

GENERAL AGREEMENT ON TARIFFS AND TRADE

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AGRICULTURE IN THE GATT

Note by the Secretariat

At its meeting of 25-27 March 1981, the Consultative Group of Eighteen requested the secretariat to prepare, inter alia, "an analysis of the rules of the GATT, including the Codes, as they applied to agriculture, highlighting any differences in obligations as between agriculture and industry". This paper seeks to respond to that request. The paper is divided into three chapters: the Articles of the GATT, the multilateral arrangements of the GATT, and the other activities in the GATT in respect of agricultural trade. The term "agriculture" as used throughout this paper refers to products contained in the Customs Co-operation Council Nomenclature, Chapters 01-24.^{1/}

^{1/} There is no internationally accepted definition of the term "agriculture" as used in trade. The General Agreement does not define "agriculture". For purposes of negotiations, it was agreed in the Multilateral Trade Negotiations and in previous rounds, that agricultural products in general were deemed to be products falling within Chapters 1 to 24 inclusive of the CCCN (MTN/AG/7). Participants were free to indicate differences between this definition and their own. Certain countries indicated that in addition to the above products, they considered one or more products under one or more of the following CCCN Chapters to be agricultural products: 29, 31, 33, 35, 38, 39, 44, 50, 53, 54, and 55; while one country notified that fish, marine mammals and products thereof (Chapters 2, 3, 5, 15, 16, 21, 23) should not be regarded as agricultural products for the purpose of the MTN (MTN/AG/W/30-36 and 40). No two of these notifications had the same definition.

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Chapter I. Articles of the GATT

Section A. Articles relating to agriculture and industry alike

1. Most of the Articles of the GATT, numerically speaking, are drafted with no special reference to, nor exemption for agricultural trade and thus on their face value relate to agriculture and industry alike. In this category can be included: Articles I, II, III, V, VII, VIII, IX, X, XII, XIII, XIV, XV, XVII, XVIII, XIX, XXI, XXII, XXIII, ^{1/}XXIV, XXV, XXVII, XXVIII, XXVIII bis, and Part IV (Articles XXXVI-XXXVIII).^{1/}

2. It is not possible to determine with precision whether the above-mentioned Articles have been applied or adhered to by contracting parties any more or less strictly to agricultural trade than industrial trade. We can only make some limited observations on the application of a few of these Articles, on the basis of notifications or cases submitted to the GATT over the years. Moreover, it should be emphasized that certain of these Articles, for example Articles XII, XIV, XVIII, XIX, XXI, and XXIV, are themselves exceptions to other GATT Articles. In addition, certain provisions within some of the Articles are exceptions to other provisions within the respective Articles, for example Article III:8(a) and 10 and Article XVII:2 and 4(d).

1. Article I

3. Article I:1 contains the most-favoured-nation clause, by which all contracting parties are bound to grant, to each other, treatment as favourable as they give to any country in the application and administration of import and export duties and charges. This rule applies to agricultural as well as industrial trade. Exceptions to non-discrimination are allowed for customs unions or free-trade areas under Article XXIV (see Section A.7 of this Chapter). Also, pursuant to the decision on "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries", contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties, notwithstanding the provisions of Article I.^{2/}

^{1/} Article XXXVI:4 and 5 and Article XXXVIII:2(a) make specific reference to "primary products": their importance to developing countries, the need for improved access of primary products on the world market, and the avoidance of excessive dependence by developing countries on the export of primary products. However the other provisions of Part IV speak more generally of objectives, commitments, and action on products of export interest to developing countries, which would not necessarily be limited to primary products exclusively.

^{2/} BISD 26S/203

2. Article II

4. In one important area of GATT activity, namely the negotiation of tariff concessions and reductions, it must be conceded that there has been less progress made on agriculture. A basic principle of the GATT is that protection should be given to domestic producers essentially through the customs tariff and not through other measures. The aim of this rule is to make the extent of protection clear and to make competition predictable (Chapter I.B.2 will discuss the agricultural exceptions under Article XI as concerns the general elimination of quantitative restrictions). The provisions of Article II (Schedules of Concessions) do not differentiate between agricultural and non-agricultural items. But an examination of the schedules of concessions of certain industrialized countries which are annexed to the General Agreement, indicate that there are indeed fewer tariff lines bound and less trade coming in under the benefit of tariff bindings, in the agricultural sector, as compared to the industrial sector.

5. The various tariff rounds carried out under the GATT have proven to be less ambitious on agriculture, negotiations on which have followed a line-by-line and request/offer approach, as opposed to industrial negotiations, for which during the Kennedy and Tokyo Rounds, broad tariff-reduction formulae have been applied across the board with limited exceptions.

6. In addition, already the work of Committee II on Agricultural Protection in 1959-1961 clearly demonstrated that agricultural commodities are substantially protected by governmental measures other than tariffs, more so than are industrial products. It is not possible to quantify this view with precision. Recent notifications of import restrictions to the secretariat by certain industrialized countries¹ confirm the findings of the Committee that there continues to be a wide assortment of restrictions in the agricultural sector: quotas, licensing, minimum pricing, seasonal restrictions and prohibitions. It appears that many of the notifying countries have a greater percentage of agricultural tariff items subject to these restrictions than for industrial items.

7. Moreover, some countries also resort to variable levies of one sort or another to protect certain of their major agricultural sectors. They are

¹L/5090 Australia, Austria, Canada, Benelux, Denmark, France, Federal Republic of Germany, Italy, Ireland, Japan, United Kingdom, Norway, Portugal, Sweden, Switzerland and the United States. See also L/5202 and L/5265.

IMPORTANCE OF GATT BINDINGS IN
COUNTRIES PARTICIPATING IN THE TARIFF STUDY

(percentages)

	Share of bindings			
	Tariff lines		m.f.n. imports	
	Agriculture (CCCN ch.01-24)	Industry excl. petroleum (CCCN ch.25-99) excl. 2709-10	Agriculture (CCCN ch.01-24)	Industry excl. petroleum (CCCN ch.25-99) excl. 2709-10
Australia ¹
Austria	65	97	78	93
Canada	90	97	98	99
European Communities	63	99	79	100
Finland	59	98	88	99
Japan	64	98	66	79
New Zealand	56	44	76	63
Norway	70	90	94	97
Sweden	48	98	79	97
Switzerland	55	99	66	100
United States	90	100	96	100
Ten tariffs combined	66	92	81	96

¹It has not yet been possible to compile post-MTN data for Australia. On the basis of 1975/76 imports and pre-MTN tariff, the bindings were as follows: agriculture, 23 per cent of tariff lines and 39 per cent of m.f.n. imports; industry, 14 per cent and 29 per cent, respectively.

Note: The estimates refer to the post-MTN tariffs and to imports in 1977 or 1976 and cover full and partial bindings. The national tariff nomenclatures have been used. MFN imports include imports entitled to GSP. The figures are preliminary and will be revised when all consolidated schedules in loose-leaf form are available.

the European Economic Community, Austria, Finland, Sweden and Switzerland.¹ There are few bindings as to the maximum levels of the variable levies. Although there are divergent views as to the status of variable levies, they must be recognized as an important factor controlling a part of agricultural trade. Health and sanitary restrictions are another factor (and will be discussed under Chapter I B 4 Article XX).

3. Article III

8. Article III contains the national treatment obligation as regards internal taxes and regulations on products. The provisions of this Article are complex, as could be expected in any attempt to deal with the various internal measures governments can take to protect their domestic production against imports.

9. With the exception of Article III:10 which relates to cinematograph films, there are no distinctions made in Article III between agricultural and non-agricultural products. There are two other exceptions, however, in the Article; one in paragraph 8(a) relating to government procurement, the other in paragraph 8(b) which allows the payment of subsidies exclusively to domestic producers, including that from the proceeds of internal taxes or charges applied consistently with the provisions of Article III.

10. Over the years, there have been several complaints that certain measures applied by certain contracting parties were not in conformity with this Article. Some of these complaints resulted in formal recourses to Article XXIII:2 and a few of these cases related to agricultural products.

¹Based on agricultural imports by c.i.f. value in 1977, \$6,886 million or around 21 per cent of total agricultural imports into the EEC were subject to variable levies, \$44 million or 6 per cent in Finland, \$476 million or 24 per cent in Sweden and \$44 million or 2 per cent in Switzerland. Based on 1976 figures, \$172 million or 19 per cent in Austria. The above EEC figures were calculated by including imports under tariff lines in the EEC Common Customs Tariff for which it is indicated that "levy", "variable component" or "sugar added levy" is applicable. Compensatory taxes, which are applicable on certain fish, fruits, vegetables, and wine for example, may act like variable levies, but they were not included in the calculation. In addition, the United States applies a flexible import fee on sugar.

11. A working party was established in 1949 to examine the discriminatory internal taxes imposed by Brazil in the light of Article III.^{1/} Spirituous beverages of foreign origin were subject to higher rates of consumption taxes in that country than domestic products, as were also foreign watches, clocks, playing cards and tobacco. The working party agreed that the taxes imposed by the 1945 Brazilian law were permitted by the terms of Brazil's Protocol of Provisional Application.^{2/} However, the members of the working party disagreed on the legal status of amendments made to the tariff rates thereafter in 1948: whether the proportionate relationship between the rates on imported and domestic products should be retained in absolute or relative terms and whether trade damage must be demonstrated before a breach of Article III can be alleged. Eventually, Brazil abolished the tax discrimination in 1957.^{3/}

12. In 1978, there was a report from the Panel, which examined the complaint by the United States, that the EEC import deposits and purchasing requirements affecting non-fat dry milk and certain animal feed proteins were not consistent with the EEC's obligations under the GATT, including, inter alia Article III.^{1/} The Panel concluded that the various products used for adding protein to animal feeds could not be considered as "like products" within the meaning of Article III but that vegetable proteins and skimmed milk powder were technically substitutable in terms of their final use and that the effects of the EEC measures were to make the latter product competitive with these vegetable proteins. The Panel concluded that the EEC measures, which were intended to ensure the sale of a given quantity of skimmed milk powder, constituted an "internal quantitative regulation" and protected this product in a manner contrary to the principles of Article III:1 and to the provisions of Article III:5 second sentence. The Panel further concluded that the EEC measures accorded imported corn gluten less favourable treatment than that accorded corn gluten of national origin (to which the measures did not apply), in violation of Article III:4.

13. In 1981, a Panel, which was established to examine a complaint by the United States on Spanish measures concerning domestic sales of soybean oil, issued a report containing findings in relation to the consistency of these measures with, inter alia, Article III.^{1/} During the examination of this report by the Council, several delegations expressed disagreement with the Panel's^{4/} findings and the Council "took note of" - but did not adopt the report.^{4/}

^{1/} See Annex I.

^{2/} See discussion under Chapter I, Section A 9(a) existing legislation.

^{3/} L/729, SR.12/14 p.99

^{4/} C/M/152

4. Article XVII

14. Another important feature of the agricultural sector is the existence of State-trading enterprises, marketing boards, or monopolies in numerous countries. Article XVII:4(a) requires a contracting party to notify the products which are imported or exported by any "State enterprise" it establishes or maintains, or by any enterprise to which it grants "exclusive or special privileges", including marketing boards. The terms within quotation marks are not specifically defined in the Article. Paragraph 4(d) of Article XVII exempts the disclosure of "confidential information" that, inter alia, "would prejudice the legitimate commercial interests of particular enterprises".

15. Over the last four years, twenty-five countries have submitted notifications on the basis of reporting procedures adopted by the CONTRACTING PARTIES.^{1/} Six of these notifying countries stated that they had no State-trading enterprises in the sense of Article XVII.^{2/} Two countries reported that their whole foreign trade is carried out by State-trading enterprises.^{3/} The remaining seventeen notifying countries reported a total of ninety-seven enterprises of which sixty-nine were concerned with agricultural products.^{4/} It is apparent that not all contracting parties are fulfilling their notification requirements. Moreover, there is a lack of adequate detail provided in some of the notifications.

16. The notifications reveal that the majority of State-trading enterprises appear to be in the agricultural sector; however no clear overall picture emerges as to the extent of their effective control over agricultural trade. The enterprises notified differ markedly from country to country, and even from enterprise to enterprise as to size, product coverage, volume of trade engaged in, relationship to the State, etc. They run the range from producers' co-operatives to government agencies. Sometimes it is indicated that an enterprise has statutory powers to be the sole importer and/or exporter or that it has licensing authority. Whereas in other cases, the

^{1/} Notification procedures contained in BISD 9S/184 and BISD 11S/58. Notifications on which information in this sector is based are contained in L/4623 Add.5 and 16, L/4933 Add.2, 3 and 9, and L/5104 Add.1-17.

^{2/} Belgium, Luxembourg, Denmark, Ireland, Malawi, and Yugoslavia.

^{3/} Czechoslovakia and Romania.

^{4/} Numbers within parentheses indicate enterprises notified that deal with agricultural products. The symbol "+" thereafter indicates that one or more enterprise dealing with non-agricultural products was also notified. Australia (9), Austria (3+), Canada (5), Finland (2), Federal Republic of Germany (1+), France (2+), Israel (1), Japan (4+), New Zealand (8), Norway (2+), Peru (4+), South Africa (17+), Sweden (1), Switzerland (2), Tunisia (7+), United Kingdom (0+), and United States (1+).

powers and influence of an enterprise are less clearly defined but no less effective, due to its marketing position, or trade with private traders etc. Moreover, the presence of a State-trading enterprise in a country may not always be the only or single most important factor influencing trade in a particular sector. The effect of governmental measures such as export taxes, quotas, high tariffs, phyto-sanitary restrictions or internal tax discrimination, may also have to be taken into consideration. It would appear from the notifications, that State-trading enterprises are about evenly divided among those which control exports, those which control imports and those which control both. They are particularly prevalent in the grains and alcohol sectors and many exist also in the dairy, tobacco and fruit sectors. Oftentimes the stated objectives of governments in establishing these enterprises is to ensure the orderly marketing of domestic farm production and adequate supplies to consumers.

17. Besides the obligation to notify, Article XVII also specifies that State-trading enterprises shall, in their purchases or sales involving either imports or exports, act in a non-discriminatory manner "as prescribed in the Agreement for governmental measures affecting imports or exports by private traders". The enterprises are also required to "make any such purchases or sales solely in accordance with commercial considerations".

5. Article XIX

18. As regards Article XIX and its application to agriculture, we note that there have been to date 109 notifications made to the GATT invoking this Article.^{1/} Of these notifications, twenty-one concerned agricultural products. Although these figures seem to indicate that there are fewer Article XIX actions taken in the agricultural sector than in industry, it must be emphasized that these figures relate only to notifications which specifically referred to Article XIX. There have been more notifications to the GATT of safeguard actions, particularly on agricultural products, but since no reference was made in these notifications invoking Article XIX, they do not figure in the above tally.

^{1/} Notifying countries with number of notifications each thereof in parentheses: Australia (35), Austria (4), Canada (19), EEC-Nine (3), France (2), Federal Republic of Germany (2), Italy (3), United Kingdom (2), Greece (3), Finland (1), Iceland (1), Israel (1), New Zealand (1), Nigeria (1), Norway (1), Peru (1), Rhodesia (1), Spain (3) and United States (25).

19. In this connexion, there was a secretariat study on "emergency type actions in the widest sense", made in 1975 on the basis of replies by twenty countries or groups of countries.¹ Most governments responding to the secretariat questionnaire limited themselves to giving information about cases of essentially the same type as that foreseen in Article XIX. However, some replies were very wide-ranging and related to long-standing measures which in the words of one reply "frequently obviate or largely obviate the need for special safeguard action to protect against injury from imports". These replies mentioned quantitative restrictions of all types (including embargoes, quotas and discretionary licensing), variable levies, mixing regulations, State-trading activities, government purchasing, systems based on minimum import prices and import surcharges. Some of these replies paid particular attention to "residual" import restrictions and measures which "insulate markets against the possibility of distortion, especially in the agricultural sector". In this context, it is interesting to note that of the actions reported under this secretariat study, nearly 40 per cent of the products affected fell in the agricultural sector. A large number of these products were in the prepared foodstuff category. Imports of bovine meat, sheepmeat and dairy products were also affected as were wheat and fresh fruit and vegetables.

20. Two out of the four reported instances under Article XIX:3 whereby a contracting party has suspended concessions or other GATT obligations against another contracting party, which had taken emergency action under Article XIX:1 affecting the former, have concerned an agricultural product. In 1952, Turkey withdrew concessions on various furniture and machines in connexion with² the United States' escape clause action increasing the duty on dried figs. During 1974 and 1975, the United States applied quotas on imports of cattle, swine, beef, veal and pork from Canada, in response to Canadian quotas on cattle, beef and veal.

21. In 1968, the United States proposed suspending concessions on various agricultural products and knitwear in connexion with Austria's increased duty on vegetable oil cakes⁴, but these suspensions were never implemented.

¹ MTN/SG/W/1 Australia, Austria, Brazil, Canada, EEC, Finland, Greece, Guatemala, Hong Kong, Japan, Korea, Malaysia, New Zealand, Norway, South Africa, Sweden, Switzerland, Turkey, United States and Venezuela.

² L/57, BISD 1S/28-30

³ L/4118, and Add.1

⁴ L/3046/Add.1, 2 and 4

22. Finally, mention might be made of the existence of voluntary restraint agreements as a type of safeguard action. One problem in dealing with these agreements is that they are not expressly provided for in the General Agreement. Article XI:1 bans, in general, any prohibitions and restrictions other than duties, taxes or other charges on imports or exports. On the other hand, Article XIX:1 allows a contracting party under certain conditions to suspend an obligation under the GATT in whole or in part and this could include suspending the obligations under Article XI:1.

23. Another problem in discussing voluntary restraint agreements is that they rarely are notified to the GATT. It should be noted that the Committee on Safeguards, at its meeting of 15 April 1981, came to the conclusion, inter alia, that:

"All actions taken under Article XIX, and to the extent possible, other actions which serve the same purpose will be notified to the CONTRACTING PARTIES. In addition, it will be open to contracting parties to bring up any matter in accordance with the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance."¹

Paragraph 3 of the "Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance" states that "contracting parties moreover undertake, to the maximum extent possible, to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement, it being understood that such notification would of itself be without prejudice to views on the consistency of measures with or their relevance to rights and obligations, under the General Agreement".² Since the adoption of this declaration the only voluntary restraint agreements on agricultural products to have been notified under this paragraph, concerned the EEC agreements with its suppliers of sheepmeat.³ In addition, both the International Dairy Arrangement and the Arrangement Regarding Bovine Meat, which will be discussed in Chapter II, Section A of this paper, require signatories to provide information on their domestic policies and trade measures including bilateral and plurilateral commitments in the dairy or bovine sector respectively, and to notify as early as possible any changes in such policies and measures that are likely to affect international trade in these products. It appears that information so far supplied by signatories regarding voluntary restraint agreements in the dairy and bovine sectors is far from complete.

24. Only in the case of Chile/EEC suspension of apple imports has the subject of voluntary restraint agreements on agriculture figured under dispute settlement in terms of Article XXIII:2. The Panel found, inter alia,

¹ L/5151

² BISD 26S/210

³ L/5154 and Add.1

that the EEC suspension applied to imports from Chile, was not a restriction similar to the voluntary restraint agreements negotiated with the other Southern Hemisphere suppliers, and therefore was not in conformity with Article XIII:1.^{1/} The Panel found that there was a difference in transparency as well as administration between the two types of restrictions, and that the import suspension was unilateral and mandatory while the agreements were voluntary and negotiated.

6. Articles XXII and XXIII (Consultation and Dispute Settlement)

25. The General Agreement is not only a set of rules governing the conduct of international trade but an instrument to facilitate and encourage discussion and consultations regarding obligations and matters affecting trade. Many of the Articles provide for and oblige consultations between a contracting party and others, which consider their trade interests to be affected, if not impaired, by the actions of the former. Examples of GATT provisions which expressly mention consultations or consideration to requests by contracting parties are: Articles II:5, VIII:2, IX:6, XII:4 and 5, XIII:4, XVI:1, XVII:4(b)(c), XVIII:Sections A,B,C and D, XIX:2, XXIV:7, XXV:1, XXVII, XXVIII:1 and XXXVII:2(b) and 5. All of these provisions are applicable to agricultural and other trade alike. Consultations under the above-mentioned provisions with specific reference to agricultural products are discussed, as necessary, in other sections of this paper under the Articles concerned.

26. The most important provisions relating to the settlement of disputes in the GATT are those laid down in Articles XXII and XXIII. It would be technically impossible to establish a comprehensive scoreboard on the frequency of consultations under these two Articles, let alone on their statistical applicability to agricultural trade. As pointed out above, there are numerous bilateral and multilateral consultations which take place under other Articles of the GATT, which could also fall within the scope of the general provisions of Articles XXII and XXIII. Contracting parties consult regularly with one another on trade matters which might relate to GATT obligations, but do not necessarily in all cases place such consultations specifically under any particular Article. Even when specific reference is made to Articles XXII or XXIII in the course of consultations, there may be no notification thereof made to the GATT. Some items appear on the Council agenda and are withdrawn never to be heard about again. Many items are remanded for bilateral consultations by the Council with or without discussion in the Council, or are just discussed in the Council and never reappear on the Council agenda. In all this grey area, it would not be possible to conclude that there are more or fewer problems or consultations on agricultural products, than on non-agricultural or general trade matters.

^{1/} BISD 27S/98

27. When one examines recourses to XXII:2 and XXIII:2, the picture is somewhat clearer, in that by their nature as requests for action by the CONTRACTING PARTIES, such recourses are inscribed in GATT records. Yet, when one looks over the list of Working Parties in respect of XXII:2, or Chairman's rulings, CONTRACTING PARTIES' rulings, Working Parties, and Panels in respect of XXIII:2, one can see that there are trade problems all around, no more on agriculture than in any other area. Another general observation that can be made is that only once did the CONTRACTING PARTIES authorize a specific retaliation for a measure held inconsistent with the GATT, (Netherlands quota on wheat flour from United States in connexion with United States dairy quotas). In addition, there has been a considerable increase recently of recourses to XXIII:2 in the form of requests for panels which is unparalleled during any other period in GATT history: since 1976, seventeen panels have been established of which eleven concerned agricultural trade measures. Most (nine) of the latter have ended in legal rulings, while two have reported a bilateral settlement.

28. Annex I lists certain multilateral consultations held specifically under Article XXII with the assistance of the GATT secretariat regarding agricultural products. It also lists rulings, Working Parties and Panels under XXIII:2 regarding agriculture.

7. Article XXIV

29. Virtually no examination of the regional arrangements, free-trade areas or customs unions notified in the GATT, has led to a unanimous conclusion or specific endorsement by the CONTRACTING PARTIES, that all the legal requirements of Article XXIV had been met.² Sometimes it has been the agricultural provisions or the lack thereof in the arrangements concerned which have caused legal or practical difficulties. For example, at the time of the examination of the Rome Treaty, the Common Agricultural Policy was not yet established.³ At the time of the examination of the accession of Denmark, Ireland and the United Kingdom to the EEC, there was no agreement on how to assess the general incidence of the duties and regulations of commerce applicable nor whether certain measures (variable levies) were

¹In 1961, Uruguay tabled claims of nullification and impairment against fifteen countries. Only one Panel was established to handle the Uruguayan recourse and it was later reconvened to review compliance with earlier recommendations.

²In the case of the Caribbean Community and Common Market, it was noted that there was general agreement in the Working Party that the arrangement was an interim agreement leading to a customs union and consistent with Article XXIV; and even here there was concern expressed about the effect of the agricultural provisions on third country trade. (C/M/119)

³BISD 6S/88

duties or regulations of commerce with respect to Article XXIV.^{1/} There were also concerns expressed with regard to the European Free-Trade Association as well as the free trade area agreements concluded between the members of the latter with the European Economic Community, in part because the respective free trade_{2/} area provisions did not cover substantially all the trade in agriculture.^{2/}

8. Article XXV

30. Article XXV:1 calls for contracting parties to meet "for the purpose of giving effect to those provisions of this Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement". In a Resolution of 17 November 1956, on particular difficulties connected with trade in primary products, the CONTRACTING PARTIES recalled that, in conformity with the functions conferred upon them under Article XXV:1, the CONTRACTING PARTIES are competent to deal, upon request of one or more contracting parties, with special difficulties arising in connexion with international trade in primary products.^{3/} The CONTRACTING PARTIES decided to review, at every session, the trade and developments in international commodity trade on the basis of a report to be prepared by the Chairman of the Interim Coordination Committee for International Commodity Arrangements (ICCIICA). These reviews were initially carried out by the Working Party on Commodities established at the thirteenth session in November 1958, which reported to the CONTRACTING PARTIES.^{4/} Subsequently, since 1962 the CONTRACTING PARTIES reviewed the Impact of Commodity Problems on International Trade at their November session until 1968.

31. Moreover, it was under the terms of XXV:1 that at the request of New Zealand, multilateral consultations were held in 1961 on the difficulties in marketing butter in the United Kingdom.^{5/} The consultation did not lead to any improvement in the butter market_{6/} and recourse was later made to Article XXII:1 by the interested countries.^{6/}

^{1/} C/M/107

^{2/} C/M/38, C/M/90, C/M/94

^{3/} BISD 5S/27

^{4/} BISD 7S/42, 8S/76, 10S/83

^{5/} BISD 10S/74, 77

^{6/} See Annex I

32. Article XXV:5 provides for the possibility of the CONTRACTING PARTIES to waive a contracting party from a GATT obligation. There have been some seventy waivers granted under this provision¹, of which six concerned exclusively specific agricultural products. These agricultural waivers are discussed in detail under Annex II. Several more waivers covered specific agricultural and industrial items together. A few covered only specific industrial items. The majority of waivers granted were of a general nature; that is, the product coverage thereof was not specified. One can perhaps assume that these waivers involved trade measures applied to products across-the-board, or at the least, did not apply to agricultural products exclusively. Most waivers have fallen into one or the other of the following categories: special preferred treatment between a contracting party and a newly independent or semi-independent territory (waivers from Article I); preferential regional associations (waivers from Article I); special tariff surcharges due to balance-of-payments problems (waivers from Article II); new tariff nomenclature or fiscal reform pending renegotiation of Schedule of Concessions (waivers from Article II); and non-members of the IMF not entering into a "special exchange agreement" (waivers from Article XV). There have also been waivers relating to the Generalized Scheme of Preferences and to Trade Negotiations among Developing Countries.

33. Of the waivers granted to date, seven remain in effect. They concern: India - Auxiliary duty of customs (waiver from Article II obligation decided in 1973 plus extensions); Indonesia - Renegotiation of Schedule (last waiver from Article II obligations decided in 1976 plus extensions); Turkey - Stamp Duty (waiver from Article II:1 originally decided in 1963 plus amendments and extensions); Pakistan - Renegotiation of Schedule (waiver from Article II decided in 1977 plus extensions); United States - Imports of automotive products from Canada (waiver from Article I decided in 1965); United States - Agricultural Adjustment Act² (waiver from Articles II and XI obligations decided in 1955); Uruguay - Import surcharges (last waiver from Article II:1 decided in 1972 plus extensions).

¹Based on BISD Series. Sometimes new waivers were granted for the same action but are counted separately. Extensions of waivers are not counted as separate waivers. There have been a number of decisions taken by the CONTRACTING PARTIES regarding inter alia the "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" and many preferential arrangements, for example, the Trade Arrangement Between India, Egypt and Yugoslavia, the ASEAN Agreement, and the Bangkok Agreement, wherein mention is made of "notwithstanding the provisions of Article I ..." Since no specific reference has been made to Article XXV:5 in the above-mentioned and similar decisions, they have not been included in the tabulation.

²See Annex II

34. There are two instances when a waiver was requested but not granted by the CONTRACTING PARTIES. One concerned a request in 1969 by the EEC for a waiver from its obligations under Article I in order to reduce the customs duties, in respect of certain citrus fruit originating from Israel and Spain.¹ Another case concerned a request by Greece in 1970 for a waiver from Article I in connexion with tariff preferences for certain manufactured products imported from the USSR within specific quota limits.²

9. Article XXXIII (Accession)

(a) "Existing legislation"

35. Under the terms of the Protocol of Provisional Application of the General Agreement on Tariffs and Trade, signed by the original drafting governments, as well as under subsequent Protocols of Accession, governments have agreed to apply provisionally "... Part II of the General Agreement to the fullest extent not inconsistent with its legislation existing on the date of the Protocol." Part II of the GATT includes Articles III through XXIII.

36. To take advantage of this "grandfather clause" it does not, however, suffice to have any law on the books concerning a practice prior to acceding to the GATT. It has been agreed that a measure can be permitted during the period of provisional application "provided that the legislation on which it is based is by its terms or expressed intent of a mandatory character - that is, it imposes on the executive authority requirements which cannot be modified by executive action".³ This ruling was expressly reaffirmed at the ninth session of the CONTRACTING PARTIES.⁴

37. It is impossible to determine the extent to which this "grandfather clause" operates in practice. No government has had to notify its existing mandatory legislation at the time of accession. In 1955, a request was made to contracting parties for information on their existing mandatory legislation which was not in conformity with Part II of the GATT. Of the thirteen that replied, seven countries indicated they had such legislation and of that seven, four countries specified measures concerning certain agricultural products.⁵ However, at the time it was understood that this list was not exhaustive and respondents were not bound by the list. Needless to say many laws indicated at that time, have changed since then.

38. As in many other cases of the GATT the "grandfather clause" is only referred to when invoked as an argument in response to a complaint that a measure may be inconsistent with the General Agreement. In 1949, a working

¹L/3281, C/M/57, 59 and 61

²L/3447, C/M/62, 63 and 65

³BISD, Volume II, page 62, paragraph 99

⁴BISD 3S/249 paragraph 58

⁵L/309/Add.1. The four countries were: Federal Republic of Germany, Canada, India and the United States.

party concluded that in view of the "mandatory nature" of a 1945 Brazilian law, "the taxes imposed by it, although discriminatory and hence contrary to the provision of Article III were permitted by the terms of the Protocol of Provisional Application and need not be altered so long as the General Agreement was being applied only provisionally by the Government of Brazil". However, the members of the working party disagreed as to whether subsequent tariff changes imposed by Brazil in 1948 were permitted under its Protocol of Provisional Application.¹

39. During the 1961 Panel examination under XXIII:2 of complaints by Uruguay against fifteen countries, six countries argued that certain measures were permitted under their respective Protocols of Accession or Provisional Application: Belgium (mixing regulation on wheat), Canada (import licensing on grain items), Denmark (mixing regulation on bread grains), Federal Republic of Germany (import permits and quotas on meat and edible oils), Italy (State trading on wheat and wheat flour), and the United States (quotas on wheat and wheat flour to the extent inconsistent with XI:2(c)).²

40. Also, during the 1962 examination of residual import restrictions³, the following countries stated that they considered that certain restrictions they applied to certain agricultural products were covered by their respective Protocols of Provisional Application or Accession. Australia (prohibition on butter substitutes), Italy (restrictions on wheat and meslin, wheat flour, bananas and tobacco), Sweden (various measures in meat, dairy, grains, sugar and fish sectors) and United States (wheat, wheat flour, and sugar).

(b) Other exceptions under Protocols of Accession

41. A few countries have incorporated specific derogations or exceptions from GATT provisions into the terms of their Protocols of Accession. For example, Egypt may maintain a "consolidation of economic development tax" as well as regional preferences, Hungary may maintain existing trading regulations with respect to specific Socialist countries, and the Philippines⁴ may maintain certain sales and specific taxes, all under certain conditions.⁴ There are provisions in the respective Protocols of Accession of Poland, Romania and Hungary, whereby other contracting parties still maintaining quantitative restrictions, not consistent with Article XIII, on imports from those countries, must remove them progressively.⁵ The restrictions currently in force apply essentially to non-agricultural products.

¹ See Annex I and discussion under Chapter I, Section A 3, Article III.

² L/1923. See Annex I.

³ L/1769

⁴ BISD 17S/4, 20S/3, 26S/193

⁵ BISD 15S/47, 18S/6, 20S/4. It is specified in the Protocols of Accession of Hungary and Romania that such restrictions not removed by 1 January 1975 are subject to examination, with a view to their elimination, in the working parties set up under the Protocols.

42. Switzerland has an exception specifically relating to agriculture incorporated into its Protocol of Accession. Under its 1966 Protocol, Switzerland reserved its position with regard to the application of the provisions of Article XI of the General Agreement to the extent necessary to permit it to apply import restrictions pursuant to certain Swiss legislation concerning agricultural products.¹ According to the last annual report submitted by Switzerland regarding measures maintained consistently with this reservation, imports of certain products in the following sectors are subject to quantitative restrictions: grains, livestock and meat, dairy, fruits and vegetables, horticulture, wine and alcohol sectors.²

Section B. Articles with special reference to agriculture

43. A few GATT Articles, important ones, contain certain provisions with special reference to agriculture.

1. Article VI

44. This Article defines dumping and sets out procedures for levying anti-dumping and countervailing duties. It specifies an injury requirement by which these duties can be levied to offset dumping or subsidization if it "causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry". It was intended that the term "industry" as used in this Article included "such activities as agriculture, forestry, mining, etc., as well as manufacturing".³

45. Paragraph 7 of Article VI exempts a system for the stabilization of prices or returns on a primary commodity from anti-dumping or countervailing duties, by presuming such a system "not to result in material injury" under certain conditions. The term "primary commodity" is not defined, but as the wording in this provision follows closely that of Ad Article XVI, Section B, paragraph 3, sub-paragraph 2, which refers to a "primary product", one can assume that the definition of the latter could apply as well to a "primary commodity" for purposes of Article VI:7.⁴

46. This paragraph assumes that all contracting parties substantially interested in the commodity concerned agree that the stabilization system meets the requirements of both sub-paragraphs (a) and (b). Otherwise, an importing contracting party would, in practice, countervail. There is no record of Article VI:7 ever having been invoked formally in the GATT. This may mean that the justification of its use by a contracting party has never been challenged during discussions with other interested contracting parties.

¹ BISD 14S/8

² L/5208

³ Havana Reports, E/CONF/2, page 74, paragraph 24

⁴ L/1514. See Chapter I, Section B.3.

47. Paragraphs 1 through 6, which means virtually all the provisions of Article VI, are applicable to agricultural and non-agricultural trade. There are no requirements to report actions taken pursuant to this Article. Only a few times has the justification of such actions been contested or discussed in the context of dispute settlement. During the 1961 XXV:1 consultations on the marketing of butter in the United Kingdom the Group "noted that Article VI imposed no obligation on contracting parties to impose anti-dumping or countervailing duties and that the imposition of such duties was the prerogative of particular contracting parties and not of the group or of the CONTRACTING PARTIES". Thereafter, Denmark and New Zealand applied to the United Kingdom for the imposition of anti-dumping or countervailing duties pursuant to Article VI on imports of butter into the United Kingdom coming from certain other supplying countries. Consultations with interested countries ensued, but no mutually satisfactory solution was achieved at that stage.²

48. The Anti-Dumping Code which came into force in 1968 did contain reporting requirements as does its successor negotiated in the Tokyo Round. A cursory examination of actions reported thereunder indicate that the majority of anti-dumping and countervailing duties are levied on non-agricultural products.

2. Article XI

49. Paragraph 1 of Article XI establishes a general ban on restrictive measures "other than duties, taxes or other charges" on imports and exports. Paragraph 2 specifies the exceptions to this ban. In here can be found among the more significant exceptions specific to agriculture in the General Agreement. But as will be explained, there are conditions and limitations attached to these exceptions. In addition, the wording of the product coverage thereof is such that some products outside the agricultural sector could conceivably qualify for the exceptions under XI:2, in particular 2(a) and 2(b).

50. The export prohibitions or restrictions allowed under XI:2(a) are intended to be temporary, and must be related to preventing or relieving a "critical shortage" of foodstuffs or "other products essential to the exporting contracting party".

51. As regards XI:2(b), one of the key words therein is "necessary". The Working Party on Quantitative Restrictions, in its report adopted in 1955, wrote that: "Restrictions related to the application of standard or regulations for the classification, grading or marketing of commodities in international trade which go beyond what is necessary for the application of those standards or regulations and thus have an unduly restrictive effect on trade would clearly be inconsistent with Article XI".³ The term "commodities" as used in XI:2(b) is not defined.

¹L/1514. See discussion under Chapter I, Section A 8.

²C/M/8. See Annex I.

³BISD 3S/189, paragraph 67

52. Article XI:2(c) sets out exceedingly complex requirements as the reader can appreciate. First of all, it should be noted that the chapeau of XI:2(c) refers to "import restrictions on any agricultural or fisheries product imported in any form". Ad Article XI specifies that in any form "covers the same products when in an early stage of processing and still perishable, which compete directly with the fresh product and if freely imported would tend to make the restriction on the fresh product ineffective".^{1/} As in XI:2(b), a key word in the chapeau to XI:2(c) is "necessary".^{1/} There must be a clear justification for restricting imports, because they would render ineffective governmental measures, which operate to restrict the production or marketing of the domestic product. There are additional requirements for restrictions to be permissible under XI:2(c)(i), to the effect that there be public notice of import quotas and that a certain proportion be maintained between import levels and domestic production.

53. Moreover, it must be emphasized that restrictions allowable under XI:2 must still meet the requirements for non-discrimination specified under Article XIII; in particular, as regards similarity of restrictions, quota shares, and public notice.

54. It is not possible to know the precise extent to which contracting parties are "taking advantage" of the exceptions under Article XI:2 provisions. There are no obligations in this Article, strictly speaking, to notify the GATT. However, some countries have notified actions they consider to be in conformity with Article XI:2. The list of notifications (by no means exhaustive) includes the following. Finland introduced licensing on potatoes and hay in 1976 and notified the action under XI:2.^{2/} Since 1970, Canada has applied import controls on dairy products to support the Canadian supply management programme for manufacturing milk.^{3/} It has notified these measures as being in accordance with XI:2(c)(i).^{3/} Greece notified import restrictions on meat taken in 1975 under XI:2(c)(ii) and reintroduced the restrictions in 1976.^{4/} In 1979, Canada notified the introduction of a global import quota for chicken, to support the Canadian supply management programme operated by the Canadian Chicken Marketing Agency.^{5/} Canada stated that this step was being taken in accordance with XI:2(c).^{5/}

^{1/} See Report of Working Party on Quantitative Restrictions, BISD 3S/189-190, paragraphs 67-68.

^{2/} L/4305. Even though Finland only invoked Article XI:2, we can assume XI:2(a) is meant since the notification refers to measures aimed "at relieving critical shortage of those products".

^{3/} L/3455, L/4187

^{4/} C/M/116

^{5/} L/4868

55. It is also interesting to note that during 1968-1970 several countries notified "import restrictions applied inconsistently with the provisions of GATT and not covered by waivers".^{1/} Most of the notifying countries listed restrictions in the agricultural field: Austria, Benelux, Denmark, France, Federal Republic of Germany, Italy, Japan, Norway, Sweden, United Kingdom, United States. These restrictions were therefore admittedly being applied inconsistently with Article XI.

56. A comparison of these countries' notifications at that time and recently^{2/} shows that most of the import restrictions applied now on agriculture are the same as those notified earlier: Austria^{3/} (restrictions on thirty-four CCCN tariff lines), Belgium (two), Luxembourg (two), Denmark (three), France (eighteen), Federal Republic of Germany (three), Italy (two), Japan (twenty-two), Norway (fifty), Sweden^{3/} (two), United Kingdom (one), and the United States (one). It should be noted that these figures relate only to those countries which responded to both questionnaires. These and other countries maintain other import restrictions on agriculture; some covered by waivers and some not.

57. There is always the possibility of recourse to Article XXIII, when a contracting party believes a restriction inconsistent with Article XI. In 1951, the United States did not contest that its import restrictions on dairy products violated Article XI, in response to complaints filed by the Netherlands and Denmark.^{4/} In 1962, France did not contest that import restrictions it applied to, inter alia, certain agricultural products from the United States were contrary to Article XI.^{4/}

58. However, in three other cases under XXIII:2, the contracting party, against whom a complaint had been brought, argued that the measures under examination were permissible under Article XI:2(c). During the 1962 Panel examination of the cases brought by Uruguay against fifteen countries, including the United States, the latter argued that its quotas on wheat and wheat flour were generally applied consistently with Article XI:2(c), but to the extent such consistency was lacking, the measures were maintained in terms of the United States Protocol of Provisional Application.^{4/5/}

^{1/} L/3212

^{2/} L/5265

^{3/} Sweden did not notify in L/3212 several restrictions it maintained in the agricultural field as it considered them to be covered by "existing legislation" under its Protocol of Accession. See discussion under Chapter I, Section A.9. Austria indicated in L/3212 that it was willing to discuss the question of whether certain restrictions it had notified were covered by its Protocol of Accession as well.

^{4/} See Annex I.

^{5/} BISD 11S/148, L/1923

The Panel made no legal finding on the matter. In 1976, a Panel was established to examine, inter alia, whether the EEC minimum import price and surety deposit system which applied to tomato concentrates was consistent with Article XI. The Panel considered the EEC intervention system for fresh tomatoes not to be an effective restriction on the marketing or production of fresh tomatoes nor of tomato concentrates. The Panel found that the EEC minimum import price and surety deposit system on tomato concentrates could not qualify as exemptions to Article XI:1 under XI:2(c)(i) or (ii) and^{1/} was therefore not consistent with the EEC's obligations under Article XI. In a separate case brought by Chile in 1979, the Panel had to determine, inter alia, whether the EEC suspension of imports of apples from Chile was allowable under XI:2(c)(i) or (ii). In this regard, the Panel found that the EEC measures could not qualify under XI:2(c)(i) in that they had not fulfilled the conditions of the last paragraph of Article XI:2, especially in regard to maintaining a certain proportion between import levels and domestic production. The Panel could not conclude however, that the EEC did not meet the conditions of XI:2(c)(ii) and proceeded to examine the EEC measures in relation to Article XIII, finding them inconsistent therewith.^{1/}

59. In addition, a working party was established in 1976 to make an advisory ruling on the consistency of Canada's import quotas on eggs with Article XI. The members of the Working Party, with the exception of the United States, agreed that the Canadian supply management programme for eggs conformed with Article XI:2(c)(i). The Working Party, however, was unable to decide whether the representative period chosen by Canada in determining the quotas was in conformity with the last paragraph of XI:2.^{1/} It should be noted that for a measure to qualify as an exception to XI:1 under XI:2(c)(i) it must meet the requirements of the last paragraph of XI:2 as well.

60. It should also be noted that four out of the six waivers granted under XXV:5 on agricultural measures have been waivers from Article XI.^{2/}

61. In sum, it does not appear that governments rely heavily on the exceptions incorporated in XI:2 to justify their use of quantitative restrictions in the agricultural sector. These provisions set out complex requirements. They are seldom invoked. When a governments's resort to them is challenged, only rarely (if at all) is it found to have met the requirements fully.

3. Article XVI

62. Contracting parties maintaining any subsidy whether on an agricultural or a non-agricultural product are subject to the provisions of Article XVI:1 and as regards an export subsidy, XVI:2.

^{1/} See Annex I.

^{2/} See Annex II.

63. Article XVI:3 specifies that contracting parties should seek to avoid the use of subsidies on the export of primary products, but if it does grant a subsidy "which operates to increase the export of any primary product ... such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product ...". Determining what "an equitable share of world export trade" is can be a difficult matter, because trade is dynamic, and affected by multiple factors, inter alia, export availabilities, quality, standards, exchange rates, and market promotion. It should be noted that the term "primary products", as used in this provision, is defined in Ad Article XVI, Section B, sub-paragraph 2 as "any product of farm, forest or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade".

64. In addition, there is an interpretative note to XVI:3, which specifies that a system for stabilizing the domestic price or return on a primary product "shall be considered not to involve a subsidy on exports within the meaning of paragraph 3" under certain conditions, and therefore not subject to the "equitable share of world export trade" requirements. This note follows closely the wording of Article VI:7, except that in the latter "it is determined by consultation among the contracting parties substantially interested in the commodity concerned" that the stabilization system fulfils certain requirements, whereas in the case of Article XVI:3, it is the CONTRACTING PARTIES that make this determination. As with Article VI:7, there is no record of such a provision ever having been formally invoked in the GATT.

65. As regards export subsidies on a product other than a primary product, Article XVI:4, second sentence, provided for a standstill whereby contracting parties would agree not to extend the scope of subsidies existing as of 1 January 1955 nor introduce new subsidies. This standstill was originally in force until 1957 and extended several times until 1967. In the meantime, it was overtaken by a Declaration, which was made on 19 November 1960 and entered into force on 14 November 1962, giving effect to Article XVI:4. Most industrialized countries have signed this Declaration.

66. There are two main obligations under XVI:1. The first is to notify the extent, nature and effect of subsidies, including any form of income or price support, which operate directly or indirectly to increase exports or reduce imports. This obligation to notify applies to subsidies on agricultural and non-agricultural products.

¹They are: Austria, Belgium, Canada, Denmark, France, Federal Republic of Germany, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Southern Rhodesia, Sweden, Switzerland, United Kingdom, United States.

67. Over the last four years, twenty countries and the European Communities have submitted notifications on the basis of current reporting procedures adopted by the CONTRACTING PARTIES.^{1/} Eight of these countries reported that they did not maintain any measures within the meaning of Article XVI:1.^{2/} Two countries notified subsidies only in non-agricultural sectors.^{3/} One country notified a general system of tariff drawbacks.^{4/} The remaining nine countries and the European Communities notified subsidies essentially in the agricultural sector.^{5/} These subsidies included: production aids, income support, structural aids, price support guarantees, underwriting schemes, consumer price support, freight subsidies, storage aids, and export refunds. These notifications tend to imply that most subsidies are concentrated in the agricultural sector. However, it is apparent that not all contracting parties are fulfilling their obligation to notify under XVI:1. Furthermore, it has been stated that "serious gaps have been found to exist" in the responses to questionnaire L/5102; in particular, "practically no details on the situation in the industrial sector" have been provided.^{6/} It should also be noted that measures which may have the effect of export subsidies, e.g. non-commercial credit facilities are seldom notified.

68. The other obligation under XVI:1 is for a subsidizing contracting party to discuss the possibility of limiting the subsidization with the contracting party or parties concerned or with the CONTRACTING PARTIES, in any case in which it is determined that serious prejudice to the interests of a contracting party is caused or threatened by such subsidization. In this context, there have been the following discussions as regards agricultural subsidization. In 1952, Greece claimed trade damage due to lowered export prices as a result of the United States' export subsidy on sultanas.^{7/} The subsidy was reduced for the next season and the United States stated it would submit a progress report on the matter under the normal procedure of Article XVI.^{8/} In 1953, Italy claimed that United States' export subsidies on oranges and almonds prejudiced Italian trade in certain of its traditional

^{1/} BISS 9S/193 and BISS 11S/58. Latest notifications are contained in L/4622, L/4932, and L/5102 series. See also page 18 of C/W/373.

^{2/} Chile, Czechoslovakia, Denmark, Hong Kong, Luxembourg, Malawi, Romania and Tunisia.

^{3/} Belgium and Federal Republic of Germany.

^{4/} Yugoslavia.

^{5/} Austria, Australia, Canada, EC, Finland, Norway, South Africa, Sweden, Switzerland and United Kingdom. Australia, South Africa and Switzerland notified subsidies in the non-agricultural sector as well.

^{6/} SCM/8

^{7/} L/39, L/146 and Add.1, L/148

^{8/} SR.7/14, SR.8/12

European markets.^{1/} The matter was discussed periodically at GATT sessions, and the export payment on oranges^{2/} was suspended, then re-introduced in 1954, and ultimately reduced in 1955.^{2/} In 1956, Denmark requested consultation and the United States in respect of the latter's export^{3/} payment programme on poultry to the West German market under Public Law 480.^{3/} In 1957, Denmark claimed that the United Kingdom's export subsidy on eggs and cattle caused prejudice to Danish interests since the subsidization resulted in Denmark's loss of the United Kingdom market as well as having to compete with United Kingdom surpluses of these products on the European market. Moreover, Denmark noted that the United Kingdom had not previously been trading in these^{4/} products.^{4/} A Panel was appointed to examine the complaint but never met.^{5/} Following bilateral consultations, it was announced that the United Kingdom would apply licensing to exports of eggs and that licences would be granted only on unsubsidized eggs to Europe. The restrictions would be relaxed only when the risk of damage from subsidization to Danish and Dutch interests had ceased and there would be full^{6/} consultation with those governments prior to any changes in controls.^{6/}

69. Pursuant to separate recourses under Article XXIII:2 by Australia and Brazil in respect of EEC refunds on exports of sugar^{7/}, the Director-General organized in a Working Party, Article XVI:1 discussions between the EEC and the CONTRACTING PARTIES on the possibility of limiting EEC subsidization of sugar exports. The Working Party met during December-February 1981. In the Working Party, the EEC expressed the opinion that the measures taken in the field of prices and quotas, and the proposed inclusion into the EEC common market organization for sugar of a new fundamental element constituted by the total financial responsibility of producers for export refunds, gave a sufficiently large response to the request put to the EEC within the terms of Article XVI:1. In addition, the EEC offered to co-operate on price data in order to seek ways of making the world market more transparent and determining offer prices more objectively. Other participants in the Working Party, however, considered that the EEC régime for both production and subsidies available would continue as an open-ended one and consequently would remain a source of uncertainty in world sugar markets^{8/} and continue to constitute a threat of prejudice in terms of Article XVI:1.^{8/} In April 1981,

^{1/} L/122

^{2/} SR.8/12, SR.9/6, SR.10/3

^{3/} L/586, SR.11/16

^{4/} L/627

^{5/} IC/SR.31

^{6/} IC/SR.34

^{7/} See Annex I

^{8/} L/5113

the EEC approved new sugar regulations and intervention prices which were notified to the GATT.^{1/} The Council reviewed the situation in September 1981 and decided to establish a working party which will report to the Council not later than 1 March 1982.^{2/}

70. There have been a few occasions when a contracting party has complained that another contracting party is not conforming with its obligations under XVI:3. As mentioned earlier, it is often difficult to determine what is an equitable share of world export trade in a primary product. In 1958, a Panel examined a complaint by Australia that, as a result of subsidies granted by France on exports of wheat and wheat flour, inconsistently with XVI:3, Australian trade was being displaced in Ceylon, Indonesia, and Malaysia.^{3/} The Panel stated that it was reasonable to conclude that while there was no statistical definition of an "equitable" share in world exports, subsidy arrangements had contributed to a large extent to the increase in France's exports of wheat and of wheat flour, and that the present French share of world export trade, particularly in wheat flour, was more than equitable. The CONTRACTING PARTIES recommended that the French Government consider appropriate measures to avoid, in the future, that its export subsidies operate in such a manner as to create adverse effects on normal Australian exports of flour to Southeast Asian markets and elsewhere in general, and suggested bilateral consultations between the two governments prior to new contracts by French flour exporters to South East Asian markets.^{4/} The same Panel was asked to rule on a similar complaint by Australia against Italian export subsidization of wheat flour. The Panel never met since the matter was settled bilaterally, on the basis of a revised subsidy programme.^{5/}

71. In 1967, following consultations under Article XXII:1 by Malawi, joined by Canada, India and Turkey, with the United States concerning the latter's subsidy on exports of unmanufactured tobacco, a Working Party was established to conduct consultations on the matter on behalf of the CONTRACTING PARTIES under XXII:2.^{6/} The report on these consultations showed that they were inconclusive in that the United States could not give an undertaking as to whether any changes would be introduced in the export payment programme.^{7/} The programme on tobacco was terminated on 29 November 1972.^{8/}

^{1/} L/5175

^{2/} C/M/150, L/5245

^{3/} BISD 7S/46

^{4/} BISD 7S/22

^{5/} SR.13/17

^{6/} L/2856, C/M/42

^{7/} BISD 15S/121 paragraph 17

^{8/} L/3655/Add.14/Suppl.1

72. Finally as regards XVI:3, there have been two Panels established in 1976 under XXIII:2, as already mentioned, to examine separate complaints by Australia and Brazil in respect of EEC export refunds on sugar.¹ In neither case was the Panel able to conclude on the basis of evidence available to it, that the increase in Community exports of sugar during the period in question had resulted in the EEC "having more than an equitable share of world export trade in that product" in terms of XVI:3. However, both Panels did find that the Community system constituted prejudice under XVI:1. Moreover, as regards the particular case brought by Brazil, the Panel found that the EEC had not collaborated to further the principles in Article XXXVI, in conformity with the guidelines set out in Article XXXVIII.

73. In sum, there is a ban on export subsidies of non-primary products, but only certain industrialized countries subscribe to it. There are notification and consultation requirements under XVI:1 on subsidies, whether on agricultural or non-agricultural products. There appear to have been more consultations on agricultural products - which are at the same time primary products - probably because there are more problems (and more prejudice from subsidization) in this sector. The rules on subsidization on primary products are less strict - only once has there been a legal finding that a contracting party is not conforming to the obligations under XVI:3.

4. Article XX

74. Article XX provides ten separate exceptions to the General Agreement, of which a few could conceivably but not exclusively cover measures on agricultural products. There are no notification requirements under this Article. Information regarding the use of these exceptions is limited to the few occasions when they have been invoked in response to a complaint by a contracting party.

75. Article XX:(a), (c), (e) and (f) would not appear relevant to agriculture.

76. Article XX:(b) covers sanitary restrictions on animal, vegetable or fish products, but also restrictions on pharmaceuticals and insecticides, for example. Although there is no full GATT documentation on the matter, there is evidence to suggest that there exists a considerable number of standards and sanitary restrictions applied by countries in the agricultural sector, as regards perishable products as well as processed products. During the consultations on agricultural policies carried out by Committee II with contracting parties in 1959-1961, the question of sanitary and health regulations as applied in particular cases was raised from time to time.² The question of the discriminatory effects of restrictions for phyto-sanitary

^{1/} See Annex I.

^{2/} For example, consultation with Australia L/1055 paragraph 40

reasons was also raised in the context of the Group on Meat, established by the Council in February 1962.^{1/} Moreover, in 1961, during the examination under XXIII:2 of complaints filed by Uruguay against fifteen countries, a number of countries argued that certain health regulations they maintained on meat were consistent with Article XX. These countries were: Canada, Finland, Japan,^{2/} Sweden and the United States. The Panel made no legal ruling on the matter.^{2/} In 1969, France indicated in its notification of residual restrictions, that restrictions it applied on animal semen and certain live plants were consistent with Article XX:(b).^{3/}

77. Article XX:(d) speaks of customs enforcement, monopolies, and prevention of deceptive practices. This could affect all kinds of goods, agricultural and industrial, for example, tobacco, beverages, textiles, etc. The United States and the EEC circulated a proposal for an "Agreement on Measures to Discourage the Importation of Counterfeit Goods".^{4/} In the event an arrangement of this kind would come into force, it might be particularly relevant to XX:(d).

78. Article XX:(g) might have particular relevance to soil conservation, fisheries, as well as petroleum. In 1979, Japan notified prohibition on imports of whales or whale products from countries not parties to the International Convention for the Regulation of Whaling.^{5/} Norway has made a similar notification in July 1981.^{6/} Neither notification refers to Article XX but these actions could conceivably fall under XX:(g).

79. The Havana Charter contained a whole Chapter (VI) on "Intergovernmental Commodity Arrangements", but the only reference to such agreements in the General Agreement is to be found in Article XX:(h). Some non-agricultural products could qualify as commodities or primary products. In 1954, the CONTRACTING PARTIES established "the Working Party on Commodity Problems to consider specific proposals for principles and objectives to govern international action designed to overcome problems arising in the field of international trade in primary commodities and to consider the form of an international agreement in this field, the relationship between such an agreement and the General Agreement, and the relationship between the parties to such an agreement and other competent international organizations".^{7/} The Working Party made an interim report, containing a text of a draft Agreement

^{1/} CG/3, Submission by Federation of Rhodesia and Nyasaland

^{2/} L/1923, See Annex I

^{3/} L/3212/Add.12

^{4/} L/4817

^{5/} L/4814

^{6/} L/5165

^{7/} L/301

to govern international action in the field of commodity problems.¹ The negotiation of such an Agreement was never pursued. Attached to the 1967 Geneva Protocol following the Kennedy Round, was a Memorandum signed by Argentina, Australia, Canada, Denmark, Finland, Japan, Norway, Sweden, Switzerland, the United Kingdom, the United States, and the European Economic Community and its member states, by which they agreed to negotiate a world grains arrangement. The memorandum set out the basic elements for such a negotiation.² The International Grains Arrangement, consisting of a Wheat Trade Convention, and a Food Aid Convention, was negotiated under the auspices of the International Wheat Council in co-operation with the FAO and UNCTAD in 1967. Its replacement, the International Wheat Agreement was concluded in 1971. There have been commodity agreements, inter alia, on coffee, cocoa, olive oil, rubber, tin and sugar. In order for an Intergovernmental Commodity Agreement to be covered by Article XX(h) it must either: (a) conform to criteria submitted to the CONTRACTING PARTIES and not disapproved by them (as indicated earlier it was not possible for the latter to agree on criteria); (b) be itself submitted and not disapproved or; (c) conform to the principles approved by the Economic and Social Council in its Resolution 30(IV) of 28 March 1947.³ No contracting party has ever formally complained that a measure taken in pursuance of a commodity agreement was inconsistent with the General Agreement.

80. Article XX(i) and (j) could conceivably apply to agricultural products but also extend to industrial products as well. The provisions of XX(j) were particularly relevant to the immediate post-war trade situation. In 1949, Czechoslovakia complained that export restrictions applied by the United States discriminated against Czechoslovakia, especially vis-à-vis OEEC countries. The United States stated that these measures were consistent with Article XXI as well as Article XX which required "that any controls exercised to promote the distribution of commodities in short supply shall be consistent with any multilateral arrangements directed to an equitable international distribution of such products".⁴

¹L/320

²BISD 15S/18-24

³UN ECOSOC Resolution 30, UN document E/437. This resolution urged members of the United Nations to adopt as a general guide in intergovernmental consultation or action with respect to commodity problems, the principles laid down in the chapter relating to intergovernmental commodity agreements contained in the London draft of the Charter for an International Trade Organization.

⁴CP.3/38

C. Articles not relating to agriculture

81. A few articles of the GATT do not relate to agriculture. Article IV applies specifically to cinematograph films. Articles XXVI, XXIX, XXX, XXXI, XXXII, XXXIV and XXXV deal with administrative matters concerning the General Agreement.

Chapter II. Multilateral Arrangements of the GATT

82. This section deals with the multilateral arrangements or agreements existing under the GATT, and how they apply to agriculture. With one exception¹, all of the arrangements were concluded pursuant to the Multilateral Trade Negotiations.²

Section A. Arrangements relating specifically to agriculture

83. There are two multilateral arrangements operating under the GATT which deal exclusively with agricultural products, one on dairy and the other on bovine meat.

1. International Dairy Arrangement

84. The objectives of this Arrangement are to achieve the expansion and ever greater liberalization of world trade in dairy products under market conditions as stable as possible, on the basis of mutual benefit to exporting and importing countries, and to further the economic and social development of developing countries.

85. The Arrangement in general covers all dairy products: fresh or preserved milk and cream, butter, cheese, curd, and casein. The product coverage may extend to other products incorporating dairy products if it is deemed necessary. There are notification and consultation procedures and requirements set out under the Arrangement. An International Dairy Products Council reviews the functioning of the Arrangement and evaluates the situation in, and future outlook for, the world dairy market. As regards food aid, participants agree within the limits of their possibilities, to furnish dairy products, to developing countries as food aid; and to avoid harmful interference of food aid or concessional transactions with normal patterns of production, consumption and trade.

¹ Arrangement Regarding International Trade in Textiles

² See L/4914/Rev.5 and Add.1-2 for status of acceptances of the arrangements and agreements.

86. There are three Protocols annexed to the Arrangement which lay down specific provisions, including minimum prices for international trade in certain milk powders, milk fats, and certain cheeses. There are certain derogations from these minimum prices; for example, as regards "exports donated to developing countries or destined for relief purposes or food-related development purposes or welfare purposes in developing countries" and as regards certain powders for animal feed.

87. The International Dairy Arrangement is in force for three years as of 1 January 1980 and can be extended for further periods of three years at a time, unless the International Dairy Products Council decides otherwise.

88. The International Dairy Arrangement superseded the Arrangement Concerning Certain Dairy Products agreed to in 1970, which fixed minimum export prices for skimmed milk powder, as well as the 1973 Protocol Relating to Milk Fat, which made similar arrangements for milk fats such as butter oil. These two instruments were the outcome of consultations among most of the main participants in international trade in dairy products held within working parties established under Article XXII:2 which met during the period 1967-1973.^{1/} The International Dairy Arrangement also superseded the Gentleman's Agreement on Export of Whole Milk Powder which was concluded in 1963 under the auspices of the OECD.

2. Arrangement Regarding Bovine Meat

89. This Arrangement aims to promote expansion, liberalization and stabilization of international trade in bovine meat and cattle. The Arrangement applies to live bovine animals and meat thereof. The product coverage may be extended in order to accomplish the objectives and provisions of the Arrangement. An International Meat Council reviews the functioning of the Arrangement, evaluates the world supply and demand situation and outlook for meat, and provides an opportunity for regular consultation on all matters affecting international trade in bovine meat. As in the International Dairy Arrangement, there are information and consultation procedures and requirements set out. However, there are no economic provisions (minimum prices) in the Arrangement Regarding Bovine Meat.

90. The Arrangement Regarding Bovine Meat superseded the International Meat Consultative Group which was established in 1975 to provide "continuing opportunities for appropriate intergovernmental consultations on international trade in meat and cattle".^{2/} It should be remembered that the period 1974-1976 was one of world oversupply in bovine meat. Major importing

^{1/} See Annex I

^{2/} C/W/255, C/M/103

countries resorted to emergency actions to restrict imports. Under Article XXII:1, bilateral consultations took place between Japan and Australia, and plurilateral consultations took place between the EEC with its principal suppliers during this period.¹

Section B. Arrangements with no Relation to Agriculture

1. Agreement on Trade in Civil Aircraft
2. Arrangement Regarding International Trade in Textiles

91. This Arrangement regulates international trade in textile manufactured products of cotton, wool, man-made fibres or blends thereof. Measures taken under the provisions of this Arrangement may affect the market situation for cotton and wool, which are not included as agricultural products for purposes of this paper.

Section C. Other Arrangements

92. This section does not attempt to outline the objectives or provisions of the arrangements or codes concerned, but rather focuses only on those provisions or aspects thereof which pertain to the issue of how each arrangement or code applies to agriculture. Since these codes have only recently been implemented, the observations that follow must as a consequence be limited to an analysis of their texts.

1. Agreement on Implementation of Article VII (Customs Valuation Code)

93. This Agreement and its accompanying Protocol set rules on customs valuation of imported goods. The term "goods" is not specifically defined but there is nothing to suggest that agricultural products would not be covered by the terms. The term "produced" which is utilized throughout the Agreement in conjunction with "goods" is defined under Article 15:1(c) as including "grown, manufactured and mined". The Code is applicable to agriculture, just as Article VII is as well.

2. Agreement on Import Licensing Procedures

94. The Agreement applies to the procedures for licensing used in trade, and does not mention import licences for agricultural or industrial products specifically. The Agreement is applicable to agriculture and perhaps particularly relevant thereto in light of the incidence of licensing in that sector.

¹C/M/99-102, C/M/109, C/M/112-113

3. Agreement on Technical Barriers to Trade

95. Article 1.1 of this Agreement specifies that "all products, including industrial and agricultural products, shall be subject to the provisions of this Agreement". There has been discussion within the Committee on Technical Barriers to Trade as to whether processes and production methods are subject to the provisions of the Code. There is no consensus on this matter, however, all members agree that the dispute settlement procedures of the Code "can be invoked in cases where a Party considers that obligations under this Agreement are being circumvented by the drafting of requirements in terms of processes and production methods rather than in terms of characteristics of products" (Article 14.25). This issue would have particular relevance to agriculture, it would seem, but as well to other areas as far afield as pharmaceuticals and nuclear reactors.

4. Agreement on Government Procurement

96. Article I:1(a) of this Agreement specified that it applies to "any law, regulation, procedure and practice regarding the procurement of products by the entities subject to this Agreement. This includes services incidental to the supply of products if the value of these incidental services does not exceed that of the products themselves, but not service contracts per se".

97. Nothing in the provisions of this Agreement per se exclude agriculture. However, the determining test of applicability is whether purchases of agricultural products are included in the lists of entities annexed to the Agreement and to whom the provisions apply. These lists are established as a result of negotiation between participants. An examination of the entities which currently figure in the Annex indicate that in two countries, Canada and the United States, purchases of agricultural supplies by the Departments of Defense are covered by the Agreement. Both the United States and the European Economic Community have specified that "this Agreement shall not apply to procurement by entities falling under this Agreement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes". Moreover, the EEC has also specified that: "This Agreement does not apply to procurement by entities otherwise falling under this Agreement made on behalf of and under the specific procedure of an international organization."

5. Agreement on Implementation of Article VI (Anti-Dumping Code)

98. This Agreement makes no specific reference to agriculture. It interprets the provisions of Article VI and elaborates rules for their application. Under Chapter I, Section B.1., reference has been made to the exception for certain stabilization systems on a primary commodity contained in VI:7. The other provisions of Article VI, namely 1-6 do apply to agriculture and industry alike. Accordingly, one can say that for all practical purposes, the Anti-Dumping Code applies to agriculture.

6. Agreement on Interpretation and Application of Articles VI, XVI and XXIII (Subsidies Code)

99. Just as Article XVI contains specific provisions for export subsidies on primary products, this Agreement which, inter alia, interprets that Article makes special reference to primary products by interpreting XVI:3. Article 10:2 of the Agreement attempts to give more precision to some of the terms used in XVI:3 by specifying that:

"(a) 'more than an equitable share of world export trade' shall include any case in which the effect of an export subsidy granted by a signatory is to displace the exports of another signatory bearing in mind the developments on world markets;

(b) with regard to new markets traditional patterns of supply of the product concerned to the world market, region or country, in which the new market is situated shall be taken into account in determining 'equitable share of world export trade'.

(c) 'a previous representative period' shall normally be the three most recent calendar years in which normal market conditions existed."

In addition, Article 10.3 states that:

"Signatories further agree not to grant export subsidies on exports of certain primary products to a particular market in a manner which results in prices materially below those of other suppliers to the same market."

100. The Agreement provides procedures for dispute settlement and consultation. This is without prejudice to recourse to the normal procedures of the GATT under Articles XXII and XXIII. The United States has held consultations with the EEC concerning its export subsidies on wheat flour, within the context of Article 12 of the Agreement. A panel has been established, in accordance with Article 13, to examine this matter. Previously the two parties have held consultations on the matter under Article XXII:1 of the General Agreement.^{1/}

Chapter III. Other Activities of the GATT Relating to Agriculture

101. This chapter deals with certain other activities of the GATT relating to agriculture, which were not dealt with in the previous chapters, in particular discussions for a multilateral framework for agriculture.

A. Resolutions of the GATT relating to agriculture

102. There have been at least two resolutions by the CONTRACTING PARTIES of particular relevance to agriculture. Both were decided on 4 March 1955. The first concerns the disposal of agricultural surpluses and reads as follows:

^{1/}L/5231, L/5014, SCM/M/9

"... THE CONTRACTING PARTIES

Consider that when arranging the disposal of surplus agricultural products in world trade contracting parties should undertake a procedure of consultation with the principal suppliers of those products and other interested contracting parties, which would contribute to the orderly liquidation of such surpluses, including where practicable disposals designed to expand consumption of the products, and to the avoidance of prejudice to the interests of other contracting parties, and that they should give sympathetic consideration to the views expressed by other contracting parties in the course of such consultations".¹

103. The other resolution concerns the liquidation of strategic stocks of primary products and reads:

"THE CONTRACTING PARTIES ...

Recommend

1. That, whenever practicable, any contracting party intending to liquidate a substantial quantity of such stocks should give at least forty-five days prior notice of such intention,
2. That a contracting party, intending to liquidate and giving notice in accordance with paragraph 1, should consult fully with any contracting party which considers itself substantially interested and requests such consultations, with a view to avoiding or minimizing substantial injury to the economic interests of that contracting party and undue disruption of the markets for the product concerned and should give full and sympathetic consideration to the views expressed by such other interested contracting parties."²

104. During the period 1961-1968, some contracting parties submitted annual reports on their individual programmes of surplus disposal of commodities,³ particularly Australia, Canada, the United Kingdom and the United States. Thereafter, only Australia has notified in respect of actions disposing of strategic stocks of hemp, rubber, and cotton.⁴

B. Agriculture Committees in the GATT

1. Committee II

105. In 1959, a committee on agricultural protection, "Committee II", was established:

¹ BISD 3S/50

² BISD 3S/51

³ C/M/4, L/1550 and Add.1, L/1860, L/2152, L/2363, L/2605, L/2889 and Add.1, L/3105 and Add.1

⁴ L/3234, L/3373, L/3432, L/4018, L/4554

"(a) To assemble, in consultation with other competent international organizations, and in particular with the Food and Agriculture Organization, data regarding the use by contracting parties of non-tariff measures for the protection of agriculture or in support of incomes of agricultural producers, and the agricultural policies from which these measures derive. On the basis of such data and in consultation with the contracting parties concerned, to examine the effects of these measures adopted by individual contracting parties on international trade as a whole, and in particular on the trade in products entering importantly into international trade.

(b) To consider, in the light of such data, the extent to which the existing rules of GATT and their application have proved inadequate to promote the expansion of international trade on a reciprocal and mutually advantageous basis as contemplated in Article I, and to report on the steps that might appropriately be taken in the circumstances.

(c) To suggest procedures for further consultations between all contracting parties on agricultural policies as they affect international trade."

106. In its first stage of work the Committee proceeded to collect the data mentioned under (a) above and to carry out consultations with countries on their respective general agricultural policies as well as on policies in relation to specific commodities entering importantly into world trade (dairy products, meat, cereals, sugar, vegetable oils, and fish).¹

107. The Committee examined agricultural policy objectives, structural measures, measures affecting income and price (support prices, deficiency systems, stabilization funds) quantitative restrictions, and aid to exports. It also appointed a small group to study the possibilities of measuring agricultural protection.²

108. Next, the Committee made an analysis of the principal factors influencing the volume, value and direction of trade in the commodities mentioned above. Among its general conclusions as a result of its studies, the Committee stated that non-tariff devices had seriously affected international trade in the products considered, and frustrated benefits which many countries expected to receive as a result of the obligations arising from the General Agreement. It also concluded that a moderation of agricultural protection in both importing and exporting countries was desirable.³

2. Agriculture Committee

109. Following the Kennedy Round, the Agriculture Committee was established in 1967:

¹ BISD 8S/121-131

² BISD 9S/110-120

³ BISD 10S/27, 135-167; C/M/10 (Groups on Cereals and on Meat)

"To examine the problems in the agricultural sector, and to explore the opportunities for making progress in the attainment of the objectives of the General Agreement in the agricultural field. The examination would cover all agricultural products important in international trade. This examination should prepare the way for subsequent consideration of positive solutions which could be mutually accepted by all contracting parties concerned. It would bear on all relevant elements of agricultural trade and protection policies."¹

110. The first stage of this Committee's work programme was the assembly of documentation relating to eight product groups. The second stage (1970) was to identify the principal problems affecting agricultural trade and production and to seek mutually acceptable solutions to these problems.² For this purpose the Committee carried out its work in four groups: measures which affect exports (Group 1), measures which affect imports (Group 2), measures which affect production (Group 3), and other relevant measures (Group 4). In 1972, the Agriculture Committee established a Working Group "to examine the various techniques and modalities for future negotiations as they relate to agriculture".³ This Group produced a fairly comprehensive survey of techniques and modalities for dealing with the principal problems of trade in agricultural commodities.⁴

3. Multilateral agricultural framework

111. It was not possible to finalize work within the Tokyo Round on a new multilateral framework in the GATT for the whole agricultural sector. In November 1979, in the light of the discussion and recommendation in the Trade Negotiations Committee to the CONTRACTING PARTIES, to further develop active co-operation in the agricultural sector, the CONTRACTING PARTIES requested the Director-General to consult with interested delegations on this matter.⁵ The Director-General's report on these consultations stated that the conclusion had emerged that there was a need for a forum where officials responsible for agricultural trade policy can meet to address themselves frankly and openly, and in a substantive manner, to issues affecting agricultural trade. A further conclusion was that the Consultative Group of Eighteen provided a forum of this kind. In light of the foregoing, the Director-General proposed that the CONTRACTING PARTIES request the Consultative Group of Eighteen to provide adequate additional time in its future meetings, for the review of matters affecting agricultural trade and

¹ BISD 15S/70, 73, 74

² L/3320

³ COM.AG/24

⁴ COM.AG/25

⁵ MTN/27, L/4884/Add.1/Annex VI, BISD 26S/219

for the receipt of information on activities in the agricultural sector which the secretariat has followed"^{1/} The CONTRACTING PARTIES approved this proposal on 26 November 1980.^{2/} Among the first actions, the Consultative Group of Eighteen has taken to carry out its work on agriculture, is to request the secretariat to prepare this study.

Chapter IV. Summing-up

112. In conformity with the mandate given by the Consultative Group of Eighteen, this paper has sought to analyse the rules of the GATT, including the Codes, as they applied to agriculture, highlighting any differences in obligations as between agriculture and industry. The paper reveals that there are differences between agricultural and industrial trade with respect to certain rules of the GATT and how they are applied. The differences can be categorized as follows:

1. Special references to and exceptions for agriculture drafted in the provisions of the General Agreement itself (e.g. Articles XI:2, XVI:3 and XX:(b) and (h));
2. Derogations from GATT obligations, granted through waivers, or included in the provisions of Protocols of Provisional Application or Accession (e.g. United States Agricultural Adjustment Act waiver, Protocol of Accession of Switzerland, grandfather clauses);
3. Lack of observance or application of certain provisions of the GATT (e.g. low level of tariff bindings - limited use of Article II, and residual restrictions - lack of observance of Article XI);
4. Divergent interpretations of certain provisions of the GATT (e.g. Articles III, XVI, and XXIV);
5. Measures not expressly provided for in the General Agreement (e.g. variable levies, non-commercial financing facilities, voluntary restraint agreements, long-term arrangements).

113. In this connexion, note should be taken of, inter-alia, the following two factors. The first is that the information on which this paper has been based is limited to those governmental measures that have been reported to or raised in the GATT by contracting parties. The reality of agricultural trade policy may or may not be much different from this visible protection. Despite recent improvements in the mechanisms concerning notification, consultation, dispute settlement and surveillance in the GATT, the agricultural trade sector is not completely transparent.

^{1/} L/5077

^{2/} SR.36/4 p.58

114. The second factor that must also be taken into account is that the standard, against which the treatment of agricultural trade is to be compared, is not a perfect one. It has been noted already that many Articles of the General Agreement, which do not distinguish between agricultural and non-agricultural trade, are themselves exceptions to other GATT Articles, and that, in addition, certain provisions within some of the Articles are exceptions to other provisions. The General Agreement also contains exceptions for certain non-agricultural products (e.g. films), and measures involving non-agricultural products may be covered under exceptions regarded as "agricultural", (e.g. Articles XVI:3 and XX:(b) and (h)). Derogations from GATT obligations have been granted through waivers and Protocols of Provisional Application or Accession, on measures affecting mostly non-agricultural products. Most importantly, GATT rules are not always observed in the non-agricultural sector as well. A large proportion of trade in textiles and clothing has been regulated by special arrangements involving departure from the rules of GATT. Sectoral difficulties have been encountered in trade in steel, automobiles, shoes, consumer electronic products, and certain petrochemicals. Many of these have been handled through bilateral agreements or other actions falling outside the scope of the GATT rules.^{1/}

^{1/} CG.18/W/61 p.4

ANNEX I

List of Certain Actions under Articles XXII or XXIII:2
Relating to Agriculture

A. Multilateral consultations held under XXII (or XXV:1):

Marketing of butter in the United Kingdom

- Article XXV:1 consultations (BISD 10S/74,77)
- Article XXII:1 consultations (C/M/8) 1961
- Working Group (L/1720) 1962

United States subsidy on unmanufactured tobacco

- Working Party under XXII:2 (BISD 15S/116) 1967

Poultry

- Working Party under XXII:2 (C/M/45) 1968

Dairy Products

- Working Party under XXII:2 (BISD 17S/59) 1967-1970
- Arrangement Concerning Certain Dairy Products (BISD 17S/5) 1970
- Protocol Relating to Milk Fat (BISD 20S/11) 1973

B. Panels and other actions under XXIII:2:

France/Brazil internal taxes on, inter alia, spirituous beverages and manufactured tobacco (BISD II/181, 186) 1949

Norway/West Germany duties on sardines (BISD 1S/30) 1952

Netherlands suspension of obligations/United States import restrictions on dairy products (BISD 1S/31, 62- BISD 7S/23, 128) 1952

Benelux/West Germany duties on starch and potato flour (BISD 3S/77) 1955

Australia/France export subsidies on wheat flour (BISD 7S/46) 1958

Uruguay/15 countries restrictions on, inter alia, certain agricultural products (L/1923, BISD 11S/56) 1962 and (L/2074, L/2778, BISD 13S/35) 1965

Brazil/United Kingdom preferences on bananas (L/1749) 1962

United States/Canada duty values on potatoes (BISD 11S/55, 88) 1962

United States/France residual restrictions on, inter alia, canned fruit (L/1921, BISD 11S/55) 1962 and (L/3744, C/M/80) 1972

United States/EEC poultry unbindings (L/2088) 1963^{1/}
United States/United Kingdom dollar area quotas on bananas, grapefruit,
rum and cigars (BISD 20S/230, 236) 1973
United States/Canada import quotas on eggs (BISD 23S/91) 1975^{2/}
United States/EEC measures on animal feed proteins (BISD 25S/49) 1978
United States/EEC minimum import price and licensing system on certain
processed fruits and vegetables (BISD 25S/68) 1978
Chile/EEC export refunds on barley malt (C/M/125) 1978
Australia/EEC export refunds on sugar (BISD 26S/290) 1979
Brazil/EEC export refunds on sugar (BISD 27S/69) 1980
Chile/EEC suspension of apple imports (BISD 27S/98) 1980
Canada/EEC beef quota (L/5099) 1981
Brazil/Spain tariffs on unroasted coffee (L/5135) 1981
United States/Japan restraints on manufactured tobacco (L/5140) 1981
United States/Spain measures concerning domestic sale of soyabean oil
(L/5142) 1981
United States/United Kingdom sanitary restrictions on poultry (L/5155)
1981
Canada/United States restrictions on tuna fish (L/5198) 1981

^{1/} Although not a complaint, this item is included under XXIII:2 because
it involved conciliation.

^{2/} Included because advisory ruling was sought from Working Party.

ANNEX II

Article XXV:5 Waivers on Agriculture

Chapter I Section A.8. already discussed waivers under XXV:5 in their global aspect. This annex provides details on those waivers granted under XXV:5 relating specifically to agriculture.

In a decision of 24 October 1953, Article I:1 and 4(b) were waived to the extent necessary to permit Australia to grant or continue to accord duty-free treatment to unspecified primary products of Papua New Guinea.^{1/} The waiver was extended on 25 November 1955 to include certain forestry products. In June 1981 Australia notified that the waiver had become redundant and without further effect in light of the Papua New Guinea/Australia Trade and Commercial Relations Agreement, which entered into force in February 1977,^{2/} and which has been submitted as a free-trade area under Article XXIV.^{2/}

In a decision of 5 March 1955, the obligations of the United States under the provisions of Articles II and XI were waived to the extent necessary to prevent a conflict with such provisions in the case of action required to be taken by that Government under Section 22 of the Agricultural Adjustment Act as amended. There are several conditions attached to the waiver, particularly as regards notification and consultation procedures. Also it is stated that: "The United States will remove or relax each restriction permitted under this waiver as soon as it finds that the circumstances requiring such restriction no longer exist or have changed so as no longer to require its imposition in its existing form." The United States is committed to submit annual reports on the operation of Section 22^{3/}, on the basis of which the CONTRACTING PARTIES make an annual review of the action taken under the decision. According to the last annual report by the United States, import restrictions pursuant to Section 22 were in effect on cotton of specified lengths, cotton waste and certain cotton products, peanuts, certain cheese, chocolate crumb, and sugar.^{4/} The United States Section 22 waiver is the only agricultural waiver in force at present.

On 3 December 1955, Belgium's obligations under Article XI were waived to the extent necessary to allow the maintenance of restrictions applied to imports of several products in the livestock, meat, dairy, fish, fruit and vegetable, egg, grain sectors as well as sugar beet, chicory roots and hops.

^{1/} BISD 2S/18, 19

^{2/} L/5138

^{3/} BISD 3S/32, 38

^{4/} L/5084, C/M/146

The waiver was granted for a period of five years. It could be extended until 3 December 1962 if certain remaining restrictions had not been eliminated by reason of exceptional circumstances. "Exceptional circumstances" referred to difficulties that might be expected in the harmonization of agricultural policies of the members of the Benelux Customs Union.^{1/} During the November 1962 Working Party on the Belgian waiver, Belgium provided a list of items initially covered by the 1955 waiver, indicating that restrictions remained on foals for slaughter, foal flesh, certain deep sea fish in fillets, fresh cut flowers, certain fruits and vegetables, certain grains, sugar beet, chicory roots and hops.^{2/} Thereafter, most of the items were incorporated into the various common market organizations as they were established within the EEC.^{3/}

On 3 December 1955, Luxembourg was granted a waiver from Article XI to the extent necessary to permit the maintenance of restrictions on bovine cattle and swine and meat thereof, certain milk products, eggs, potatoes, apples,^{4/} wheat and rye and products thereof, pasta, and certain bakers' wares.^{5/} The waiver was reviewed in 1960 and 1966.^{6/} With effect from 1 May 1970, Luxembourg ceased to have recourse to the provisions of the waiver.^{7/} As in the case of Belgium, the products in question were incorporated into the common market organization of the EEC.^{8/}

At their twelfth session in 1958 the CONTRACTING PARTIES, on the basis of the findings of the International Monetary Fund regarding monetary reserves and balance of payments of the Federal Republic of Germany, decided that the Federal Republic was no longer entitled to maintain import restrictions under Article XII.^{9/} By a decision of 30 May 1959, "notwithstanding the provisions of Article XI" Germany was allowed to maintain restrictions on around a hundred agricultural products, subject to certain conditions, especially as regards consultation and non-discrimination

^{1/} BISD 4S/22, 26

^{2/} L/1928, and Add.1

^{3/} According to L/5265 there remain seasonal restrictions on early potatoes, tomatoes and fresh table grapes.

^{4/} BISD 4S/27, 29

^{5/} L/1382

^{6/} L/2625

^{7/} L/3452

^{8/} L/5265 Luxembourg maintains the same seasonal restrictions as are indicated for Belgium. However the products affected were never covered under the Luxembourg waiver.

^{9/} BISD 6S/55-68

among supplying countries.^{1/} The waiver was granted for three years and expired in November 1962. The Working Party established to carry out consultations in 1962 with Germany concerning its import restrictions noted, inter alia, that a significant number of items, both industrial and agricultural products, would remain subject to restrictions at the expiry of the waiver, and that certain restrictions would be removed when the^{2/} Common Agricultural Policy of the EEC for those items came into operation.^{2/}

By a decision on 19 November 1960, Article I:1 was waived for the period ending 31 December 1965 to the extent necessary to permit Italy to grant duty-free treatment on bananas, banana flour, oilseeds and oleaginous fruit, prepared or preserved, fish,^{3/} leather, and cotton not carded or combed, originating from Somalia.^{3/} In 1966, the waiver was further extended until 31 December 1967 as regards bananas, prepared or preserved meat, and prepared or preserved fish. In addition, Italy was allowed to apply a lower consumption tax to bananas from Somalia than from other origins.^{4/} The waiver was again extended in 1967 until 30 June 1968 as regards the meat and fish products. Also Italy was permitted to apply the lower consumption tax on bananas until 31 December 1969.^{5/} The waiver on the latter was again extended until 31 December 1970.^{6/} The preferential fiscal system was abolished in October 1980.^{7/}

^{1/} BISD 8S/31-50

^{2/} BISD 11S/222

^{3/} BISD 9S/40-42

^{4/} BISD 14S/34-35

^{5/} BISD 15S/87-89

^{6/} BISD 17S/27-28

^{7/} L/3480