basically constituted the expression of the points of view of certain participants. The BOP Committee itself did not seem to have pronounced itself on these matters. The Committee had functioned well and performed in this area its limited task. However, further discussion of the subject could be pursued in the Committee itself which was the appropriate body to air these matters. In any case, if there had been any specially harmful effects resulting indirectly from the specific measures adopted by a consulting country, the affected countries could have availed themselves of the consultation procedures of the GATT.

45. A delegation commented that since all would presumably agree that incidental protection was undesirable, it might also be agreed that even if the use of QRs was sometimes inevitable, not all types were optimal as means for dealing with balance-of-payments problems. For example, some might be conditional on the level of domestic production or sales, or might be used to maintain a domestic price level or protect a subsidised industry, all of which would clearly have protectionist implications. Similar considerations would arise where the allocation of a quota was handled by the domestic industry itself. The purpose of considering trade restrictions from this point of view would be to ascertain whether some types of QRs were less likely than others to give rise to protective effects. Another speaker argued that the limitations inherent in a low level of development, together with the need to opt for measures with a more rapid and direct impact on the BOP disequilibrium militated against considerations of a long-term nature, including incidental effects and sophisticated efficiency considerations. The point to retain was, however, that the mere existence of incidental effects did not constitute a valid argument for the acceptance of certain proposals.

(vi) Procedural matters, including the periodicity of consultations, procedures in the BOP Committee itself and anything which may need to be said on dispute settlement.

46. The representative of the USA said that current procedures in the BOP Committee were seriously inadequate. The great majority, 72 per cent since 1975, of consultations were conducted under simplified procedures where measures received only a cursory review. Attempts by some members to increase the number of full consultations had been blocked or heavily resisted. Most consultations were inconclusive and failed to provide any specific guidance to the consulting country. The Committee rarely came to a clear conclusion on the basic issue of whether the measures were justified. Only 5 of the 34 full consultations since 1975 provided such a conclusion. Even in cases where the Committee had made repeated recommendations to consulting countries these recommendations had not been implemented. Some countries had refused to submit full, detailed information to the Committee. Thus, a meaningful review of measures could not be conducted because their exact nature and coverage was not known. According to some interpretations, consultations in the Committee, however inadequate and inconclusive, made any measure justified on BOP grounds immune from challenge in any other GATT body. Although it had been suggested that the Committee was the best possible place to discuss and correct any anomalies associated with its functioning, attempts to do this in that body had proved unsuccessful.

47. The representative of Canada suggested that consultations should normally be conducted under full procedures, although the Committee should also be able to decide that a country making rapid liberalisation progress should be reviewed under simplified procedures. However, the burden of review for countries adhering to the guidelines should be minimised: as long as these countries continued to have a serious BOP problem, they

should not have to seek the approval of the Committee for measures within the Guidelines. Specific options for Committee decisions were also proposed so that Committee recommendations would provide more guidance and would be implemented. The concept of conditional acceptance of measures had been introduced, thereby linking the GATT consistency of measures with the implementation of specific recommended reforms within a specified time frame.

48. The representative of the EEC said that there were three main areas of action in his delegation's proposal: improvements in notifications; relationship between full and simplified consultations; and role of the Committee's recommendations. Regarding the first, paragraph 5 of the proposal intended to clarify the information that should be supplied in notifications and provided for the opportunity of a review. No basic changes were envisaged as regards the nature of the documentation used for consultations. With regard to the second, although simplified consultations had been introduced as an exception from full consultation procedures to minimise administrative burden, this had led to sporadic full consultations. Frequent full consultations might represent an excessive burden for the least developed countries, but other countries should consult under full procedures, although simplified consultations would continue to apply when a country was following the liberalisation plan presented in previous consultations; a maximum periodicity of six years was envisaged for full consultations. As to the third area, it was the current practice that conclusions of the BOP Committee left open the legal status of restrictions. In certain cases such an outcome was inevitable, but efforts should be made to arrive at consensual conclusions that provided adequate security for all parties concerned. It was therefore proposed that the Committee should aim at proposing recommendations, linked to the liberalisation plans presented by the consulting country, obviating the possibility of any eventual dispute settlement procedure. Recommendations could endorse a trade liberalisation plan presented by the consulting country or propose that certain modifications be introduced in the restrictions applied. In both cases the consulting country would be deemed to be in compliance with its GATT obligations in following the agreed recommendations. The absence of recommendations would have no implications for the legal status of restrictions; any country which considered that restrictions were not in conformity with GATT obligations could have recourse, in accordance with standard GATT procedures, to dispute settlement.

49. Another participant referred to the possibility of improving the contribution of the IMF, to reflect the increasing awareness of the impact of macroeconomic conditions on the trade situation. The BOP Committee should not question a country's macroeconomic programme sponsored by the Bretton Woods institutions, but should consider the duration of the measures and their relationship to the magnitude of the problem, the possibility of using alternative measures, and the impact of the restrictive trade measures on the trade flows of contracting parties. The IMF for its part should inform the Committee when these elements had a bearing on the macroeconomic programme. It might be considered that least-developed countries should not consult in the Committee when a structural adjustment programme agreed with the Fund was in existence.



50. A number of participants expressed the view that the BOP Committee had in general performed its functions very well; to the extent that problems had arisen, they could have been reduced if contracting parties had shown the same degree of interest in the Committee's work as was now being shown in the context of the Round. It was not, however, the function of the Committee to exercise surveillance of the liberalisation plans of consulting countries, as some delegations had suggested. Some of the proposals made in the guise of "procedural improvements" were in fact very substantive; they would affect the balance of rights and obligations, not merely the efficiency of the Committee's proceedings. For example, the link proposed by the EEC between the time schedule for liberalisation and the termination of trade measures would go well beyond the existing provisions of Article XVIII. Nor was there any need to change procedures in order to address the problems which had been cited; given adequate commitment, these could be addressed within the framework of the existing procedures.

51. As regards the balance between simplified and full consultations, it should be recalled that simplified consultations had been introduced not to frustrate transparency but in order to alleviate the burden on the Committee and on consulting countries of repeated consideration in detail of policies and underlying economic situations which were relatively stable, and whose periodic analysis was therefore unlikely to be rewarding. In these circumstances it was not surprising if countries had sometimes resisted calls for repeated full consultations; but in fact the record showed that consultations had never been blocked. One developing country had consulted in the Committee eleven times in twenty-one years and had invariably supplied the required documentation. The consultations provided an opportunity for any interested contracting party to request information relevant to the BOP problem, and such requests had invariably been met. Problems which had arisen regarding the supply of information had often stemmed from the fact that requests were made at very short notice - too late for the information to be included in the background material. In any case, the introduction of the Integrated Data Base would greatly facilitate the provision of information.

52. The point was also made that surveillance in the Balance-of-Payments Committee, whether in full or simplified consultations, contrasted sharply with the lack of surveillance of trade restrictions, often illegal, used by developed countries. The implementation of recommendations made by panels also compared badly with the implementation of BOP Committee recommendations. Regarding the conclusions of the Committee, they were of course arrived at by consensus, in keeping with standard GATT practice, but this had never prevented members of the Committee from expressing their own opinions as to the conformity of the BOP measures of the consulting country. If in the recent past there had been difficulty on some occasions in reaching consensus this reflected a difference of view on the substance of the consulting countries' situation. It should not be seen as wilful blocking of consensus or as evidence of a weakness in the provisions requiring their amendment. In any case, contracting parties believing that trade measures were applied inconsistently with GATT obligations could have recourse to the dispute settlement procedures in Article XXIII: it was also noted that dispute settlement procedures were provided in Article XVIII:12 itself.

53. In conclusion it was stated that members of the BOP Committee had always been ready to consider the possibility of improving its procedures; the most recent effort in this direction had been aborted by the launching of the Uruguay Round, not by unwillingness to address the issues raised. The Committee was still the most appropriate forum in which to consider these matters.

(vii) Possibility of giving greater operational force to paragraph 12 of the 1979 Declaration and of facilitating recourse to Article XVIII:C

54. The representative of the European Communities explained that his delegation recognised that paragraph 12 of the 1979 Declaration had been of limited effectiveness and hoped that full attention could be given to the difficult issues it raised. A number of improvements were suggested to ensure a fuller consideration of the contributions by other contracting parties in this field. First the GATT secretariat would include in its documentation analytical material on the impact of the external economic environment on the BOP situation of the consulting country. This would allow a fuller consideration in the Committee of the BOP situation as well as providing a more informed basis for the consideration of possible contributions by other parties - the consulting country could of course provide additional information. The consideration by the Committee of actions that might be taken to facilitate an expansion of export earnings would not in the case of developing countries depend on the invocation of the provision by the consulting country. The Council might recommend collective action by the CONTRACTING PARTIES to support the trade liberalisation plans of the consulting country. The particular modalities of such an action would have to be examined on a case by case basis and substantiated in accordance with appropriate follow up procedures by the Council. The possibility was envisaged that the CONTRACTING PARTIES should have the opportunity, in a more institutionalised manner, to draw to the attention of the international financial institutions the trade liberalisation undertaken by the consulting countries. The intention was to facilitate possible consideration of financial support and not to imply cross-conditionality or cross-monitoring. Referring to the proposal on Article XVIII:C, it was explained that the purpose was to facilitate recourse to this provision by permitting action on a tariff in a way not currently permitted, and by relaxing the application of counter-measures by countries affected by restrictions applied on the basis of Article XVIII:C. Such additional flexibility would be useful when more extensive bindings were assumed in the course of the Uruguay Round. However, it was necessary to mention that the proposal on XVIII:C and that on XVIII:B were linked in such a way that one could not be accepted without the other.

55. A number of participants commented that though the proposal to improve the functioning of paragraph 12 was superficially attractive, it had little real substance since it was cast in the form of a "best endeavours" commitment. Reference was made to the case of a developing country, consulting in 1989, which had pointed out to other members of the Committee that the relaxation of quantitative restrictions on textiles and clothing would have a significant beneficial effect on its economy; developed countries had responded that it was not clear that such action would benefit the country in question. In another case, a developing country in

1983 had addressed specific requests for liberalisation to a large number of its major trading partners, none of which had responded. In general the position taken by industrialised countries had indicated no real interest in making concessions without reciprocity and outside the context of the Round. Therefore, while it was clear that the secretariat might be able to offer useful information on how the external environment might be improved, precedents suggested that requests based on such information were likely to be ignored. Since no action had been taken even in the case of countries with highly concentrated export patterns it was almost impossible to conceive that it would be done effectively for countries with a diversified export structure, reliant on many markets and without principal supplier status. Moreover, market liberalisation undertaken on an MFN basis would not necessarily benefit the consulting country.

56. It was suggested that it would be unrealistic to expect the BOP Committee to consider the impact of the external environment without the consulting country having invoked paragraph 12 of the Declaration, or to expect the GATT Council to make recommendations in this area, given the need for consensus. Nor would much be achieved by bringing to the attention of the IMF and the World Bank the trade liberalisation efforts of consulting countries, on which they were already better informed than any other organisation. One participant expressed surprise at the lack of interest shown in improving the operation of paragraph 12, which his own delegation would be ready to work on.

57. With reference to the suggested link between changes in Article XVIII:C and reform of the balance-of-payments disciplines, one participant said that such a suggestion was to be regretted; the balance-of-payments problems of developing countries were too serious to permit trade-offs of this kind.

58. At the end of this discussion the Chairman concluded that the Group had now carried out the most thorough and focused debate so far on the balance-of-payments issues. It seemed to him that the point had now been reached where no further discussion of this type was needed. Any further consideration should be devoted to deciding whether to begin serious negotiations with the objective of achieving some kind of result, or whether we must conclude that negotiations in this area were not possible.

59. A number of participants, agreeing that all issues raised in the proposals had now been very fully discussed in good faith, expressed the view that there was still no sign of a consensus on the appropriateness of negotiations on this subject. In this respect it was different from other subjects under negotiation in the Round - even those on which participants held different views about the direction in which negotiations should be moving. One speaker said that the Group should now recognise the reality that the precondition for any negotiation is the involvement of two parties and that in this case there was no agreement to negotiate. It was also said that the discussions had provided no indication that any of the changes which had been proposed would benefit countries needing to invoke

Article XVIII:B, and that it was necessary for any country invited to participate in a negotiation to assess the benefits of doing so. The proponents of change in this area had said that others should be ready to negotiate, as they were negotiating in areas of no particular interest to themselves: but this was true of all participants in the Round, and it provided no reason for developing countries to accept a negotiation that would inevitably diminish their GATT rights, since the changes being sought would have substantive, not merely procedural, effects. The legitimate concerns of trading partners could already be addressed within the existing provisions and procedures.

60. The balance-of-payments position of countries consulting under Article XVIII:B had not improved over the years and they remained acutely vulnerable to external economic changes. The impact of the proposals which had been made on the payments situation of these countries would be likely to be adverse. It should be remembered that the BOP Committee's procedures and the substantive provisions embodied a balanced set of rights and obligations - they were not equivalent to an unrestricted privilege.

61. Another speaker said that various ideas had been mooted as to possible trade-offs for the reform of Article XVIII:B, including references to selectivity in the safeguards area. But developing countries had made it clear that Article XVIII:B was an issue of the greatest importance for them, and one which could not be negotiated against any lesser objective. Only such a concession as would restore to developing countries all of the guarantees and security they had lost - such as the conversion of Part IV of GATT into a mandatory commitment - would be worthy of consideration. So far, no suggestion worth taking seriously had been put forward by any developed country.

62. Other participants argued that the discussion in this and earlier meetings had clearly shown that there were difficulties arising from the existing provisions and procedures and that accordingly there was need and scope for a productive negotiation. One speaker said that for his delegation this was perhaps the most important issue in the Round as far as the countries consulting or likely to consult under Article XVIII:B were concerned. Failure to address it would leave a damaging weakness in the fabric of the Round and would affect the ability to make progress in other Groups. Lack of consensus at this stage should not prevent negotiation; as yet there was no consensus on any subject in the Round, and his country was negotiating in several areas in which it had no special interest. Another speaker said that references had been made during the discussions to such problems as grey area measures and the MFA regime, and noted that his delegation had proposed the elimination of MFA restrictions and was hoping for substantial results in all other areas. Another participant said that he hoped that explanations given during the meeting had served to clarify his delegation's proposals. It had been suggested that there could be no negotiation where one of the two parties was unwilling, but this oversimplified the situation. Apart from those who were putting forward or supporting proposals for change and those who regarded the issue as non-negotiable, there were also delegations indicating that they might be

willing to negotiate if certain other conditions were met. It was owed to each of these groups to make clear exactly what the proposals would entail. The signals now going out from this Negotiating Group were not of a kind to advance the progress of the Round as a whole.

63. Summing up the discussion, the Chairman said that several references had been made to the fact that this negotiation was linked with many other aspects of the Round, by countries taking different views on the question whether or not the Group should enter a more intensive phase of negotiations on this issue. These references underlined the need, also identified by a number of speakers, to reflect carefully on the next steps - not merely on the basis of the headings under which the discussions had taken place but also in the light of the relationship of this subject to other elements of the Round. As Chairman he accepted the responsibility to try to facilitate the negotiating process, but the real burden of responding to the views, proposals and texts put forward by others must be borne by the negotiators themselves. This matter would be placed on the agenda of the next meeting, and the secretariat would circulate a detailed note of this week's discussion well in advance of that date.

#### Other Business

64. The Group agreed that the next meeting would be held on 19-21 June and that the period of 17-19 July would be reserved for its following meeting.