COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 514 final/ANNEX III

Brussels, 10th October 1979

GATT MULTILATERAL TRADE NEGOTIATIONS

(Communication from the Commission to the Council)

FINAL REPORT ON THE GATT MULTILATERAL TRADE NEGOTIATIONS IN GENEVA (TOKYO ROUND) AND PROPOSAL FOR COUNCIL DECISION

ANNEX III

ANNEX 3 to COM (79) 514 final

Summary

1. Document relating to negotiations on subsidies/countervailing duties
(Part III, Section 7 of Report)

- Text of Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (GLI/271)

2. Document relating to negotiations on anti-dumping
(Part III, Section 8 of Report)

- Text of Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (MTN/NTM/W/232 Rev. 1 as amended by W/258)

3. Document relating to negotiations on licensing
(Part III, Section 9 of report)

- Text of Agreement on import licensing procedures (GLI/268)

4. Documents relating to negotiations on customs valuation
(Part III, Section 10 of Report)

- Text of Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (MTN/NTM/W/229 Rev. 1 as amended by MTN/NTM/W/252)
- An exchange of letters to this Agreement (letter A.7) *

5. Document relating to negotiations on counterfeit
(Part III, Section 11 of Report)

- Text of Agreement on measures to discourage the importation of counterfeit goods (L/4817)

6. Document relating to negotiations in the Framework Group
(Part III, Section 12 of Report)

- Texts prepared by the Framework Group (MTN/FR/6)

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* This reference is to the list of letters set out in Part II of Report, pages 30-34

ACCORD GÉNÉRAL
SUR LES TARIFS DOUANIERS
ET LE COMMERCE

GENERAL AGREEMENT
ON TARIFFS AND TRADE

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27 juillet 1979

ACCORD RELATIF A L'INTERPRETATION ET A L'APPLICATION
DES ARTICLES VI, XVI ET XXIII DE L'ACCORD GENERAL
SUR LES TARIFS DOUANIERS ET LE COMMERCE

ENVOI DE COPIES CERTIFIEES CONFORMES

..... J'ai l'honneur de vous remettre ci-joint, en application du paragraphe 12 de l'article 19 de l'Accord relatif à l'interprétation et à l'application des articles VI, XVI et XXIII de l'Accord général sur les tarifs douaniers et le commerce, une copie certifiée conforme dudit accord, fait à Genève le 12 avril 1979.

Olivier Long
Directeur général

GU/271

AGREEMENT ON INTERPRETATION AND APPLICATION OF ARTICLES VI, XVI AND XXIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD RELATIF A L'INTERPRETATION ET A L'APPLICATION DES ARTICLES VI, XVI ET XXIII DE L'ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

ACUERDO RELATIVO A LA INTERPRETACIÓN Y APLICACIÓN DE LOS ARTÍCULOS VI, XVI Y XXIII DEL ACUERDO GENERAL SOBRE ARANCELES ADUANEROS Y COMERCIO

GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES ADUANEROS Y COMERCIO

12 April 1979
Geneva

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AGREEMENT ON INTERPRETATION AND APPLICATION OF ARTICLES VI, XVI AND XXIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The signatories[1] to this Agreement,

Noting that Ministers on 12-14 September 1973 agreed that the Multilateral Trade Negotiations should, inter alia, reduce or eliminate the trade restricting or distorting effects of non-tariff measures, and bring such measures under more effective international discipline,

Recognizing that subsidies are used by governments to promote important objectives of national policy,

Recognizing also that subsidies may have harmful effects on trade and production,

Recognizing that the emphasis of this Agreement should be on the effects of subsidies and that these effects are to be assessed in giving due account to the internal economic situation of the signatories concerned as well as to the state of international economic and monetary relations,

Desiring to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory to this Agreement, and that countervailing measures do not unjustifiably impede international trade, and that relief is made available to producers adversely affected by the use of subsidies within an agreed international framework of rights and obligations,

Taking into account the particular trade, development and financial needs of developing countries,

Desiring to apply fully and to interpret the provisions of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade[2] (hereinafter referred to as "General Agreement" or "GATT") only with respect to subsidies and countervailing measures and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation,

Desiring to provide for the speedy, effective and equitable resolution of disputes arising under this Agreement,

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[1]The term "signatories" is hereinafter used to mean Parties to this Agreement.

[2]Wherever in this Agreement there is reference to "the terms of this Agreement" or the "articles" or "provisions of this Agreement" it shall be taken to mean, as the context requires, the provisions of the General Agreement as interpreted and applied by this Agreement.

Have agreed as follows:

PART I

Article 1 - Application of Article VI of the General Agreement[3]

Signatories shall take all necessary steps to ensure that the imposition of a countervailing duty[4] on any product of the territory of any signatory imported into the territory of another signatory is in accordance with the provisions of Article VI of the General Agreement and the terms of this Agreement.

Article 2 - Domestic procedures and related matters

1. Countervailing duties may only be imposed pursuant to investigations initiated[5] and conducted in accordance with the provisions of this Article. An investigation to determine the existence, degree and effect of any alleged subsidy shall normally be initiated upon a written request by or on behalf of the industry affected. The request shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of the General Agreement as interpreted by this Agreement[6] and (c) a causal link between the subsidized imports and the alleged

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[3]The provisions of both Part I and Part II of this Agreement may be invoked in parallel: however, with regard to the effects of a particular subsidy in the domestic market of the importing country, only one form of relief (either a countervailing duty or an authorized countermeasure) shall be available.

[4]The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of off-setting any bounty or subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in Article VI:3 of the General Agreement.

[5]The term "initiated" as used hereinafter means procedural action by which a signatory formally commences an investigation as provided in paragraph 3 of this Article.

[6]Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of Article 6.

injury. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a) to (c) above.

2. Each signatory shall notify the Committee on Subsidies and Countervailing Measures[7] (a) which of its authorities are competent to initiate and conduct investigations referred to in this Article and (b) its domestic procedures governing the initiation and conduct of such investigations.

3. When the investigating authorities are satisfied that there is sufficient evidence to justify initiating an investigation, the signatory or signatories, the products of which are subject to such investigation and the exporters and importers known to the investigating authorities to have an interest therein and the complainants shall be notified and a public notice shall be given. In determining whether to initiate an investigation, the investigating authorities should take into account the position adopted by the affiliates of a complainant party[8] which are resident in the territory of another signatory.

4. Upon initiation of an investigation and thereafter, the evidence of both a subsidy and injury caused thereby should be considered simultaneously. In any event the evidence of both the existence of subsidy and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation and (b) thereafter during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5. The public notice referred to in paragraph 3 above shall describe the subsidy practice or practices to be investigated. Each signatory shall ensure that the investigating authorities afford all interested signatories and all interested parties[9] a reasonable opportunity, upon request, to see all relevant information that is not confidential (as indicated in paragraphs 6 and 7 below) and that is used by the investigating authorities in the investigation, and to present in writing, and upon justification orally, their views to the investigating authorities.

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[7] As established in Part V of this Agreement and hereinafter referred to as "the Committee".

[8] For the purpose of this Agreement "party" means any natural or juridical person resident in the territory of any signatory.

[9] Any "interested signatory" or "interested party" shall refer to a signatory or a party economically affected by the subsidy in question.

6. Any information which is by nature confidential or which is provided on a confidential basis by parties to an investigation shall, upon cause shown, be treated as such by the investigating authorities. Such information shall not be disclosed without specific permission of the party submitting it.[10] Parties providing confidential information may be requested to furnish non-confidential summaries thereof. In the event such parties indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible must be provided.

7. However, if the investigating authorities find that a request for confidentiality is not warranted and if the party requesting confidentiality is unwilling to disclose the information, such authorities may disregard such information unless it can otherwise be demonstrated to their satisfaction that the information is correct.[11]

8. The investigating authorities may carry out investigations in the territory of other signatories as required, provided they have notified in good time the signatory in question and unless the latter objects to the investigation. Further, the investigating authorities may carry out investigations on the premises of a firm and may examine the records of a firm if (a) the firm so agrees and (b) the signatory in question is notified and does not object.

9. In cases in which any interested party or signatory refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final findings[12], affirmative or negative, may be made on the basis of the facts available.

10. The procedures set out above are not intended to prevent the authorities of a signatory from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

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[10] Signatories are aware that in the territory of certain signatories disclosure pursuant to a narrowly-drawn protective order may be required.

[11] Signatories agree that requests for confidentiality should not be arbitrarily rejected.

[12] Because of different terms used under different systems in various countries the term "finding" is hereinafter used to mean a formal decision or determination.

11. In cases where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the provisions of this Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the country of importation.

12. An investigation shall be terminated when the investigating authorities are satisfied either that no subsidy exists or that the effect of the alleged subsidy on the industry is not such as to cause injury.

13. An investigation shall not hinder the procedures of customs clearance.

14. Investigations shall, except in special circumstances, be concluded within one year after their initiation.

15. Public notice shall be given of any preliminary or final finding whether affirmative or negative and of the revocation of a finding. In the case of an affirmative finding each such notice shall set forth the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons and basis therefor. In the case of a negative finding each notice shall set forth at least the basic conclusions and a summary of the reasons therefor. All notices of finding shall be forwarded to the signatory or signatories the products of which are subject to such finding and to the exporters known to have an interest therein.

16. Signatories shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports will be available in the GATT secretariat for inspection by government representatives. The signatories shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months.

Article 3 - Consultations

1. As soon as possible after a request for initiation of an investigation is accepted, and in any event before the initiation of any investigation, signatories the products of which may be subject to such investigation shall be afforded a reasonable opportunity for consultations with the aim of clarifying the situation as to the matters referred to in Article 2, paragraph 1 above and arriving at a mutually agreed solution.

2. Furthermore, throughout the period of investigation, signatories the products of which are the subject of the investigation shall be afforded a

reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.[13]

3. Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a signatory from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

4. The signatory which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the signatory or signatories the products of which are subject to such investigation access to non-confidential evidence including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

Article 4 - Imposition of countervailing duties

1. The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less are decisions to be made by the authorities of the importing signatory. It is desirable that the imposition be permissive in the territory of all signatories and that the duty be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry.

2. No countervailing duty shall be levied[14] on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.[15]

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[13] It is particularly important, in accordance with the provisions of this paragraph, that no affirmative finding whether preliminary or final be made without reasonable opportunity for consultations having been given. Such consultations may establish the basis for proceeding under the provisions of Part VI of this Agreement.

[14] As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty on tax.

[15] An understanding among signatories should be developed setting out the criteria for the calculation of the amount of the subsidy.

3. When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and to be causing injury, except as to imports from those sources which have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted.

4. If, after reasonable efforts have been made to complete consultations, a signatory makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this section unless the subsidy is withdrawn.

5(a) Proceedings may[16] be suspended or terminated without the imposition of provisional measures or countervailing duties, if undertakings are accepted under which:

(i) the government of the exporting country agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(ii) the exporter agrees to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under undertakings shall not be higher than necessary to eliminate the amount of the subsidy. Price undertakings shall not be sought or accepted from exporters unless the importing signatory has first (1) initiated an investigation in accordance with the provisions of Article 2 of this Agreement and (2) obtained the consent of the exporting signatory. Undertakings offered need not be accepted if the authorities of the importing signatory consider their acceptance impractical, for example if the number of actual or potential exporters is too great, or for other reasons.

(b) If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the exporting signatory so desires or the importing signatory so decides. In such a case, if a determination of no injury or threat thereof is made, the undertaking shall automatically lapse, except in cases where a determination of no threat of injury is due in large part to the existence of an undertaking; in such cases the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement.

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[16] The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings, except as provided in paragraph 5(b) of this Article.

(c) Price undertakings may be suggested by the authorities of the importing signatory, but no exporter shall be forced to enter into such an undertaking. The fact that governments or exporters do not offer such undertakings or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the subsidized imports continue.

6. Authorities of an importing signatory may require any government or exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of undertakings, the authorities of the importing signatory may take expeditious actions under this Agreement in conformity with its provisions which may constitute immediate application of provisional measures using the best information available. In such cases definitive duties may be levied in accordance with this Agreement on goods entered for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

7. Undertakings shall not remain in force any longer than countervailing duties could remain in force under this Agreement. The authorities of an importing signatory shall review the need for the continuation of any undertaking, where warranted, on their own initiative, or if interested exporters or importers of the product in question so request and submit positive information substantiating the need for such review.

8. Whenever a countervailing duty investigation is suspended or terminated pursuant to the provisions of paragraph 5 above and whenever an undertaking is terminated, this fact shall be officially notified and must be published. Such notices shall set forth at least the basic conclusions and a summary of the reasons therefor.

9. A countervailing duty shall remain in force only as long as, and to the extent necessary to counteract the subsidization which is causing injury. The investigating authorities shall review the need for continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.

Article 5 - Provisional measures and retroactivity

1. Provisional measures may be taken only after a preliminary affirmative finding has been made that a subsidy exists and that there is sufficient evidence of injury as provided for in Article 2, paragraph 1(a) to (c). Provisional measures shall not be applied unless the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation.

2. Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.

3. The imposition of provisional measures shall be limited to as short a period as possible, not exceeding four months.

4. The relevant provisions of Article 4 shall be followed in the imposition of provisional measures.

5. Where a final finding of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or in the case of a final finding of threat of injury where the effect of the subsidized imports would, in the absence of the provisional measures, have led to a finding of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

6. If the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected. If the definitive duty is less than the amount guaranteed by the cash deposit or bond, the excess amount shall be reimbursed or the bond released in an expeditious manner.

7. Except as provided in paragraph 5 above, where a finding of threat of injury or material retardation is made (but no injury has yet occurred) a definitive countervailing duty may be imposed only from the date of the finding of threat of injury or material retardation and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

8. Where a final finding is negative any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

9. In critical circumstances where for the subsidized product in question the authorities find that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from export subsidies paid or bestowed inconsistently with the provisions of the General Agreement and of this Agreement and where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports, the definitive countervailing duties may be assessed on imports which were entered for consumption not more than ninety days prior to the date of application of provisional measures.

Article 6 - Determination of injury

1. A determination of injury[17] for purposes of Article VI of the General Agreement shall involve an objective examination of both (a) the volume of subsidized imports and their effect on prices in the domestic market for like products[18] and (b) the consequent impact of these imports on domestic producers of such products.

2. With regard to volume of subsidized imports the investigating authorities shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing signatory. With regard to the effect of the subsidized imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the importing signatory, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investment and, in the case of agriculture, whether there has been an increased burden on Government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

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[17] Determinations of injury under the criteria set forth in this Article shall be based on positive evidence. In determining threat of injury the investigating authorities, in examining the factors listed in this Article, may take into account the evidence on the nature of the subsidy in question and the trade effects likely to arise therefrom.

[18] Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

4. It must be demonstrated that the subsidized imports are, through the effects[19] of the subsidy, causing injury within the meaning of this Agreement. There may be other factors[20] which at the same time are injuring the domestic industry, and the injuries caused by other factors must not be attributed to the subsidized imports.

5. In determining injury, the term "domestic industry" shall, except as provided in paragraph 7 below, be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that when producers are related[21] to the exporters or importers or are themselves importers of the allegedly subsidized product the industry may be interpreted as referring to the rest of the producers.

6. The effect of the subsidized imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production in terms of such criteria as: the production process, the producers' realization, profits. When the domestic production of the like product has no separate identity in these terms the effects of subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

7. In exceptional circumstances the territory of a signatory may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic

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[19] As set forth in paragraphs 2 and 3 of this Article.

[20] Such factors can include inter alia, the volume and prices of non-subsidized imports of the product in question, contraction in demand or changes in the pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

[21] The Committee should develop a definition of the word "related" as used in this paragraph.

industry is not injured provided there is a concentration of subsidized imports into such an isolated market and provided further that the subsidized imports are causing injury to the producers of all or almost all of the production within such market.

8. When the industry has been interpreted as referring to the producers in a certain area, as defined in paragraph 7 above, countervailing duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing signatory does not permit the levying of countervailing duties on such a basis, the importing signatory may levy the countervailing duties without limitation, only if (a) the exporters shall have been given an opportunity to cease exporting at subsidized prices to the area concerned or otherwise give assurances pursuant to Article 4, paragraph 5, of this Agreement, and adequate assurances in this regard have not been promptly given, and (b) such duties cannot be levied only on products of specific producers which supply the area in question.

9. Where two or more countries have reached under the provisions of Article XXIV:8(a) of the General Agreement such a level of integration that they have the characteristics of a single, unified market the industry in the entire area of integration shall be taken to be the industry referred to in paragraphs 5 to 7 above.

PART II

Article 7 - Notification of subsidies[22]

1. Having regard to the provisions of Article XVI:1 of the General Agreement, any signatory may make a written request for information on the nature and extent of any subsidy granted or maintained by another signatory (including any form of income or price support) which operates directly or indirectly to increase exports of any product from or reduce imports of any product into its territory.

2. Signatories so requested shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready upon request to provide additional information to the requesting signatory. Any signatory which considers that such information has not been provided may bring the matter to the attention of the Committee.

3. Any interested signatory which considers that any practice of another signatory having the effects of a subsidy has not been notified in accordance with the provisions of Article XVI:1 of the General Agreement may bring the matter to the attention of such other signatory. If the subsidy practice is not thereafter notified promptly, such signatory may itself bring the subsidy practice in question to the notice of the Committee.

Article 8 - Subsidies - General Provisions

1. Signatories recognize that subsidies are used by governments to promote important objectives of social and economic policy. Signatories also recognize that subsidies may cause adverse effects to the interests of other signatories.

2. Signatories agree not to use export subsidies in a manner inconsistent with the provisions of this Agreement.

3. Signatories further agree that they shall seek to avoid causing, through the use of any subsidy

(a) injury to the domestic industry of another signatory[23],

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[22]In this Agreement, the term "subsidies" shall be deemed to include subsidies granted by any government or any public body within the territory of a signatory. However, it is recognized that for signatories with different federal systems of government, there are different divisions of powers. Such signatories accept nonetheless the international consequences that may arise under this Agreement as a result of the granting of subsidies within their territories.

[23]Injury to the domestic industry is used here in the same sense as it is used in Part I of this Agreement.

(b) nullification or impairment of the benefits accruing directly or indirectly to another signatory under the General Agreement[24], or

(c) serious prejudice to the interests of another signatory.[25]

4. The adverse effects to the interests of another signatory required to demonstrate nullification or impairment[26] or serious prejudice may arise through

(a) the effects of the subsidized imports in the domestic market of the importing signatory,

(b) the effects of the subsidy in displacing or impeding the imports of like products into the market of the subsidizing country, or

(c) the effects of the subsidized exports in displacing[27] the exports of like products of another signatory from a third country market.[28]

Article 9 - Export subsidies on products other than certain primary products[29]

1. Signatories shall not grant export subsidies on products other than certain primary products.

2. The practices listed in points (a) to (l) in the Annex are illustrative of export subsidies.

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[24] Benefits accruing directly or indirectly under the General Agreement include the benefits of tariff concessions bound under Article II of the General Agreement.

[25] Serious prejudice to the interests of another signatory is used in this Agreement in the same sense as it is used in Article XVI:1 of the General Agreement and includes threat of serious prejudice.

[26] Signatories recognize that nullification or impairment of benefits may also arise through the failure of a signatory to carry out its obligations under the General Agreement or this Agreement. Where such failure concerning export subsidies is determined by the Committee to exist, adverse effects may, without prejudice to paragraph 9 of Article 18 below, be presumed to exist. The other signatory will be accorded a reasonable opportunity to rebut this presumption.

[27] The term "displacing" shall be interpreted in a manner which takes into account the trade and development needs of developing countries and in this connection is not intended to fix traditional market shares.

[28] The problem of third country markets so far as certain primary products are concerned are dealt with exclusively under Article 10 below.

[29] For purposes of this Agreement "certain primary products" means the products referred to in Note Ad Article XVI of the General Agreement, Section B, paragraph 2, with the deletion of the words "or any mineral".

Article 10 - Export subsidies on certain primary products

1. In accordance with the provisions of Article XVI:3 of the General Agreement, signatories agree not to grant directly or indirectly any export subsidy on certain primary products in a manner which results in the signatory granting such subsidy having more than an equitable share of world export trade in such product, account being taken of the shares of the signatories in trade in the product concerned during a previous representative period, and any special factors which may have affected or may be affecting trade in such product.

2. For purposes of Article XVI:3 of the General Agreement and paragraph 1 above:

(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.

3. 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.

Article 11 - Subsidies other than export subsidies

1. Signatories recognize that subsidies other than export subsidies are widely used as important instruments for the promotion of social and economic policy objectives and do not intend to restrict the right of signatories to use such subsidies to achieve these and other import policy objectives which they consider desirable. Signatories note that among such objectives are:

(a) the elimination of industrial, economic and social disadvantages of specific regions,

(b) to facilitate the restructuring, under socially acceptable conditions, of certain sectors, especially where this has become necessary by reason of changes in trade and economic policies, including international agreements resulting in lower barriers to trade,

(c) generally to sustain employment and to encourage re-training and change in employment,

(d) to encourage research and development programmes, especially in the field of high-technology industries,

(e) the implementation of economic programmes and policies to promote the economic and social development of developing countries,

(f) redeployment of industry in order to avoid congestion and environmental problems.

2. Signatories recognize, however, that subsidies other than export subsidies, certain objectives and possible forms of which are described, respectively, in paragraphs 1 and 3 of this Article, may cause or threaten to cause injury to a domestic industry of another signatory or serious prejudice to the interests of another signatory or may nullify or impair benefits accruing to another signatory under the General Agreement, in particular where such subsidies would adversely affect the conditions of normal competition. Signatories shall therefore seek to avoid causing such effects through the use of subsidies. In particular, signatories, when drawing up their policies and practices in this field, in addition to evaluating the essential internal objectives to be achieved, shall also weigh, as far as practicable, taking account of the nature of the particular case, possible adverse effects on trade. They shall also consider the conditions of world trade, production (e.g. price, capacity utilization etc.) and supply in the product concerned.

3. Signatories recognize that the objectives mentioned in paragraph 1 above may be achieved, inter alia, by means of subsidies granted with the aim of giving an advantage to certain enterprises. Examples of possible forms of such subsidies are: government financing of commercial enterprises, including grants, loans or guarantees; government provision or government financed provision of utility, supply distribution and other operational or support services or facilities; government financing of research and development programmes; fiscal incentives; and government subscription to, or provision of, equity capital.

Signatories note that the above forms of subsidies are normally granted either regionally or by sector. The enumeration of forms of subsidies set out above is illustrative and non-exhaustive, and reflects these currently granted by a number of signatories to this Agreement.

Signatories recognize, nevertheless, that the enumeration of forms of subsidies set out above should be reviewed periodically and that this should be done, through consultations, in conformity with the spirit of Article XVI:5 of the General Agreement.

4. Signatories recognize further that, without prejudice to their rights under this Agreement, nothing in paragraphs 1-3 above and in particular the enumeration of forms of subsidies creates, in itself, any basis for action under the General Agreement, as interpreted by this Agreement.

Article 12 - Consultations

1. Whenever a signatory has reason to believe that an export subsidy is being granted or maintained by another signatory in a manner inconsistent with the provisions of this Agreement, such signatory may request consultations with such other signatory.

2. A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

3. Whenever a signatory has reason to believe that any subsidy is being granted or maintained by another signatory and that such subsidy either causes injury to its domestic industry, nullification or impairment of benefits accruing to it under the General Agreement, or serious prejudice to its interests, such signatory may request consultations with such other signatory.

4. A request for consultations under paragraph 3 above shall include a statement of available evidence with regard to (a) the existence and nature of the subsidy in question and (b) the injury caused to the domestic industry or, in the case of nullification or impairment, or serious prejudice, the adverse effects caused to the interests of the signatory requesting consultations.

5. Upon request for consultations under paragraph 1 or paragraph 3 above, the signatory believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

Article 13 - Conciliation, dispute settlement and authorized countermeasures

1. If, in the case of consultations under paragraph 1 of Article 12, a mutually acceptable solution has not been reached within thirty days[30] of the

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[30] Any time periods mentioned in this Article and in Article 18 may be extended by mutual agreement.

request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Part VI.

2. If, in the case of consultations under paragraph 3 of Article 12, a mutually acceptable solution has not been reached within sixty days of the request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Part VI.

3. If any dispute arising under this Agreement is not resolved as a result of consultations or conciliations, the Committee shall, upon request, review the matter in accordance with the dispute settlement procedures of Part IV.

4. If, as a result of its review, the Committee concludes that an export subsidy is being granted in a manner inconsistent with the provisions of this Agreement or that a subsidy is being granted or maintained in such a manner as to cause injury, nullification or impairment, or serious prejudice, it shall make such recommendations[31] to the parties as may be appropriate to resolve the issue and, in the event the recommendations are not followed, it may authorize such countermeasures as may be appropriate, taking into account the degree and nature of the adverse effects found to exist, in accordance with the relevant provisions of Part VI.

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[31] In making such recommendations, the Committee shall take into account the trade, development and financial needs of developing country signatories.

PART III

Article 14 - Developing countries

1. Signatories recognize that subsidies are an integral part of economic development programmes of developing countries.

2. Accordingly, this Agreement shall not prevent developing country signatories from adopting measures and policies to assist their industries, including those in the export sector. In particular the commitment of Article 9 shall not apply to developing country signatories, subject to the provisions of paragraphs 5 through 8 below.

3. Developing country signatories agree that export subsidies on their industrial products shall not be used in a manner which causes serious prejudice to the trade or production of another signatory.

4. There shall be no presumption that export subsidies granted by developing country signatories result in adverse effects, as defined in this Agreement, to the trade or production of another signatory. Such adverse effects shall be demonstrated by positive evidence, through an economic examination of the impact on trade or production of another signatory.

5. A developing country signatory should endeavour to enter into a commitment[32] to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs.

6. When a developing country has entered into a commitment to reduce or eliminate export subsidies, as provided in paragraph 5 above, countermeasures pursuant to the provisions of Parts II and VI of this Agreement against any export subsidies of such developing country shall not be authorized for other signatories of this Agreement, provided that the export subsidies in question are in accordance with the terms of the commitment referred to in paragraph 5 above.

7. With respect to any subsidy, other than an export subsidy, granted by a developing country signatory, action may not be authorized or taken under Parts II and VI of this Agreement, unless nullification or impairment of tariff concessions or other obligations under the General Agreement is found to exist as a result of such subsidy, in such a way as to displace or impede imports of like products into the market of the subsidizing country, or unless injury to domestic industry in the importing market of a signatory occurs in terms of Article VI of the General Agreement, as interpreted and applied by this

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[32] It is understood that after this Agreement has entered into force, any such proposed commitment shall be notified to the Committee in good time.

Agreement. Signatories recognize that in developing countries, governments may play a large rôle in promoting economic growth and development. Intervention by such governments in their economy, for example through the practices enumerated in paragraph 3 of Article 11, shall not, per se, be considered subsidies.

8. The Committee shall, upon request by an interested signatory, undertake a review of a specific export subsidy practice of a developing country signatory to examine the extent to which the practice is in conformity with the objectives of this Agreement. If a developing country has entered into a commitment pursuant to paragraph 5 of this Article, it shall not be subject to such review for the period of that commitment.

9. The Committee shall, upon request by an interested signatory, also undertake similar reviews of measures maintained or taken by developed country signatories under the provisions of this Agreement which affect interests of a developing country signatory.

10. Signatories recognize that the obligations of this Agreement with respect to export subsidies for certain primary products apply to all signatories.

PART IV

Article 15 - Special situations

1. In cases of alleged injury caused by imports from a country described in NOTES AND SUPPLEMENTARY PROVISIONS to the General Agreement (Annex I, Article VI, paragraph 1, point 2) the importing signatory may base its procedures and measures either

(a) on this Agreement, or, alternatively

(b) on the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

2. It is understood that in both cases (a) and (b) above the calculation of the margin of dumping or of the amount of the estimated subsidy can be made by comparison of the export price with

(a) the price at which a like product of a country other than the importing signatory or those mentioned above is sold, or

(b) the constructed value[33] of a like product in a country other than the importing signatory or those mentioned above.

3. If neither prices nor constructed value as established under (a) or (b) of paragraph 2 above provide an adequate basis for determination of dumping or subsidization then the price in the importing signatory, if necessary duly adjusted to reflect reasonable profits, may be used.

4. All calculations under the provisions of paragraphs 2 and 3 above shall be based on prices or costs ruling at the same level of trade, normally at the ex factory level, and in respect of operations made as nearly as possible at the same time. Due allowance shall be made in each case, on its merits, for the difference in conditions and terms of sale or in taxation and for the other differences affecting price comparability, so that the method of comparison applied is appropriate and not unreasonable.

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[33] Constructed value means cost of production plus a reasonable amount for administration, selling and any other costs and for profits.

PART V

Article 16 - Committee on Subsidies and Countervailing Measures

1. There shall be established under this Agreement a Committee on Subsidies and Countervailing Measures composed of representatives from each of the signatories to this Agreement. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any signatory. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the signatories and it shall afford signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.

2. The Committee may set up subsidiary bodies as appropriate.

3. In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a signatory, it shall inform the signatory involved.

PART VI

Article 17 - Conciliation

1. In cases where matters are referred to the Committee for conciliation failing a mutually agreed solution in consultations under any provision of this Agreement, the Committee shall immediately review the facts involved and, through its good offices, shall encourage the signatories involved to develop a mutually acceptable solution.[34]

2. Signatories shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

3. Should the matter remain unresolved, notwithstanding efforts at conciliation made under paragraph 2 above, any signatory involved may, thirty days after the request for conciliation, request that a panel be established by the Committee in accordance with the provisions of Article 18 below.

Article 18 - Dispute settlement

1. The Committee shall establish a panel upon request pursuant to paragraph 3 of Article 17.[35] A panel so established shall review the facts of the matter and, in light of such facts, shall present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by this Agreement.

2. A panel should be established within thirty days of a request therefor[36] and a panel so established should deliver its findings to the Committee within sixty days after its establishment.

3. When a panel is to be established, the Chairman of the Committee, after securing the agreement of the signatories concerned, should propose the composition of the panel. Panels shall be composed of three or five members,

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[34] In this connexion, the Committee may draw signatories' attention to those cases in which, in its view, there is no reasonable basis supporting the allegations made.

[35] This does not preclude, however, the more rapid establishment of a panel when the Committee so decides, taking into account the urgency of the situation.

[36] The parties to the dispute would respond within a short period of time, i.e. seven working days, to nominations of panel members by the Chairman of the Committee and would not oppose nominations except for compelling reasons.

preferably governmental, and the composition of panels should not give rise to delays in their establishment. It is understood that citizens of countries whose governments[37] are parties to the dispute would not be members of the panel concerned with that dispute.

4. In order to facilitate the constitution of panels, the Chairman of the Committee should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade relations, economic development, and other matters covered by the General Agreement and this Agreement, who could be available for serving on panels. For this purpose, each signatory would be invited to indicate at the beginning of every year to the Chairman of the Committee the name of one or two persons who would be available for such work.

5. Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

6. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee.

7. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any signatory with an interest in the matter has a right to enquire about and be given appropriate information about that solution and a notice outlining the solution that has been reached shall be presented by the panel to the Committee.

8. In cases where the parties to a dispute have failed to come to a satisfactory solution, the panels shall submit a written report to the Committee which should set forth the findings of the panel as to the questions of fact and the application of the relevant provisions of the General Agreement as interpreted and applied by this Agreement and the reasons and bases therefor.

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[37] The term "governments" is understood to mean governments of all member countries in cases of customs unions.

9. The Committee shall consider the panel report as soon as possible and, taking into account the findings contained therein, may make recommendations to the parties with a view to resolving the dispute. If the Committee's recommendations are not followed within a reasonable period, the Committee may authorize appropriate countermeasures (including withdrawal of GATT concessions or obligations) taking into account the nature and degree of the adverse effect found to exist. Committee recommendations should be presented to the parties within thirty days of the receipt of the panel report.

PART VII

Article 19 - Final provisions

1. No specific action against a subsidy of another signatory can be taken except in accordance with the provisions of the General Agreement, as interpreted by this Agreement.[38]

Acceptance and accession

2. (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community.

(b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

(c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the signatories, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

(d) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

Reservations

3. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other signatories.

Entry into force

4. This Agreement shall enter into force on 1 January 1980 for the governments[39] which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

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[38]This paragraph is not intended to preclude action under other relevant provisions of the General Agreement, where appropriate.

[39]The term "governments" is deemed to include the competent authorities of the European Economic Community.

National legislation

5. (a) Each government accepting or acceding to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply to the signatory in question.

(b) Each signatory shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Review

6. The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.[40]

Amendments

7. The signatories may amend this Agreement having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the signatories have concurred in accordance with procedures established by the Committee, shall not come into force for any signatory until it has been accepted by such signatory.

Withdrawal

8. Any signatory may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any signatory may upon such notification request an immediate meeting of the Committee.

Non-application of this Agreement between particular signatories

9. This Agreement shall not apply as between any two signatories if either of the signatories, at the time either accepts or accedes to this Agreement, does not consent to such application.

Annex

10. The annex to this Agreement constitutes an integral part thereof.

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[40] At the first such review, the Committee shall, in addition to its general review of the operation of the Agreement, offer all interested signatories an opportunity to raise questions and discuss issues concerning specific subsidy practices and the impact on trade, if any, of certain direct tax practices.

Secretariat

11. This Agreement shall be serviced by the GATT secretariat.

Deposit

12. This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each signatory and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 7, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 2, and of each withdrawal therefrom pursuant to paragraph 8 of this Article.

Registration

13. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

ANNEX

Illustrative List of Export Subsidies

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for delivery of like or directly competitive products or services for use on the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.

(e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes[1] or social welfare charges paid or payable by industrial or commercial enterprises.[2]

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g) The exemption or remission in respect of the production and distribution of exported products, of indirect taxes[1] in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior stage cumulative indirect taxes[1] on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on goods that are physically incorporated (making normal allowance for waste) in the exported product.[3]

(i) The remission or drawback of import charges[1] in excess of those levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported product; provided, however, that in particular cases a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, normally not to exceed two years.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the costs of exported products[4] or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.[5]

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least twelve original signatories[6] to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the General Agreement.

Notes

1/ For the purpose of this Agreement:

The term "direct taxes" shall mean taxes on wages, profits, interest, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

"Prior stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;

"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;

"Remission" of taxes includes the refund or rebate of taxes.

2/ The signatories recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The signatories further recognize that nothing in this text prejudges the disposition by the CONTRACTING PARTIES of the specific issues raised in GATT document L/4422.

The signatories reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any signatory may draw the attention of another signatory to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the signatories shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of signatories under the General Agreement, including the right of consultation created in the preceding sentence.

Paragraph (e) is not intended to limit a signatory from taking measures to avoid the double taxation of foreign source income earned by its enterprises or the enterprises of another signatory.

Where measures incompatible with the provisions of paragraph (e) exist, and where major practical difficulties stand in the way of the signatory concerned bringing such measures promptly into conformity with the Agreement, the signatory concerned shall, without prejudice to the rights of other signatories under the General Agreement or this Agreement, examine methods of bringing these measures into conformity within a reasonable period of time.

In this connection the European Economic Community has declared that Ireland intends to withdraw by 1 January 1981 its system of preferential tax measures related to exports, provided for under the Corporation Tax Act of 1976, whilst continuing nevertheless to honour legally binding commitments entered into during the lifetime of this system.

3/ Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

4/ The signatories agree that nothing in this paragraph shall prejudge or influence the deliberations of the panel established by the GATT Council on 6 June 1978 (C/M/126).

5/ In evaluating the long-term adequacy of premium rates, costs and losses of insurance programmes, in principle only such contracts shall be taken into account that were concluded after the date of entry into force of this Agreement.

6/ An original signatory to this Agreement shall mean any signatory which adheres ad referendum to the Agreement on or before 30 June 1979.

RESTRICTED

MTN/NTM/W/232/Rev.1
11 May 1979

Special Distribution

GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

ANTI-DUMPING

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade

Revision

1. The following text of the draft revision of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade is circulated at the request of the following delegations whose governments are parties to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade:

Austria
Canada
EEC
Finland
Japan
Norway
Sweden
Switzerland
United States

2. The text essentially contains amendments consequent to the proposed Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (MTN/NTM/W/236 and Corr.1).

3. This revised text contains the amendment circulated in MTN/NTM/W/232/Corr.1, the amendments agreed at the meeting of the Trade Negotiations Committee on 11-12 April 1979, and a number of rectifications of a purely formal character.

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AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The Parties to this Agreement (hereinafter referred to as the Parties)

Recognizing that anti-dumping practices should not constitute an unjustifiable impediment to international trade and that anti-dumping duties may be applied against dumping only if such dumping causes or threatens material injury to an established industry or materially retards the establishment of an industry;

Considering that it is desirable to provide for equitable and open procedures as the basis for a full examination of dumping cases;

Taking into account the particular trade development and financial needs of developing countries;

Desiring to interpret the provisions of Article VI of the General Agreement and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation; and

Desiring to provide for the speedy, effective and equitable resolution of disputes arising under this Agreement;

Hereby agree as follows:

PART I - ANTI-DUMPING CODE

Article 1

Principles

The imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement and pursuant to investigations initiated[1] and conducted in accordance with the provisions of this Code. The following provisions govern the application of Article VI of the General Agreement in so far as action is taken under anti-dumping legislation or regulations.

Article 2

Determination of Dumping

1. For the purpose of this Code a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

[1]The term "initiated" as used hereinafter means the procedural action by which a Party formally commences an investigation as provided in paragraph 6 of Article 6.

2. Throughout this Code the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

3. In the case where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the price at which the products are sold from the country of export to the country of importation shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely trans-shipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

4. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.

5. In cases where there is no export price or where it appears to the authorities[1] concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

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[1]When in this Code the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate, senior level.

6. In order to effect a fair comparison between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the price established pursuant to the provisions of Article VI:1(b) of the General Agreement, the two prices shall be compared at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. In the cases referred to in paragraph 5 of Article 2 allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.

7. This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I of the General Agreement.

Article 3

Determination of Injury[1]

1. A determination of injury for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and their effect on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

2. With regard to volume of the dumped imports the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

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[1] Under this Code the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

3. The examination of the impact on the industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

4. It must be demonstrated that the dumped imports are, through the effects[1] of dumping, causing injury within the meaning of this Code. There may be other factors[2] which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the dumped imports.

5. The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production in terms of such criteria as: the production process, the producers' realizations, profits. When the domestic production of the like product has no separate identity in these terms the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

6. A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.[3]

7. With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be studied and decided with special care.

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[1] As set forth in paragraphs 2 and 3 of this Article.

[2] Such factors include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

[3] One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices.

Article 4

Definition of Industry

1. In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products except that

(i) when producers are related[1] to the exporters or importers or are themselves importers of the allegedly dumped product the industry may be interpreted as referring to the rest of the producers;

(ii) in exceptional circumstances the territory of a Party may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

2. When the industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), anti-dumping duties shall be levied[2] only on the products in question consigned for final consumption to that area. When the constitutional law of the importing country does not permit the levying of anti-dumping duties on such a basis, the importing Party may levy the anti-dumping duties without limitation only if (1) the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 7 of this Code, and adequate assurances in this regard have not been promptly given, and (2) such duties cannot be levied on specific producers which supply the area in question.

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[1] An understanding among Parties should be developed defining the word "related" as used in this Code.

[2] As used in this Code "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.

3. Where two or more countries have reached under the provisions of Article XXIV:8(a) of the General Agreement such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the industry referred to in paragraph 1 above.

4. The provisions of paragraph 5 of Article 3 shall be applicable to this Article.

Article 5

Initiation and Subsequent Investigation

1. An investigation to determine the existence, degree and effect of any alleged dumping shall normally be initiated upon a written request by or on behalf of the industry[1] affected. The request shall include sufficient evidence of the existence of (a) dumping; (b) injury within the meaning of Article VI as interpreted by this Code and (c) a causal link between the dumped imports and the alleged injury. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a) to (c) above.

2. Upon initiation of an investigation and thereafter, the evidence of both dumping and injury caused thereby should be considered simultaneously. In any event the evidence of both dumping and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Code provisional measures may be applied, except in the cases provided for in paragraph 3 of Article 10 in which the authorities accept the request of the exporters.

3. An application shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping or the volume of dumped imports, actual or potential, or the injury is negligible.

4. An anti-dumping proceeding shall not hinder the procedures of customs clearance.

5. Investigations shall, except in special circumstances, be concluded within one year after their initiation.

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[1] As defined in Article 4.

Article 6

Evidence

1. The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all evidence that they consider useful in respect to the anti-dumping investigation in question. They shall also have the right, on justification, to present evidence orally.

2. The authorities concerned shall provide opportunities for the complainant and the importers and exporters known to be concerned and the governments of the exporting countries, to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 3 below, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

3. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an anti-dumping investigation shall, upon cause shown, be treated as such by the investigating authorities. Such information shall not be disclosed without specific permission of the party submitting it.[1] Parties providing confidential information may be requested to furnish non-confidential summaries thereof. In the event that such parties indicate that such information is not susceptible of summary, a statement of the reasons why summarization is not possible must be provided.

4. However, if the authorities concerned find that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.[2]

5. In order to verify information provided or to obtain further details the authorities may carry out investigations in other countries as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation.

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[1] Parties are aware that in the territory of certain Parties disclosure pursuant to a narrowly drawn protective order may be required.

[2] Parties agree that requests for confidentiality should not be arbitrarily rejected.

6. When the competent authorities are satisfied that there is sufficient evidence to justify initiating an anti-dumping investigation pursuant to Article 5, the Party or Parties the products of which are subject to such investigation and the exporters and importers known to the investigating authorities to have an interest therein and the complainants shall be notified and a public notice shall be given.

7. Throughout the anti-dumping investigation all parties shall have a full opportunity for the defence of their interests. To this end, the authorities concerned shall, on request, provide opportunities for all directly interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

8. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final findings, affirmative or negative, may be made on the basis of the facts available.

9. The provisions of this Article are not intended to prevent the authorities of a Party from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures in accordance with the relevant provisions of this Code.

Article 7

Price Undertakings

1. Proceedings may[1] be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping.

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[1] The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 3.

2. Price undertakings shall not be sought or accepted from exporters unless the authorities have initiated an investigation in accordance with the provisions of Article 5 of this Code. Undertakings offered need not be accepted if the authorities of the importing country consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons.

3. If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a determination of no injury or threat thereof is made, the undertaking shall automatically lapse except in cases where a determination of no threat of injury is due in large part to the existence of a price undertaking. In such cases the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Code.

4. Price undertakings may be suggested by the authorities in the importing country, but no exporter shall be forced to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

5. Authorities in an importing country may require any exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of undertakings, the authorities of the importing country may take, under this Code in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases definitive duties may be levied in accordance with this Code on goods entered for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

6. Undertakings shall not remain in force any longer than anti-dumping duties could remain in force under the Code. The authorities of an importing country shall review the need for the continuation of any price undertaking, where warranted, on their own initiative or if interested exporters or importers of the product in question so

request and submit positive information substantiating the need for such review.

7. Whenever an anti-dumping investigation is suspended or terminated pursuant to the provisions of paragraph 1 above and whenever an undertaking is terminated, this fact shall be officially notified and must be published. Such notices shall set forth at least the basic oonclusions and a summary of the reasons therefor.

Article 8

Imposition and Collection of Anti-Dumping Duties

1. The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories Parties to this Agreement, and that the duty be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

2. When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources, from which price undertakings under the terms of this Code have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

3. The amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2. Therefore, if subsequent to the application of the anti-dumping duty it is found that the duty so collected exceeds the actual dumping margin the amount in excess of the margin shall be reimbursed as quickly as possible.

4. Within a basic price system the following rules shall apply provided that their application is consistent with the other provisions of this Code:

If several suppliers from one or more countries are involved, anti-dumping duties may be imposed on imports of the product in question found to have been dumped and to be causing injury from the country or countries concerned, the duty being equivalent to the amount by which the export price is less than the basic price established for this purpose, not exceeding the lowest normal price in the supplying country or countries where normal conditions of competition are prevailing. It is understood that for products which are sold below this already established basic price a new anti-dumping investigation shall be carried out in each particular case, when so demanded by the interested parties and the demand is supported by relevant evidence. In cases where no dumping is found, anti-dumping duties collected shall be reimbursed as quickly as possible. Furthermore, if it can be found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible.

5. Public notice shall be given of any preliminary or final finding whether positive or negative and of the revocation of a finding. In the case of positive finding each such notice shall set forth the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons and basis therefor. In the case of a negative finding, each notice shall set forth at least the basic conclusions and a summary of the reasons therefor. All notices of finding shall be forwarded to the Party or Parties the products of which are subject to such finding and to the exporters known to have an interest therein.

Article 9

Duration of Anti-Dumping Duties

1. An anti-dumping duty shall remain in force only as long as, and to the extent necessary to counteract dumping which is causing injury.

2. The investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.

Article 10

Provisional Measures

1. Provisional measures may be taken only after a preliminary positive finding has been made that there is dumping and that there is sufficient evidence of injury as provided for in (a) to (c) of paragraph 1 of Article 5. Provisional measures shall not be applied unless the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation.

2. Provisional measures may take the form of a provisional duty or, preferably, a security - by deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

3. The imposition of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved to a period not exceeding six months.

4. The relevant provisions of Article 8 shall be followed in the application of provisional measures.

Article 11

Retroactivity

1. Anti-dumping duties and provisional measures shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 8 and paragraph 1 of Article 10, respectively, enters into force, except that in cases:

(i) Where a final finding of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or in the case of a final finding of threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a finding of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

If the anti-dumping duty fixed in the final decision is higher than the provisionally paid duty, the difference shall not be collected. If the duty fixed in the final decision is lower than the provisionally paid duty or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

(ii) Where for the dumped product in question the authorities determine

(a) either that there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and

(b) that the injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short period) to such an extent that, in order to preclude it recurring, it appears necessary to levy an anti-dumping duty retroactively on those imports,

the duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures.

2. Except as provided in paragraph 1 above where a finding of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the finding of threat of injury or material retardation and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

3. Where a final finding is negative any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

Article 12

Anti-Dumping Action on behalf of a Third Country

1. An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

2. Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

3. The authorities of the importing country in considering such an application shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

4. The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the CONTRACTING PARTIES seeking their approval for such action shall rest with the importing country.

Article 13

Developing Countries

It is recognized that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under this Code. Possibilities of constructive remedies provided for by this Code shall be explored before applying anti-dumping duties where they would affect the essential interests of developing countries.

PART II

Article 14

Committee on Anti-Dumping Practices

1. There shall be established under this Agreement a Committee on Anti-Dumping Practices composed of representatives from each of the Parties to this Agreement. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Party. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Parties and it shall afford Parties the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.

2. The Committee may set up subsidiary bodies as appropriate.

3. In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Party, it shall inform the Party involved. It shall obtain the consent of the Party and any firm to be consulted.

4. Parties shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports will be available in the GATT secretariat for inspection by government representatives. The Parties shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months.

Article 15[1]

Consultation, conciliation and resolution of disputes

1. Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Party with respect to any matter affecting the operation of this Agreement.

2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement, is being nullified or impaired, or that the achievement of any objective of the Agreement is being impeded by another Party or Parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultation. The Parties concerned shall initiate consultation promptly.

3. If any Party considers that the consultation pursuant to paragraph 2 has failed to achieve a mutually agreed solution and final action has been taken by the administering authorities of the importing country to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Committee for conciliation. When a provisional measure has a significant impact and the Party considers the measure was taken contrary to the provisions of paragraph 1 of Article 10 of this Agreement, a Party may also refer such matter to the Committee for conciliation. In cases where matters are referred to the Committee for conciliation the Committee shall meet within thirty days to review the matter, and, through its good offices, shall encourage the Parties involved to develop a mutually acceptable solution.[2]

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[1] If disputes arise between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT.

[2] In this connection the Committee may draw Parties' attention to those cases in which, in its view, there are no reasonable bases supporting the allegations made.

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4. Parties shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

5. If no mutually agreed solution has been reached after detailed examination by the Committee under paragraph 3 within three months, the Committee shall, at the request of any party to the dispute, establish a panel to examine the matter, based upon:

(a) a statement of the Party making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and

(b) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing country.

6. Confidential information provided to the panel shall not be revealed without formal authorization from the person or authority providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the authority or person providing the information, will be provided.

7. Further to paragraphs 1-5 the resolution of disputes shall mutatis mutandis be governed by the provisions of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance. Panel members shall have relevant experience and be selected from the signatory countries not parties to the dispute.

PART III

Article 16

Final Provisions

1. No specific action against dumping of exports from another Party can be taken except in accordance with the provisions of the General Agreement, as interpreted by this Agreement.[1]

Acceptance and accession

2. (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community.

(b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

(c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

(d) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

Reservations

3. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

Entry into force

4. This Agreement shall enter into force on 1 January 1980 for the governments[2] which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

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[1] This is not intended to preclude action under other relevant provisions of the General Agreement, as appropriate.

[2] The term "government" is deemed to include the competent authorities of the European Economic Community.

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Denunciation of acceptance of the 1967 Agreement

5. Acceptance of this Agreement shall carry denunciation of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, done at Geneva on 30 June 1967, which entered into force on 1 July 1968, for Parties to the 1967 Agreement. Such denunciation shall take effect for each Party to this Agreement on the date of entry into force of this Agreement for each such Party.

National legislation

6. (a) Each government accepting or acceding to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Party in question.

(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Review

7. The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.

Amendments

8. The Parties may amend this Agreement having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

Withdrawal

9. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

Non-application of this Agreement between particular Parties

10. This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

Secretariat

11. This Agreement shall be serviced by the GATT secretariat.

Deposit

12. This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 8, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 2, or each withdrawal therefrom pursuant to paragraph 9 above.

Registration

13. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this ..... day of ..... nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

RESTRICTED
MTN/NTM/W/258
20 June 1979
Special Distribution
English only

GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Rectifications of a Formal Character

Note by the Secretariat

In the Procès-Verbal embodying the results of the Multilateral Trade Negotiations, representatives acknowledged that the texts listed therein might be subject to rectifications of a purely formal character that did not affect the substance or meaning of the texts (MTN/28, paragraph 1). An airgram (GATT/AIR/1565) inviting delegations to communicate suggestions for formal rectifications to the secretariat by 1 June 1979 was circulated on 8 May 1979 and suggestions from delegations for rectifications were circulated in MTN/NTM/W/248.

Rectifications[1] to the English text of document MTN/NTM/W/232/Rev.1 are listed below.

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1. Preamble

(a) First line

The text should read: "The Parties to this Agreement (hereinafter referred to as "Parties"),"

(b) Third preambular paragraph

Insert a comma between "trade" and "development".

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[1] Corresponding rectifications to the French and Spanish texts are being circulated. Rectifications to the French and Spanish texts concerning only the alignment of those texts to the English text are being communicated directly to delegations using these languages. Other delegations wishing to have copies of these texts are invited to inform the secretariat (Tel. 31.02.31, ext. 2385).

Preamble (cont'd)

(c) Fourth preambular paragraph

The second line should read: "... Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT") and to elaborate rules for their application in order to provide ..."

2. Article 4

(a) Paragraph 1

Insert a comma between "products" and "except" in the fifth line.

(b) Paragraph 1(i)

Insert a comma between "product" and "the industry" in the second line.

3. Paragraph 1 of Article 5

Insert "of the General Agreement" between "Article VI" and "as interpreted" in the fifth line.

4. Article 6

(a) Paragraph 8

Add the following footnote to the word "findings" at the end of the third line:

"Because of different terms used under different systems in various countries the term "finding" is hereinafter used to mean a formal decision or determination."

(b) Paragraph 9

Insert a comma between "measures" and "in accordance" in the last line.

5. Article 7

(a) Paragraph 2

Move the words "of the importing country" in the fourth line up to the second line between "authorities" and "have".

(b) Paragraph 4

Replace "in" by "of" in the first line.

(c) Paragraph 5

Replace "in" by "of" in the first line.

(d) Paragraph 6

Replace "the Code" by "this Code" in the second line.

6. Article 8

(a) Paragraph 3

Insert a comma between "margin" and "the amount" in the fourth line.

(b) Paragraph 4

(i) Insert a comma after "apply" in the first line.

(ii) Insert commas between "that" and "for products" in the eighth line and between "price" and "a new" in the ninth line.

(c) Paragraph 5

Replace "positive" in the second and third lines by "affirmative".

7. Article 10

(a) Paragraph 1

(i) Replace "positive" in the first line by "affirmative".

(ii) Insert a comma after "injury" in the third line.

(b) Paragraph 2

(i) Insert "cash" between "by" and "deposit" in the second line.

(ii) Insert a comma between "measure" and "provided" in the fifth line.

8. Paragraph 1(i) of Article 11

Insert a comma between "is made or" and "in the case" in the third line.

9. Paragraph 1 of Article 14

Insert "(hereinafter referred to as the "Committee")" after the words "Anti-Dumping Practices" in the second line.

10. Article 15

(a) Heading

Replace "resolution of disputes" by "dispute settlement".

(b) Paragraph 2

Delete the comma between "Agreement" and "is being" in the second line.

(c) Paragraph 5(a)

Insert "written" between "a" and "statement" in the first line.

(d) Paragraph 7

(i) Replace "1-5" in the first line by "1-6".

(ii) Replace "resolution" by "settlement" in the first line.

(iii) Replace "the signatory countries" in the fourth and fifth lines by "Parties".

11. Article 16

(a) Heading of paragraph 5

Delete the words "of acceptance".

(b) Paragraph 12

(i) Replace "or each" at the end of the fifth line by "and of each".

(ii) Replace "above" in the last line by "of this Article".

12. Footnotes

All footnotes shall be numbered continuously throughout the Agreement.

**ACCORD GÉNÉRAL
SUR LES TARIFS DOUANIERS
ET LE COMMERCE**

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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11 juillet 1979

ACCORD RELATIF AUX PROCEDURES EN MATIERE
DE LICENCES D'IMPORTATION

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..... J'ai l'honneur de vous remettre ci-joint, en application du paragraphe 10 de l'article 5 de l'Accord relatif aux procédures en matière de licences d'importation, une copie certifiée conforme dudit Accord, fait à Genève le 12 avril 1979.

Olivier Long
Directeur général

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GLI/268

AGREEMENT ON IMPORT LICENSING PROCEDURES

ACCORD RELATIF AUX PROCEDURES EN MATIERE DE LICENCES D'IMPORTATION

ACUERDO SOBRE PROCEDIMIENTOS PARA EL TRÁMITE DE LICENCIAS DE IMPORTACIÓN

GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES ADUANEROS Y COMERCIO

12 April 1979
Geneva

AGREEMENT ON IMPORT LICENSING PROCEDURES

PREAMBLE

Having regard to the Multilateral Trade Negotiations, the Parties to this Agreement on Import Licensing Procedures (hereinafter referred to as "Parties" and "this Agreement");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

Taking into account the particular trade, development and financial needs of developing countries;

Recognizing the usefulness of automatic import licensing for certain purposes and that such licensing should not be used to restrict trade;

Recognizing that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of the GATT;

Recognizing also that the inappropriate use of import licensing procedures may impede the flow of international trade;

Desiring to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices;

Desiring to provide for a consultative mechanism and the speedy, effective and equitable resolution of disputes arising under this Agreement;

Hereby agree as follows:

Article 1. General provisions

1. For the purpose of this Agreement, import licensing is defined as administrative procedures[1] used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing country.

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[1] Those procedures referred to as "licensing" as well as other similar administrative procedures.

2. The Parties shall ensure that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of the GATT including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing countries.

3. The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.

4. The rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, and the lists of products subject to the licensing requirement shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Any changes in either the rules concerning licensing procedures or the list of products subject to import licensing shall also be promptly published in the same manner. Copies of these publications shall also be made available to the GATT Secretariat.

5. Application forms and, where applicable, renewal forms shall be as simple as possible. Such documents and information as are considered strictly necessary for the proper functioning of the licensing regime may be required on application.

6. Application procedures and, where applicable, renewal procedures shall be as simple as possible. Applicants shall have to approach only one administrative body previously specified in the rules referred to in paragraph 4 above in connexion with an application and shall be allowed a reasonable period therefor. In cases where it is strictly indispensable that more than one administrative body is to be approached in connexion with an application, these shall be kept to the minimum number possible.

7. No application shall be refused for minor documentation errors which do not alter basic data contained therein. No penalty greater than necessary to serve merely as a warning shall be imposed in respect of any omission or mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence.

8. Licensed imports shall not be refused for minor variations in value, quantity or weight from the amount designated on the licence due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practice.

9. The foreign exchange necessary to pay for licensed imports shall be made available to licence holders on the same basis as to importers of goods not requiring import licences.

10. With regard to security exceptions, the provisions of Article XXI of the GATT apply.

11. The provisions of this Agreement shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 2. Automatic import licensing[2]

1. Automatic import licensing is defined as import licensing where approval of the application is freely granted.

2. The following provisions[3], in addition to those in paragraphs 1 to 11 of Article 1 and paragraph 1 of Article 2 above, shall apply to automatic import licensing procedures:

(a) Automatic licensing procedures shall not be administered in a manner so as to have restricting effects on imports subject to automatic licensing;

(b) Parties recognize that automatic import licensing may be necessary whenever other appropriate procedures are not available. Automatic import licensing may be maintained as long as the circumstances which gave rise to its introduction prevail or as long as its underlying administrative purposes cannot be achieved in a more appropriate way;

(c) Any person, firm or institution which fulfils the legal requirements of the importing country for engaging in import operations involving products subject to automatic licensing shall be equally eligible to apply for and to obtain import licences;

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[2]Those import licensing procedures requiring a security which have no restrictive effects on imports, are to be considered as falling within the scope of paragraphs 1 and 2 of Article 2 below.

[3]A developing country Party, which has specific difficulties with the requirements of sub-paragraphs (d) and (e) below may, upon notification to the Committee referred to in paragraph 1 of Article 4, delay the application of these sub-paragraphs by not more than two years from the date of entry into force of this Agreement for such Party.

(d) Applications for licences may be submitted on any working day prior to the customs clearance of the goods;

(e) Applications for licences when submitted in appropriate and complete form shall be approved immediately on receipt, to the extent administratively feasible, but within a maximum of ten working days.

Article 3. Non-automatic import licensing

The following provisions, in addition to those in paragraphs 1 to 11 of Article 1 above, shall apply to non-automatic import licensing procedures, that is, import licensing procedures not falling under paragraphs 1 and 2 of Article 2 above:

(a) Licensing procedures adopted, and practices applied, in connexion with the issuance of licences for the administration of quotas and other import restrictions, shall not have trade restrictive effects on imports additional to those caused by the imposition of the restriction;

(b) Parties shall provide, upon the request of any Party having an interest in the trade in the product concerned, all relevant information concerning:

(i) the administration of the restrictions;

(ii) the import licences granted over a recent period;

(iii) the distribution of such licences among supplying countries;

(iv) where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. The developing countries would not be expected to take additional administrative or financial burdens on this account;

(c) Parties administering quotas by means of licensing shall publish the overall amount of quotas to be applied by quantity and/or value, the opening and closing dates of quotas, and any change thereof;

(d) In the case of quotas allocated among supplying countries, the Party applying the restrictions shall promptly inform all other Parties having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof;

(e) Where there is a specific opening date for the submission of licensing applications, the rules and product lists referred to in paragraph 4 of Article 1 shall be published as far in advance as

possible of such date, or immediately after the announcement of the quota or other measure involving an import licensing requirement;

(f) Any person, firm or institution which fulfils the legal requirements of the importing country shall be equally eligible to apply and to be considered for a licence. If the licence application is not approved, the applicant shall, on request, be given the reasons therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the importing country;

(g) The period for processing of applications shall be as short as possible;

(h) The period of licence validity shall be of reasonable duration and not be so short as to preclude imports. The period of licence validity shall not preclude imports from distant sources, except in special cases where imports are necessary to meet unforeseen short-term requirements;

(i) When administering quotas, Parties shall not prevent importation from being effected in accordance with the issued licences, and shall not discourage the full utilization of the quotas;

(j) When issuing licences, Parties shall take into account the desirability of issuing licences for products in economic quantities;

(k) In allocating licences, Parties should consider the import performance of the applicant, including whether licences issued to the applicant have been fully utilized, during a recent representative period;

(l) Consideration shall be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities. In this regard, special consideration should be given to those importers importing products originating in developing countries and, in particular, the least-developed countries;

(m) In the case of quotas administered through licences which are not allocated among supplying countries, licence holders[4] shall be free to choose the sources of imports. In the case of quotas

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[4] Sometimes referred to as "quota holders".

allocated among supplying countries, the licence shall clearly stipulate the country or countries;

(n) In applying paragraph 8 of Article 1 above, compensating adjustments may be made in future licence allocations where imports exceeded a previous licence level.

Article 4. Institutions, consultation and dispute settlement

1. There shall be established under this Agreement a Committee on Import Licensing composed of representatives from each of the Parties (referred to in this Agreement as "the Committee"). The Committee shall elect its own Chairman and shall meet as necessary for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.

2. Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement, shall be subject to the procedures of Articles XXII and XXIII of the GATT.

Article 5. Final provisions

1. Acceptance and accession

(a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community.

(b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

(c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

(d) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

2. Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

3. Entry into force

This Agreement shall enter into force on 1 January 1980 for the governments[5] which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

4. National legislation

(a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

5. Review

The Committee shall review as necessary, but at least once every two years, the implementation and operation of this Agreement taking into account the objectives thereof and shall inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.

6. Amendments

The Parties may amend this Agreement, having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

7. Withdrawal

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

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[5]For the purpose of this Agreement, the term "governments" is deemed to include the competent authorities of the European Economic Community.

8. Non-application of this Agreement between particular Parties

This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

9. Secretariat

This Agreement shall be serviced by the GATT secretariat.

10. Deposit

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 6, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 1 and of each withdrawal therefrom pursuant to paragraph 7 of this Article.

11. Registration

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April, nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

RESTRICTED

MTN/NTM/W/229/Rev.1*
9 April 1979

Special Distribution

GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

Group "Non-Tariff Measures"
Sub-Group "Customs Matters"

CUSTOMS VALUATION

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade

Attached hereto is the text of an Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade. The text has been prepared and advanced by a number of delegations.

*This document incorporates changes set out in MTN/NTM/W/229/Corr.1 and some other technical corrections.

General Introductory Commentary

1. The primary basis for customs value under this Agreement is "transaction value" as defined in Article 1. Article 1 is to be read together with Article 8 which provides, inter alia, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer, but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 to 7, inclusive, provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1.

2. Where the customs value cannot be determined under the provisions of Article 1, there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Articles 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. On the other hand, the customs administration may have information about the customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.

3. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under Article 5.1 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if he so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

4. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.

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AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade

PREAMBLE

Having regard to the Multilateral Trade Negotiations, the parties to this Agreement,

Desiring to further the objectives of the General Agreement on Tariffs and Trade and to secure additional benefits for the international trade of developing countries;

Recognizing the importance of the provisions of Article VII of the General Agreement on Tariffs and Trade and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Recognizing the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

Recognizing that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

Recognizing that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that valuation procedures should not be used to combat dumping;

Hereby agree as follows:

PART I - RULES ON CUSTOMS VALUATION

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:

(a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

(i) are imposed or required by law or by the public authorities in the country of importation;

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and

(d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2 of this Article.

2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and he shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

(i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;

(ii) the customs value of identical or similar goods as determined under the provisions of Article 5;

(iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

(iv) the transaction value in sales to unrelated buyers for export to the same country of importation of goods which would be identical to the imported goods except for having a different country of production provided that the sellers in any two transactions being compared are not related.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(c) The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).

Article 2

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities shall be used, adjusted to take account of differences attributable to commercial level and/or to quantity, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities shall be used, adjusted to take account of differences attributable to commercial level and/or to quantity, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1. (a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

(i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;

(iii) where appropriate, the costs and charges referred to in Article 8.2;

(iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1(a) of this Article, be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a) of this Article.

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation;

(c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the party under Article 8.2.

2. No party may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the

customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of the General Agreement on Tariffs and Trade (hereinafter referred to as the GATT) and on the basis of data available in the country of importation.

2. No customs value shall be determined under the provisions of this Article on the basis of:

(a) the selling price in the country of importation of goods produced in such country;

(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;

(c) the price of goods on the domestic market of the country of exportation;

(d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;

(e) the price of the goods for export to a country other than the country of importation;

(f) minimum customs values;

(g) arbitrary or fictitious values.

3. If he so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

2. In framing its legislation, each party shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

(a) the cost of transport of the imported goods to the port or place of importation;

(b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and

(c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each party.

Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11

1. The legislation of each party shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each party shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. He shall also be informed of his rights of any further appeal.

Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of the GATT by the country of importation concerned.

Article 13

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer shall nevertheless be able to withdraw his goods from customs if, where so required, he provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each party shall make provisions for such circumstances.

Article 14

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

Article 15

1. In this Agreement:

(a) "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

(b) "country of importation" means country or customs territory of importation; and

(c) "produced" includes grown, manufactured and mined.

2. (a) In this Agreement "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.

(b) In this Agreement "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.

(c) The terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 8.1(b)(iv) because such elements were undertaken in the country of importation.

(d) Goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued.

(e) Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

3. In this Agreement "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.

4. For the purposes of this Agreement, persons shall be deemed to be related only if:

(a) they are officers or directors of one another's businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family.

5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4 of this Article.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of his imported goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART II - ADMINISTRATION AND DISPUTE RESOLUTION

Institutions

Article 18

There shall be established under this Agreement:

1. A Committee on Customs Valuation (hereinafter referred to as the Committee) composed of representatives from each of the parties to this Agreement. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording parties to this Agreement the opportunity to consult on matters relating to the administration of the customs valuation system by any party to this Agreement as it might affect the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the parties. The GATT secretariat shall act as the secretariat to the Committee.

2. A Technical Committee on Customs Valuation (hereinafter referred to as the Technical Committee) under the auspices of the Customs Cooperation Council which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Consultations

Article 19

1. If any party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result

of the actions of another party or parties, it may, with a view to reaching a mutually satisfactory solution of the matter, request consultations with the party or parties in question. Each party shall afford sympathetic consideration to any request from another party for consultations.

2. The parties concerned shall initiate requested consultations promptly.

3. Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall attempt to conclude such consultations within a reasonably short period of time. The Technical Committee shall provide, upon request, advice and assistance to parties engaged in consultations.

Resolution of disputes

Article 20

1. If no mutually satisfactory solution has been reached between the parties concerned in consultations under Article 19 above, the Committee shall meet at the request of any party to the dispute, within thirty days of receipt of such a request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.

2. In investigating the matter and in selecting its procedures, the Committee shall take into account whether the issues in dispute relate to commercial policy considerations or to questions requiring detailed technical consideration. The Committee may request on its own initiative that the Technical Committee carry out an examination, as provided in paragraph 4 below, of any question requiring technical consideration. Upon the request of any party to the dispute that considers the issues to relate to questions of a technical nature, the Committee shall request the Technical Committee to carry out such an examination.

3. During any phase of a dispute settlement procedure, competent bodies and experts in matters under consideration may be consulted; appropriate information and assistance may be requested from such bodies and experts. The Committee shall take into consideration the results of any work of the Technical Committee that pertain to the matter in dispute.

Technical issues

4. When the Technical Committee is requested under the provisions of paragraph 2 above, it shall examine the matter and report to the Committee no later than three months from the date the technical issue was referred to it, unless the period is extended by mutual agreement between the parties to the dispute.

Panel proceedings

5. In cases where the matter is not referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within three months from the date of the request to the Committee to investigate the matter. Where the matter is referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within one month from the date when the Technical Committee presents its report to the Committee.

6. (a) When a panel is established, it shall be governed by the procedures as set forth in Annex III.

(b) If the Technical Committee has made a report on the technical aspects of the matter in dispute, the panel shall use this report as the basis for its consideration of the technical aspects of the matter in dispute.

Enforcement

7. After the investigation is completed or after the report of the Technical Committee or panel is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within thirty days of receipt of the report. Such action shall include:

(i) a statement concerning the facts of the matter; and

(ii) recommendations to one or more parties to this Agreement or any other ruling which it deems appropriate.

8. If a party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

9. If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more parties to this Agreement to suspend the application to any other party or parties to this Agreement of such obligations under this Agreement as it determines to be appropriate in the circumstances.

10. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

11. If a dispute arises between parties relating to rights and obligations under this Agreement, parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT, including invoking Article XXIII thereof.

PART III - SPECIAL AND DIFFERENTIAL TREATMENT

Article 21

1. Developing country parties to this Agreement may delay application of its provisions for a period not exceeding five years from the date of entry into force of this Agreement for such countries. Developing country parties who choose to delay application of this Agreement shall notify the Director-General to the CONTRACTING PARTIES to the GATT accordingly.

2. In addition to paragraph 1 above, developing country parties to this Agreement may delay application of Article 1.2(b)(iii) and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country parties that choose to delay application of the provisions specified in this paragraph shall notify the Director-General to the CONTRACTING PARTIES to the GATT accordingly.

3. Developed country parties to this Agreement shall furnish, on mutually agreed terms, technical assistance to developing country parties that so request. On this basis developed country parties shall draw up programmes of technical assistance which may include, inter alia, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

PART IV - FINAL PROVISIONS

Acceptance and accession

Article 22

1. This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community.

2. This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the parties to this Agreement, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

3. Contracting parties may accept this Agreement in respect of those territories for which they have international responsibility, provided that the GATT is being applied in respect of such territories in accordance with the provisions of Article XXVI:5(a) or (b) of the GATT; and in terms of such acceptance, each such territory shall be treated as though it were a party to this Agreement.

Reservations

Article 23

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other parties to this Agreement.

Entry into force

Article 24

This Agreement shall enter into force on 1 January 1981 for the governments* which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

National legislation

Article 25

1. Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

2. Each party to this Agreement shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Review

Article 26

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.

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*The term "governments" is deemed to include the competent authorities of the European Economic Community.

Amendments

Article 27

The parties may amend this Agreement, having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the parties have concurred in accordance with procedures established by the Committee, shall not come into force for any party until it has been accepted by such party.

Withdrawal

Article 28

Any party to this Agreement may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the date on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any party to this Agreement may, upon the receipt of such notice, request an immediate meeting of the Committee.

Secretariat

Article 29

This Agreement shall be serviced by the GATT secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the Customs Co-operation Council.

Deposit

Article 30

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each party to this Agreement and each contracting party to the GATT a certified

copy thereof and of each amendment thereto pursuant to Article 27, and an information of each acceptance thereof or instrument of accession thereto pursuant to Article 22, or written notice of each withdrawal therefrom pursuant to Article 28.

Registration

Article 31

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this ..... day of ..... nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

ANNEX I

INTERPRETATIVE NOTES

General Note

Sequential application of valuation methods

1. Articles 1 to 7, inclusive, define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Articles 1 to 6, inclusive, it is to be determined under the provisions of Article 7.

Use of generally accepted accounting principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the customs administration of each party shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in Article 8.1(b)(ii) undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1

Price actually paid or payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

(a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

(b) the cost of transport after importation;

(c) duties and taxes of the country of importation.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1(a)(iii)

Among restrictions which would not render a price paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1(b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

(a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;

(b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;

(c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning

the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind,this would demonstrate that the price had not been influenced.

4. Paragraph 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2(b) is met, it is not necessary to examine the question of influence under paragraph 2(a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 2(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in Article 1.2(b).

Note to Article 2

1. In applying Article 2, the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

(a) a sale at the same commercial level but in different quantities;

(b) a sale at a different commercial level but in substantially the same quantities; or

(c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

(a) quantity factors only;

(b) commercial level factors only; or

(c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

Note to Article 3

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

(a) a sale at the same commercial level but in different quantities;

(b) a sale at a different commercial level but in substantially the same quantities; or

(c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

(a) quantity factors only;

(b) commercial level factors only; or

(c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of

500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 3 is not appropriate.

Note to Article 5

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total quantity sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in Article 8.1(b), should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that "profit and general expenses" referred to in Article 5.1 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of Article 5.1(a)(iv) shall be deducted under the provisions of Article 5.1(a)(i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of Article 5.1, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, "goods of the same class or kind" include goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of Article 5.1(b), the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in Article 5.2 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in Article 5.2 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Article 6

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the

computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in Article 6.1(a) is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in Article 8.1(a)(ii) and (iii). It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in Article 8.1(b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in Article 8.1(b)(iv) which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in Article 6.1(b) is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitivity. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The "general expenses" referred to in Article 6.1(b) covers the direct and indirect costs of producing and selling the goods for export which are not included under Article 6.1(a).

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Article 7

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 to 6, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.

3. Some examples of reasonable flexibility are as follows:

(a) Identical goods - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.

(b) Similar goods - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.

(c) Deductive method - the requirement that the goods shall have been sold in the "condition as imported" in Article 5.1(a) could be flexibly interpreted; the "ninety days" requirement could be administered flexibly.

Note to Article 8

Paragraph 1(a)(i)

The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Paragraph 1(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in Article 8.1(b)(ii) to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that

production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1(b)(iv)

1. Additions for the elements specified in Article 8.1(b)(iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Paragraph 1(c)

1. The royalties and licence fees referred to in Article 8.1(c) may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 9

For the purposes of Article 9, "time of importation" may include the time of entry for customs purposes.

Note to Article 11

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

3. However, nothing in Article 11 shall prevent a party from requiring full payment of assessed customs duties prior to an appeal.

Note to Article 15

Paragraph 4

For the purposes of this Article, the term "persons" includes legal persons, where appropriate.

Paragraph 4(e)

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

ANNEX II

Technical Committee on Customs Valuation

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the Customs Co-operation Council with a view, at the technical level, towards uniformity in interpretation and application of this Agreement.

2. The responsibilities of the Technical Committee shall include the following:

(a) to examine specific technical problems arising in the day-to-day administration of the customs valuation systems of parties to this Agreement and to give advisory opinions on appropriate solutions based upon the facts presented;

(b) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;

(c) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;

(d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any party to this Agreement or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;

(e) to facilitate, as requested, technical assistance to parties to this Agreement with a view to furthering the international acceptance of this Agreement; and

(f) to exercise such other responsibilities as the Committee may assign to it.

General

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by parties to this Agreement or the Committee, in a reasonably short period of time.

4. The Technical Committee shall be assisted as appropriate in its activities by the Secretariat of the Customs Co-operation Council.

Representation

5. Each party to this Agreement shall have the right to be represented on the Technical Committee. Each party may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a party so represented on the Technical Committee is hereinafter referred to as a member of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers. The GATT secretariat may also attend such meetings with observer status.

6. Members of the Customs Co-operation Council who are not parties to this Agreement may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

7. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the Customs Co-operation Council (hereinafter referred to as "the Secretary-General") may invite representatives of governments which are neither parties to this Agreement nor members of the Customs Co-operation Council and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Technical Committee meetings

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman.

10. The meetings of the Technical Committee shall be held at the headquarters of the Customs co-operation Council unless otherwise decided.

11. The Secretary-General shall inform all members of the Technical Committee and those included under paragraphs 6 and 7 at least thirty days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

Agenda

12. A provisional agenda for each session shall be drawn up by the Secretary-General and circulated to the members of the Technical Committee and to those included under paragraphs 6 and 7 at least thirty days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its preceding session, all items included by the Chairman on his own initiative, and all items whose inclusion has been requested by the Secretary-General, by the Committee or by any member of the Technical Committee.

13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

Officers and conduct of business

14. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice Chairmen. The Chairman and Vice Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice Chairmen are eligible for re-election. A Chairman or Vice Chairman who ceases to represent a member of the Technical Committee shall automatically lose his mandate.

15. If the Chairman is absent from any meeting or part thereof, a Vice Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.

16. The Chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

17. In addition to exercising the powers conferred upon him elsewhere by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if his remarks are not relevant.

18. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state his ruling. If this ruling is challenged, the Chairman shall submit it to the meeting for decisions and it shall stand unless overruled.

19. The Secretary-General, or officers of the Secretariat designated by him, shall perform the secretarial work of meetings of the Technical Committee.

Quorum and voting

20. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.

21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the Customs Co-operation Council on that matter indicating the different views expressed in the relevant discussions.

Languages and records

22. The official languages of the Technical Committee shall be English, French and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in the event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

23. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or his designee shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the Customs Co-operation Council.

ANNEX III

Ad hoc panels

1. Ad hoc panels established by the Committee under this Agreement shall have the following responsibilities:

(a) to examine the matter referred to it by the Committee;

(b) to consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and

(c) to make a statement concerning the facts of the matter as they relate to the application of the provisions of this Agreement and, make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

2. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of customs valuation and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connection, each party to this Agreement shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the parties to this Agreement would be willing to make available for such work. When a panel is established, the Chairman, after consultation with the parties concerned, shall, within seven days of such establishment, propose the composition of the panel consisting of three or five members and preferably government officials. The parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

3. Each panel shall develop its own working procedures. All parties having a substantial interest in the matter and having notified this to the Committee shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a party, it shall inform the government of that party. Any party to this Agreement shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be disclosed without the specific permission of the person or government providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person or government providing the information, will be provided.

4. Where the parties to the dispute have failed to reach a satisfactory solution, the panel shall submit its findings in writing. The report of a panel should normally set out the rationale behind its findings. Where a settlement of the matter is reached between the parties, the report of the panel may be confined to a brief description of the dispute and to a statement that a solution has been reached.

5. Panels shall use such report of the Technical Committee as may have been issued under Article 20.4 of this Agreement as the basis for their consideration of issues that involve questions of a technical nature.

6. The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, normally within a period of three months from the date that the panel was established.

7. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the parties to this Agreement.

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
MTN/NTM/W/252
20 June 1979
Special Distribution
English only

Multilateral Trade Negotiations

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Rectifications of a Formal Character

Note by the Secretariat

In the Procès-Verbal embodying the results of the Multilateral Trade Negotiations, representatives acknowledged that the texts listed therein might be subject to rectifications of a purely formal character that did not affect the substance or meaning of the texts (MTN/28, paragraph 1). An airgram (GATT/AIR/1565) inviting delegations to communicate suggestions for formal rectifications to the secretariat by 1 June 1979 was circulated on 8 May 1979 and suggestions from delegations for rectifications were circulated in MTN/NTM/W/249.

Rectifications[1] to the English text of document MTN/NTM/W/229/Rev.1 are listed below.

Page 1: Preamble, first sentence - insert, after "the Parties to this Agreement", "(hereinafter referred to as "Parties")," and make consequential changes throughout the text

Page 1: Preamble, second sentence - insert, after "the General Agreement on Tariffs and Trade", "(hereinafter referred to as "General Agreement" or "GATT")" and make consequential changes throughout the text

Page 5: Article 2:1(b), 6th line - delete the words "shall be used," and insert them in the 8th line, after "quantity,"

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[1] Corresponding rectifications to the French and Spanish texts are being circulated. Rectifications to the French and Spanish texts concerning only the alignment of those texts to the English text are being communicated directly to delegations using these languages. Other delegations wishing to have copies of these texts are invited to inform the secretariat (Tel. 31.02.31, ext. 2385).

Page 6: Article 3:1(b), 6th line - delete the words "shall be used," and insert them in the 7th line, after "quantity,"

Page 7: Article 5:1(a)(iii) - add "and" after "Article 8.2;"

Page 17: Part II - the title should read:

"ADMINISTRATION, CONSULTATION AND DISPUTE SETTLEMENT"

Page 17: Article 18:1 - delete comma at the end of the 8th line and in the 9th line replace "to carry" by "carrying"

Page 17: The title before Article 19 should read "Consultation"

Page 17: Article 19:1, last line - delete comma after "impeded"

Page 18: The title preceding Article 20 should read "Dispute settlement"

Page 22: Article 22 - paragraph 2 will become paragraph 3, paragraph 3 will be deleted and replaced by a new paragraph 4, a new paragraph 2 will be added. The revised text will read:

"2. This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

3. This Agreement shall be open to accession by any other governments on terms related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

4. In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable."

Page 24: Deposit, Article 30 should read:

"This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to Article 27, and a notification of each acceptance thereof or accession thereto pursuant to Article 22 and of each withdrawal therefrom pursuant to Article 28.

Page 29: Note to Article 1:1(a)(iii), first line - insert "actually" before "paid or payable".

March 26, 1979

Letter from Mr Luyten, Head of the Commission Delegation in Geneva to Mr Culbert, Deputy Head of the U.S. Delegation to the MTN relating to the interpretation to be given to article 6.2 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade

Member States of the European Community have had, and continue to have, unfortunate experiences with verification visits performed by foreign customs officials. Tacit acceptance by the government concerned has been assumed in particular cases when, in fact, because of insufficient notice or failures of communication, the government in question has not had the opportunity to intervene. In order to avoid such problems when the new valuation agreement comes into effect, we consider that it will be necessary within the Community to lay down some specific procedures to implement the provisions of Article 6.2. The procedures might, for example, stipulate the length of the advance notice to be given and nominate particular offices for the receipt of the request to carry out a verification. Furthermore, it might be decided to stipulate that such visits should only take place when the authorities of the country in question have informed the authorities of the country of importation in writing that they agree to, or do not object to, the investigation.

We consider that Article 6.2 of the Valuation Agreement does not infringe the sovereign right of any signatory to specify whatever rules or procedures it considers necessary to control verification visits within its territory and that it is, therefore, open to the Community to introduce procedures along the lines outlined above. Furtheremore, we believe that nothing in Article 6.2 should be construed as altering previously agreed procedures established among sovereign states. As a consequence, where agreements exist between a Member State of the Community and the United States Government which provide for the verification of information concerning customs value, the procedures provided for in such agreements should be applied in the case of verifications under the provisions of Article 6.2 of the Valuation Agreement.

I should be grateful for confirmation that the United States administration shares our interpretation of Article 6.2 of the Valuation Agreement, as well as our view on the applicability of existing mutual assistance agreements to verifications under the provisions of Article 6.2

Annex to Part III A.7
Section 10

June 15, 1979

Letter from Ambassador McDonald of the US Delegation to Mr Luyten, Head of the Commission Delegation in Geneva

This is to acknowledge receipt of your letter of March 28, 1979 regarding Article 6.2 of the Customs Valuation Agreement.

We consider that Article 6.2 of the Valuation Agreement does not infringe on the sovereign right of any signatory to specify whatever rules or procedures it deems necessary to control verification visits within its territory. Furthermore, we believe that nothing in Article 6.2 shall be construed as altering previously agreed procedures established among sovereign states.

I believe that this is consistent with your own interpretation of this article of the Agreement.

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

L/4817
31 July 1979

Special Distribution

AGREEMENT ON MEASURES TO DISCOURAGE THE IMPORTATION OF COUNTERFEIT GOODS

The attached proposal is circulated at the request of the United States and the European Economic Community. It is a revised version of MTN/NTM/W/225.

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AGREEMENT ON MEASURES TO DISCOURAGE THE IMPORTATION OF COUNTERFEIT GOODS

PREAMBLE

Having regard to the Multilateral Trade Negotiations the Parties to the Agreement on Measures to Discourage the Importation of Counterfeit Goods (hereinafter referred to as "Parties" and "this Agreement");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

Considering that trade in counterfeit goods prejudices the interests of legitimate traders;

Considering also that trade in counterfeit goods deceives consumers and is harmful to their interests;

Desiring to discourage international trade in counterfeit goods by co-operation among parties to this Agreement and by strengthening measures to combat such trade;

Desiring to deprive parties to the importation of counterfeit goods of the economic benefits of such transactions;

Recognizing that variances in the legal systems and customs procedures of the Parties may require different methods, consistent with the Agreement, of dealing with counterfeit goods;

Desiring to bring commercial counterfeiting under more effective control without inhibiting the free flow of legitimate trade; and

Seeking to provide for international notification, consultation, surveillance and dispute settlement procedures with a view to ensuring a fair, prompt and effective application of this Agreement;

Hereby agree as follows:

PART I

Article I - Objectives, Requirements, and Scope of Agreement

1. The Parties shall discourage international trade in counterfeit goods. To this end they shall deal with imported counterfeit goods in a manner that deprives the persons involved of the economic benefits of the transaction and deters international trade in such goods. In furtherance thereof, they shall

prevent, to the greatest extent possible, counterfeit goods from entering or re-entering commerce. However, nominal quantities of goods intended for personal use and not for sale may be excluded from the requirements of this Agreement.

2. In this Agreement:

"Counterfeit goods" means any imported goods with a false representation of a trademark that is entitled to protection under the laws of the country of importation and which is legally registered, where such registration is required by the country of importation.

"Trademark" shall be as defined by the law of the country of importation and shall include any certification mark or collective mark registered in the country of importation and entitled to protection as a trademark.

"Country of importation" means the country in which counterfeit goods are subject to customs entry for home use.

3. The substantive intellectual property law of the Parties is unchanged by this Agreement.

4. Nothing in this Agreement shall require or permit the Parties to treat parallel imports as counterfeit.

Article II - Procedures

1. Parties shall afford owners of intellectual property rights covered by this Agreement, or their representatives, the opportunity to present information concerning international trade in counterfeit goods to the appropriate authorities of the country of importation. Such authorities may be administrative, such as the customs or trademark authorities, or judicial.

2. (A) When the authorities referred to in paragraph 1 are satisfied that goods reasonably suspected of being counterfeit have been or are likely to be imported, they shall take the necessary steps to provide for the detention or seizure of such goods or the taking of other appropriate measures to retain jurisdiction over or prevent the sale or other disposal of such goods pending final determination whether the goods are counterfeit or not.

(B) Notwithstanding the provisions of paragraph 2(A) of this Article, alternative procedures consistent with the objectives of this Agreement may be established to deal with perishable goods and goods with a seasonal market.

3. The actions prescribed in this article shall be taken at the written request of the person owning the intellectual property right in question or his representative. The person making the request shall be required to establish his right to protection in accordance with the relevant law in the country of importation and to produce satisfactory evidence that counterfeit goods have been or are likely to be imported in infringement of that right.

4. To the greatest extent possible, notice of arrival of goods which have been the subject of a written request under the provisions of paragraph 3 of this article shall be given promptly to the person making such request. The importer of such goods shall also be informed of the action taken and the reasons for such action.

5. Where appropriate, the person requesting action in accordance with the provisions of paragraph 2 may be required to provide security by bond or deposit of money in an amount sufficient to indemnify the authorities or to hold the importer harmless from loss or damage resulting from such action where goods are determined not to be counterfeit.

6. The Parties shall take appropriate steps to ensure that determinations concerning counterfeit goods shall be reasoned and made in a fair, open and expeditious manner which avoids the creation of non-tariff barriers to and minimizes interference with legitimate trade.

7. Actions in accordance with the provisions of this article may, subject to the law of the country of importation, be terminated at any time upon the request of the owner of the intellectual property right in question or his representative.

Article III - Disposal of Counterfeit Goods

1. Upon determination that the goods in question are counterfeit, action shall be taken so as to deprive the parties to the importation of the counterfeit goods of the economic benefits of the transaction and to provide an effective deterrent to further transactions involving the importation of counterfeit goods.

2. To the greatest extent possible, counterfeit goods should be subject to forfeiture and should be disposed of outside the channels of commerce in a manner that minimizes harm to the owner of the intellectual property right in question. Alternative methods of disposal may be used as long as they constitute an effective deterrent to trade in such goods. However, in individual cases involving special circumstances, other measures may be taken having due regard to the objectives of this Agreement.

3. Such disposal or measures may include any other form of disposal of the goods in question, consistent with national law, as may be agreed by the authorities and the owner of the intellectual property right in question.

Article IV - Right of Appeal

The Parties shall provide to persons with a legitimate interest the right of appeal against any action or decision, taken pursuant to this Agreement by the authorities referred to in paragraph 1 of Article II.

Article V - Information and Review

1. Laws, regulations, administrative rulings of general application, and any information about procedures relating to the implementation of this Agreement, shall be published. Judicial decisions shall be made available on request to any other Party.

2. In order to ensure the effective application of this Agreement, the Parties shall co-operate and provide assistance through the exchange of information concerning international trade in counterfeit goods, or otherwise. They shall, where appropriate, communicate without delay to other Parties concerned information relating to trade in counterfeit goods which is liable to have effects outside their territory or which shows that a new fraudulent practice or technique has been adopted.

3. All information which is by nature confidential or which is provided on a confidential basis in pursuance of this Agreement shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article VI - Notes on Articles

The notes annexed to this Agreement form an integral part of this Agreement and the articles of this Agreement are to be read and applied in conjunction with their respective notes.

Article VII - Enforcement of Obligations

Institutions

1. There shall be established under this Agreement a Committee on Commercial Counterfeiting (referred to in this Agreement as "the Committee") composed of representatives from each of the Parties. This Committee shall elect its own Chairman and shall meet as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of the Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.

2. The Committee may establish ad hoc panels in the manner and for the purposes set out in paragraph 7 of this Article and working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.

Consultations

3. At the request of any Party any other Party shall enter into consultations concerning any specific problem relating to the application of the Agreement and shall work towards a mutually satisfactory solution consistent with the objectives of this Agreement.

4. Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall provide information concerning the matter subject to the provisions of Article VII, paragraph 3, and attempt to conclude such consultations within a reasonably short period of time.

Dispute Settlement

5. If no mutually satisfactory solution has been reached as a result of consultations under paragraph 3 between the Parties concerned, the Committee shall meet at the request of any Party within thirty days of receipt of such a request, to investigate the matter, with a view to facilitating a mutual satisfactory solution.

6. If no mutually satisfactory solution has been reached after detailed examination by the Committee under paragraph 5 within three months, the Committee shall, at the request of any Party to the dispute, establish a panel to:

(a) examine the matters;

(b) consult regularly with the Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;

(c) make a statement concerning the facts of the matter as they relate to application of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

7. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of governmental officials experienced in the field of trade relations. This list may also include persons other than governmental officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two persons whom the Parties would be willing to make available for such work. When a panel is established under paragraph 6, the Chairman, within seven days, shall propose to the Parties to

the dispute the composition of the panel consisting of three or five members and preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are Parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as governmental representatives nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

8. Each panel shall develop its own working procedures. All Parties, having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Before a panel seeks such information from a source within the jurisdiction of a Party it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information authorized by the government or person providing the information, will be provided.

Where a mutually satisfactory solution to a dispute cannot be found or where the dispute relates to an interpretation of this Agreement, the panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the Parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee. Where an interpretation of this Agreement is not involved and where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

9. The time required by panels will vary with the particular case. Panels should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, taking into account the obligation of the Committee to ensure prompt settlement in cases of urgency normally within a period of four months from the date the panel was established.

Enforcement

10. After the examination is complete or after the report of a panel, working party or other subsidiary body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to

these reports, the Committee shall take appropriate action normally within thirty days of receipt of the report, unless extended by the Committee, including:

(a) a statement concerning the facts of the matter;

(b) recommendations to one or more Parties; or

(c) any other ruling which it deems appropriate.

Any recommendations by the Committee shall aim at the positive resolution of the matter on the basis of the operative provisions of this Agreement and its objectives.

11. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

12. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

Balance of rights and obligations

13. If the Committee's recommendations are not accepted by a Party, or Parties, to the dispute, and if the Committee considers that the circumstances are serious enough to justify such action, it may authorize a Party or Parties to suspend in whole or in part, and for such time as may be necessary, the application of this Agreement to any other Party or Parties, as is determined to be appropriate in the circumstances.

Article VIII

Final provisions

1. Acceptance and accession

(a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting Parties to the GATT and by the European Economic Community.

(b) Any government contracting Party to the GATT not a Party to this Agreement may accede to it on terms to be agreed between that government and the Parties to this Agreement. Accession shall take place by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

(c) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

(d) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

(e) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

2. Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

3. Entry into force

This Agreement shall enter into force on 1 January 1980 for the governments[1] which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

4. National legislation

(a) Each government[2] accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

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[1]For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Economic Community.

[2]The application of this Agreement by the member States of the European Economic Community is without prejudice to such further implementating measures as may be introduced in a Community framework.

5. Review

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.

In this connection, the Parties agree to consult with one another with a view to strengthening the protection of other intellectual property rights. To this end the Parties agree that discussions and negotiations should be pursued bilaterally or in appropriate international fora on other intellectual property rights such as appellations of origin and indications of source, certification marks, copyrights and designs and that the results of this work should be taken account of in the annual review referred to above.

6. Amendments

The Parties may amend this Agreement, having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

7. Withdrawal

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

8. Non-application of this Agreement between particular Parties

This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

9. Secretariat

This Agreement shall be serviced by the GATT secretariat.

10. Deposit

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 6 and a notification of each acceptance thereof or accession thereto pursuant to paragraph 1 and of each withdrawal therefrom pursuant to paragraph 7.

11. Registration

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this ..... day of ..... nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

Note to Article I

This Agreement applies to international trade in "counterfeit goods". The term "counterfeit goods" is defined in Article I to be any imported goods with a false representation of a trademark that is entitled to protection under the laws of the country of importation and which is legally registered where such registration is required by the country of importation. This definition is intended to limit the scope of the Agreement to cover only imported goods with false trademarks that are identical or substantially indistinguishable from the legally protected mark and not lesser infringements. Furthermore, it is intended that countries with registration systems for trademarks may require registration of a trademark as a pre-condition to the application of procedures required by this Agreement.

Note to Article II

Article II provides that action under the Agreement shall be taken at the written request of the person concerned. This should not be interpreted as precluding the appropriate authorities from initiating such action in the absence of specific written request, if they have the necessary powers, where from evidence available to them they reasonably suspect that imported goods are counterfeit. These powers should not, however, be exercised in such a way as to create non-tariff barriers to legitimate trade.

Note to Article II

The appropriate authorities may specify the information required to be presented by the person owning the intellectual property right or his representative under the provisions of Article II(3). Such information shall be no more specific and detailed than is reasonably required to enable the authorities to take the necessary action.

Note to Article III.2

In order to minimize harm to the owner of the intellectual property right in question the trademark whose use rendered the goods counterfeit should be obliterated or removed, where feasible, before disposal.

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
MTN/FR/6
16 July 1979
Special Distribution

Multilateral Trade Negotiations

TEXTS PREPARED BY GROUP "FRAMEWORK"

Note by the Secretariat

The texts prepared by Group "Framework" attached to the Procès-Verbal embodying the results of the Multilateral Trade Negotiations have been subject to rectifications of a formal character circulated in MTN/FR/W/25. The attached texts incorporate these rectifications. The French and Spanish texts have been edited to ensure their full correspondence with the English texts.

The circulation of these rectified texts does not prejudice action to be taken in due course by the CONTRACTING PARTIES regarding their legal form or their entry into force.

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POINTS 1 AND 4

DIFFERENTIAL AND MORE FAVOURABLE TREATMENT RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES

NOTE: The text below has been drawn up without prejudice to the position of any delegation with respect to its eventual legal status. Some delegations consider that such a text should appear as a new Article or set of provisions to be incorporated in the General Agreement. Other delegations consider that it should be adopted by the CONTRACTING PARTIES as a Declaration or Decision. Some consequential amendments to the text may be necessary in the light of the decision taken on this question.

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1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries*, without according such treatment to other contracting parties.

2. The provisions of paragraph 1 apply to the following**:

   (a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences***;

   (b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;

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*The words "developing countries" as used in this text are to be understood to refer also to developing territories.

**It would remain open for the CONTRACTING PARTIES to consider on an ad hoc basis under the GATT provisions for joint action any proposals for differential and more favourable treatment not falling within the scope of this paragraph.

***As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of "generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries".

(c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another;

(d) Special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.

3. Any differential and more favourable treatment provided under this clause:

(a) shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties;

(b) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

(c) shall in the case of such treatment accorded by developed contracting parties to developing countries be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries.

4.* Any contracting party taking action to introduce an arrangement pursuant to paragraphs 1, 2 and 3 above or subsequently taking action to introduce modification or withdrawal of the differential and more favourable treatment so provided shall:

(a) notify the CONTRACTING PARTIES and furnish them with all the information they may deem appropriate relating to such action;

(b) afford adequate opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise. The CONTRACTING PARTIES shall, if requested to do so by such contracting party, consult with all contracting parties concerned with respect to the matter with a view to reaching solutions satisfactory to all such contracting parties.

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*Nothing in these provisions shall affect the rights of contracting parties under the General Agreement.

5. The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.

6. Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems.

7. The concessions and contributions made and the obligations assumed by developed and less-developed contracting parties under the provisions of the General Agreement should promote the basic objectives of the Agreement, including those embodied in the Preamble and in Article XXXVI. Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.

8. Particular account shall be taken of the serious difficulty of the least-developed countries in making concessions and contributions in view of their special economic situation and their development, financial and trade needs.

9. The contracting parties will collaborate in arrangements for review of the operation of these provisions, bearing in mind the need for individual and joint efforts by contracting parties to meet the development needs of developing countries and the objectives of the General Agreement.

POINT 2A

DRAFT DECLARATION ON TRADE MEASURES TAKEN FOR BALANCE-OF-PAYMENTS PURPOSES

The CONTRACTING PARTIES,

Having regard to the provisions of Articles XII and XVIII:B of the General Agreement;

Recalling the procedures for consultations on balance-of-payments restrictions approved by the Council on 28 April 1970 (BISD, Eighteenth Supplement, pages 48-53) and the procedures for regular consultations on balance-of-payments restrictions with developing countries approved by the Council on 19 December 1972 (BISD, Twentieth Supplement, pages 47-49);

Convinced that restrictive trade measures are in general an inefficient means to maintain or restore balance-of-payments equilibrium;

Noting that restrictive import measures other than quantitative restrictions have been used for balance-of-payments purposes;

Reaffirming that restrictive import measures taken for balance-of-payments purposes should not be taken for the purpose of protecting a particular industry or sector;

Convinced that the contracting parties should endeavour to avoid that restrictive import measures taken for balance-of-payments purposes stimulate new investments that would not be economically viable in the absence of the measures;

Recognizing that the less-developed contracting parties must take into account their individual development, financial and trade situation when implementing restrictive import measures taken for balance-of-payments purposes;

Recognizing that the impact of trade measures taken by developed countries on the economies of developing countries can be serious;

Recognizing that developed contracting parties should avoid the imposition of restrictive trade measures for balance-of-payments purposes to the maximum extent possible,

Agree as follows:

1. The procedures for examination stipulated in Articles XII and XVIII shall apply to all restrictive import measures taken for balance-of-payments purposes. The application of restrictive import measures taken for balance-of-payments purposes shall be subject to the following conditions in addition to those provided for in Articles XII, XIII, XV and XVIII without prejudice to other provisions of the General Agreement:

(a) In applying restrictive import measures contracting parties shall abide by the disciplines provided for in the GATT and give preference to the measure which has the least disruptive effect on trade[1];

(b) The simultaneous application of more than one type of trade measure for this purpose should be avoided;

(c) Whenever practicable, contracting parties shall publicly announce a time schedule for the removal of the measures.

The provisions of this paragraph are not intended to modify the substantive provisions of the General Agreement.

2. If, notwithstanding the principles of this Declaration, a developed contracting party is compelled to apply restrictive import measures for balance-of-payments purposes, it shall, in determining the incidence of its measures, take into account the export interests of the less-developed contracting parties and may exempt from its measures products of export interest to those contracting parties.

3. Contracting parties shall promptly notify to the GATT the introduction or intensification of all restrictive import measures taken for balance-of-payments purposes. Contracting parties which have reason to believe that a restrictive import measure applied by another contracting party was taken for balance-of-payments purposes may notify the measure to the GATT or may request the GATT secretariat to seek information on the measure and make it available to all contracting parties if appropriate.

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[1] It is understood that the less-developed contracting parties must take into account their individual development, financial and trade situation when selecting the particular measure to be applied.

4. All restrictive import measures taken for balance-of-payments purposes shall be subject to consultation in the GATT Committee on Balance-of-Payments Restrictions (hereafter referred to as "Committee").

5. The membership of the Committee is open to all contracting parties indicating their wish to serve on it. Efforts shall be made to ensure that the composition of the Committee reflects as far as possible the characteristics of the contracting parties in general in terms of their geographical location, external financial position and stage of economic development.

6. The Committee shall follow the procedures for consultations on balance-of-payments restrictions approved by the Council on 28 April 1970 and set out in BISD, Eighteenth Supplement, pages 48-53, (hereinafter referred to as "full consultation procedures") or the procedures for regular consultations on balance-of-payments restrictions with developing countries approved by the Council on 19 December 1972 and set out in BISD, Twentieth Supplement, pages 47-49, (hereinafter referred to as "simplified consultation procedures") subject to the provisions set out below.

7. The GATT secretariat, drawing on all appropriate sources of information, including the consulting contracting party, shall with a view to facilitating the consultations in the Committee prepare a factual background paper describing the trade aspects of the measures taken, including aspects of particular interest to less-developed contracting parties. The paper shall also cover such other matters as the Committee may determine. The GATT secretariat shall give the consulting contracting party the opportunity to comment on the paper before it is submitted to the Committee.

8. In the case of consultations under Article XVIII:12(b) the Committee shall base its decision on the type of procedure on such factors as the following:

(a) the time elapsed since the last full consultations;

(b) the steps the consulting contracting party has taken in the light of conclusions reached on the occasion of previous consultations;

(c) the changes in the overall level or nature of the trade measures taken for balance-of-payments purposes;

(d) the changes in the balance-of-payments situation or prospects;

(e) whether the balance-of-payments problems are structural or temporary in nature.

9. A less-developed contracting party may at any time request full consultations.

10. The technical assistance services of the GATT secretariat shall, at the request of a less-developed consulting contracting party, assist it in preparing the documentation for the consultations.

11. The Committee shall report on its consultations to the Council. The reports on full consultations shall indicate:

(a) the Committee's conclusions as well as the facts and reasons on which they are based;

(b) the steps the consulting contracting party has taken in the light of conclusions reached on the occasion of previous consultations;

(c) in the case of less-developed contracting parties, the facts and reasons on which the Committee based its decision on the procedure followed; and

(d) in the case of developed contracting parties, whether alternative economic policy measures are available.

If the Committee finds that the consulting contracting party's measures

(a) are in important respects related to restrictive trade measures maintained by another contracting party[1] or

(b) have a significant adverse impact on the export interests of a less-developed contracting party,

it shall so report to the Council which shall take such further action as it may consider appropriate.

12. In the course of full consultations with a less-developed contracting party the Committee shall, if the consulting contracting party so desires, give particular attention to the possibilities for alleviating and correcting the balance-of-payments problem through measures that contracting parties

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[1]It is noted that such a finding is more likely to be made in the case of recent measures than of measures in effect for some considerable time.

might take to facilitate an expansion of the export earnings of the consulting contracting party, as provided for in paragraph 3 of the full consultation procedures.

13. If the Committee finds that a restrictive import measure taken by the consulting contracting party for balance-of-payments purposes is inconsistent with the provisions of Articles XII, XVIII:B or this Declaration, it shall, in its report to the Council, make such findings as will assist the Council in making appropriate recommendations designed to promote the implementation of Articles XII and XVIII:B and this Declaration. The Council shall keep under surveillance any matter on which it has made recommendations.

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POINT 2B

SAFEGUARD ACTION FOR DEVELOPMENT PURPOSES

1. The CONTRACTING PARTIES recognize that the implementation by less-developed contracting parties of programmes and policies of economic development aimed at raising the standard of living of the people may involve in addition to the establishment of particular industries* the development of new or the modification or extension of existing production structures with a view to achieving fuller and more efficient use of resources in accordance with the priorities of their economic development. Accordingly, they agree that a less-developed contracting party may, to achieve these objectives, modify or withdraw concessions included in the appropriate schedules annexed to the General Agreement as provided for in Section A of Article XVIII or, where no measure consistent with the other provisions of the General Agreement is practicable to achieve these objectives, have recourse to Section C of Article XVIII, with the additional flexibility provided for below. In taking such action the less-developed contracting party concerned shall give due regard to the objectives of the General Agreement and to the need to avoid unnecessary damage to the trade of other contracting parties.

2. The CONTRACTING PARTIES recognize further that there may be unusual circumstances where delay in the application of measures which a less-developed contracting party wishes to introduce under Section A or Section C of Article XVIII may give rise to difficulties in the application of its programmes and policies of economic development for the aforesaid purposes. They agree, therefore, that in such circumstances, the less-developed contracting party concerned may deviate from the provisions of Section A and paragraphs 14, 15, 17 and 18 of Section C to the extent necessary for introducing the measures contemplated on a provisional basis immediately after notification.

3. It is understood that all other requirements of the preambular part of Article XVIII and of Sections A and C of that Article, as well as the Notes and Supplementary Provisions set out in Annex I under these Sections will continue to apply to the measures to which this Decision relates.

4. The CONTRACTING PARTIES shall review this Decision in the light of experience with its operation, with a view to determining whether it should be extended, modified or discontinued.

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*As referred to in paragraphs 2, 3, 7, 13 and 22 of Article XVIII and in the Note to these paragraphs.

POINT 3

DRAFT UNDERSTANDING REGARDING NOTIFICATION CONSULTATION, DISPUTE SETTLEMENT AND SURVEILLANCE

1. The CONTRACTING PARTIES reaffirm their adherence to the basic GATT mechanism for the management of disputes based on Articles XXII and XXIII.[1] With a view to improving and refining the GATT mechanism, the CONTRACTING PARTIES agree as follows:

Notification

2. Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification.[2]

3. 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. Contracting parties should endeavour to notify such measures in advance of implementation. In other cases, where prior notification has not been possible, such measures should be notified promptly ex post facto. Contracting parties which have reason to believe that such trade measures have been adopted by another contracting party may seek information on such measures bilaterally, from the contracting party concerned.

Consultations

4. Contracting parties reaffirm their resolve to strengthen and improve the effectiveness of consultative procedures employed by contracting parties. In that connexion, they undertake to respond to requests for consultations promptly and to attempt to conclude consultations expeditiously, with a view to reaching mutually satisfactory conclusions. Any requests for consultations should include the reasons therefor.

5. During consultations, contracting parties should give special attention to the particular problems and interests of less-developed contracting parties.

6. Contracting parties should attempt to obtain satisfactory adjustment of the matter in accordance with the provisions of Article XXIII:1 before resorting to Article XXIII:2.

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[1] It is noted that Article XXV may, as recognized by the CONTRACTING PARTIES, inter alia, when they adopted the report of the Working Party on particular difficulties connected with trade in primary products (L/930), also afford an appropriate avenue for consultation and dispute settlement in certain circumstances.

[2] See secretariat note, "Notifications required from contracting parties" (MTN/FR/W/17, dated 1 August 1978).

Dispute settlement

7. The CONTRACTING PARTIES agree that the customary practice of the GATT in the field of dispute settlement, described in the Annex, should be continued in the future, with the improvements set out below. They recognize that the efficient functioning of the system depends on their will to abide by the present understanding. The CONTRACTING PARTIES reaffirm that the customary practice includes the procedures for the settlement of disputes between developed and less-developed countries adopted by the CONTRACTING PARTIES in 1966 (BISD, fourteenth supplement, page 18) and that these remain available to less-developed contracting parties wishing to use them.

8. If a dispute is not resolved through consultations the contracting parties concerned may request an appropriate body or individual to use their good offices with a view to the conciliation of the outstanding differences between the parties. If the unresolved dispute is one in which a less-developed contracting party has brought a complaint against a developed contracting party, the less-developed contracting party may request the good offices of the Director-General who, in carrying out his tasks, may consult with the Chairman of the CONTRACTING PARTIES and the Chairman of the Council.

9. It is understood that requests for conciliation and the use of the dispute settlement procedures of Article XXIII:2 should not be intended or considered as contentious acts and that, if disputes arise, all contracting parties will engage in these procedures in good faith in an effort to resolve the disputes. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

10. It is agreed that if a contracting party invoking Article XXIII:2 requests the establishment of a panel to assist the CONTRACTING PARTIES to deal with the matter, the CONTRACTING PARTIES would decide on its establishment in accordance with standing practice. It is also agreed that the CONTRACTING PARTIES would similarly decide to establish a working party if this were requested by a contracting party invoking the Article. It is further agreed that such requests would be granted only after the contracting party concerned had had an opportunity to study the complaint and respond to it before the CONTRACTING PARTIES.

11. When a panel is set up, the Director-General, after securing the agreement of the contracting parties concerned, should propose the composition of the panel, of three or five members depending on the case, to the CONTRACTING PARTIES for approval. The members of a panel would preferably be governmental. It is understood that citizens of countries whose governments[1] are parties to the dispute would not be members of the panel concerned with

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[1] In the case customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.

that dispute. The panel should be constituted as promptly as possible and normally not later than thirty days from the decision by the CONTRACTING PARTIES.

12. The parties to the dispute would respond within a short period of time, i.e., seven working days, to nominations of panel members by the Director-General and would not oppose nominations except for compelling reasons.

13. In order to facilitate the constitution of panels, the Director-General should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade relations, economic development, and other matters covered by the General Agreement, and who could be available for serving on panels. For this purpose, each contracting party would be invited to indicate at the beginning of every year to the Director-General the name of one or two persons who would be available for such work.[1]

14. Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members,[2] a sufficiently diverse background and a wide spectrum of experience.

15. Any contracting party having a substantial interest in the matter before a panel, and having notified this to the Council, should have an opportunity to be heard by the panel. Each panel should have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a State it shall inform the government of that State. Any contracting party should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided should not be revealed without formal authorization from the contracting party providing the information.

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[1] The coverage of travel expenses should be considered within the limits of budgetary possibilities.

[2] NOTE: A statement would be included in the Annex describing the current practice with respect to inclusion on panels of persons from developing countries.

16. The function of panels is to assist the CONTRACTING PARTIES in discharging their responsibilities under Article XXIII:2. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the General Agreement and, if so requested by the CONTRACTING PARTIES, make such other findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2. In this connexion, panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

17. Where the parties have failed to develop a mutually satisfactory solution, the panel should submit its findings in a written form. The report of a panel should normally set out the rationale behind any findings and recommendations that it makes. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

18. To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the CONTRACTING PARTIES.

19. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any contracting party with an interest in the matter has a right to enquire about and be given appropriate information about that solution in so far as it relates to trade matters.

20. The time required by panels will vary with the particular case.[1] However, panels should aim to deliver their findings without undue delay, taking into account the obligation of the CONTRACTING PARTIES to ensure prompt settlement. In cases of urgency the panel would be called upon to deliver its findings within a period normally of three months from the time the panel was established.

21. Reports of panels and working parties should be given prompt consideration by the CONTRACTING PARTIES. The CONTRACTING PARTIES should take appropriate action on reports of panels and working parties within a reasonable period of time. If the case is one brought by a less-developed contracting party, such action should be taken in a specially convened meeting, if necessary. In such cases, in considering what appropriate action might be taken the CONTRACTING PARTIES shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of less-developed contracting parties concerned.

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[1] NOTE: An explanation is included in the Annex that "in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months."

22. The CONTRACTING PARTIES shall keep under surveillance any matter on which they have made recommendations or given rulings. If the CONTRACTING PARTIES' recommendations are not implemented within a reasonable period of time, the contracting party bringing the case may ask the CONTRACTING PARTIES to make suitable efforts with a view to finding an appropriate solution.

23. If the matter is one which has been raised by a less-developed contracting party, the CONTRACTING PARTIES shall consider what further action they might take which would be appropriate to the circumstances.

Surveillance

24. The CONTRACTING PARTIES agree to conduct a regular and systematic review of developments in the trading system. Particular attention would be paid to developments which affect rights and obligations under the GATT, to matters affecting the interests of less-developed contracting parties, to trade measures notified in accordance with this understanding and to measures which have been subject to consultation, conciliation or dispute settlement procedures laid down in this understanding.

Technical assistance

25. The technical assistance services of the GATT secretariat shall, at the request of a less-developed contracting party, assist it in connexion with matters dealt with in this understanding.

ANNEX

Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement (Article XXIII:2)

1. Any dispute which has not been settled bilaterally under the relevant provisions of the General Agreement may be referred to the CONTRACTING PARTIES[1] which are obliged, pursuant to Article XXIII:2, to investigate matters submitted to them and make appropriate recommendations or give a ruling on the matter as appropriate. Article XXIII:2 does not indicate whether disputes should be handled by a working party or by a panel.[2]

2. The CONTRACTING PARTIES adopted in 1966 a decision establishing the procedure to be followed for Article XXIII consultations between developed and less-developed contracting parties (BISD, 14th Supplement, page 18). This procedure provides, inter alia, for the Director-General to employ his good offices with a view to facilitating a solution, for setting up a panel with the task of examining the problem in order to recommend appropriate solutions, and for time-limits for the execution of the different parts of this procedure.

3. The function of a panel has normally been to review the facts of a case and the applicability of GATT provisions and to arrive at an objective assessment of these matters. In this connexion, panels have consulted regularly with the parties to the dispute and have given them adequate opportunity to develop a mutually satisfactory solution. Panels have taken appropriate account of the particular interests of developing countries. In cases of failure of the parties to reach a mutually satisfactory settlement, panels have normally given assistance to the CONTRACTING PARTIES in making recommendations or in giving rulings as envisaged in Article XXIII:2.

4. Before bringing a case, contracting parties have exercised their judgment as to whether action under Article XXIII:2 would be fruitful. Those cases which have come before the CONTRACTING PARTIES under this provision have, with few exceptions, been brought to a satisfactory conclusion. The

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[1]The Council is empowered to act for the CONTRACTING PARTIES, in accordance with normal GATT practice.

[2]At the Review Session (1955) the proposal to institutionalize the procedures of panels was not adopted by CONTRACTING PARTIES mainly because they preferred to preserve the existing situation and not to establish judicial procedures which might put excessive strain on the GATT.

aim of the CONTRACTING PARTIES has always been to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the CONTRACTING PARTIES is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the General Agreement. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measures which are inconsistent with the General Agreement. The last resort which Article XXIII provides to the country invoking this procedure is the possibility of suspending the application of concessions or other obligations on a discriminatory basis vis-à-vis the other contracting party, subject to authorization by the CONTRACTING PARTIES of such measures. Such action has only rarely been contemplated and cases taken under Article XXIII:2 have led to such action in only one case.

5. In practice, contracting parties have had recourse to Article XXIII only when in their view a benefit accruing to them under the General Agreement was being nullified or impaired. In cases where there is an infringement of the obligations assumed under the General Agreement, the action is considered prima facie to constitute a case of nullification or impairment. A prima facie case of nullification or impairment would ipso facto require consideration of whether the circumstances are serious enough to justify the authorization of suspension of concessions or obligations, if the contracting party bringing the complaint so requests. This means that there is normally a presumption that a breach of the rules has an adverse impact on other contracting parties, and in such cases, it is up to the contracting parties against whom the complaint has been brought to rebut the charge. Paragraph 1(b) permits recourse to Article XXIII if nullification or impairment results from measures taken by other contracting parties whether or not these conflict with the provisions of the General Agreement, and paragraph 1(c) if any other situation exists. If a contracting party bringing an Article XXIII case claims that measures which do not conflict with the provisions of the General Agreement have nullified or impaired benefits accruing to it under the General Agreement, it would be called upon to provide a detailed justification.

6. Concerning the customary elements of the procedures regarding working parties and panels, the following elements have to be noted:

(i) working parties are instituted by the Council upon the request of one or several contracting parties. The terms of reference of working parties are generally "to examine the matter in the light of the relevant provisions of the General Agreement and to report to the Council". Working parties set up their own working procedures. The practice for working parties has been to hold

one or two meetings to examine the matter and a final meeting to discuss conclusions. Working parties are open to participation of any contracting party which has an interest in the matter. Generally working parties consist of a number of delegations varying from about five to twenty according to the importance of the question and the interests involved. The countries who are parties to the dispute are always members of the Working Party and have the same status as other delegations. The report of the Working Party represents the views of all its members and therefore records different views if necessary. Since the tendency is to strive for consensus, there is generally some measure of negotiation and compromise in the formulation of the Working Party's report. The Council adopts the report. The reports of working parties are advisory opinions on the basis of which the CONTRACTING PARTIES may take a final decision.

(ii) In the case of disputes, the CONTRACTING PARTIES have established panels (which have been called by different names) or working parties in order to assist them in examining questions raised under Article XXIII:2. Since 1952, panels have become the usual procedure. However, the Council has taken such decisions only after the party concerned has had an occasion to study the complaint and prepare its response before the Council. The terms of reference are discussed and approved by the Council. Normally, these terms of reference are "to examine the matter and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII". When a contracting party having recourse to Article XXIII:2 raised questions relating to the suspension of concessions or other obligations, the terms of reference were to examine the matter in accordance with the provisions of Article XXIII:2. Members of the panel are usually selected from permanent delegations or, less frequently, from the national administrations in the capitals amongst delegates who participate in GATT activities on a regular basis. The practice has been to appoint a member or members from developing countries when a dispute is between a developing and a developed country.

(iii) Members of panels are expected to act impartially without instructions from their governments. In a few cases, in view of the nature and complexity of the matter, the parties concerned have agreed to designate non-government experts. Nominations are proposed to the parties concerned by the GATT secretariat. The composition of panels (three or five members depending on the case) has been agreed upon

by the parties concerned and approved by the GATT Council. It is recognized that a broad spectrum of opinion has been beneficial in difficult cases, but that the number of panel members has sometimes delayed the composition of panels, and therefore the process of dispute settlement.

(iv) Panels set up their own working procedures. The practice for the panels has been to hold two or three formal meetings with the parties concerned. The panel invited the parties to present their views either in writing and/or orally in the presence of each other. The panel can question both parties on any matter which it considers relevant to the dispute. Panels have also heard the views of any contracting party having a substantial interest in the matter, which is not directly party to the dispute, but which has expressed in the Council a desire to present its views. Written memoranda submitted to the panel have been considered confidential, but are made available to the parties to the dispute. Panels often consult with and seek information from any relevant source they deem appropriate and they sometimes consult experts to obtain their technical opinion on certain aspects of the matter. Panels may seek advice or assistance from the secretariat in its capacity as guardian of the General Agreement, especially on historical or procedural aspects. The secretariat provides the secretary and technical services for panels.

(v) Where the parties have failed to develop a mutually satisfactory solution, the panel has submitted its findings in a written form. Panel reports have normally set out findings of fact, the applicability of relevant provisions, and the basic rationale behind any findings and recommendations that it has made. Where a bilateral settlement of the matter has been found, the report of the panel has been confined to a brief description of the case and to reporting that a solution has been reached.

(vi) The reports of panels have been drafted in the absence of the parties in the light of the information and the statements made.

(vii) To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel has normally first submitted the descriptive part of its report to the parties concerned, and also their conclusions, or an outline thereof, a reasonable period of time before they have been circulated to the CONTRACTING PARTIES.

(viii) In accordance with their terms of reference established by the CONTRACTING PARTIES panels have expressed their views on whether an infringement of certain rules of the General Agreement arises out of the measure examined. Panels have also, if so requested by the CONTRACTING PARTIES, formulated draft recommendations addressed to the parties. In yet other cases panels were invited to give a technical opinion on some precise aspect of the matter (e.g. on the modalities of a withdrawal or suspension in regard to the volume of trade involved). The opinions expressed by the panel members on the matter are anonymous and the panel deliberations are secret.

(ix) Although the CONTRACTING PARTIES have never established precise deadlines for the different phases of the procedure, probably because the matters submitted to panels differ as to their complexity and their urgency, in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months.

The 1966 decision by the CONTRACTING PARTIES referred to in paragraph 2 above lays down in its paragraph 7 that the Panel shall report within a period of sixty days from the date the matter was referred to it.

POINT 5

UNDERSTANDING REGARDING EXPORT RESTRICTIONS AND CHARGES

The participants in the Multilateral Trade Negotiations have examined the various existing provisions of the General Agreement relating to export restrictions and charges. The Annex contains a statement of these provisions.

In the light of the examination referred to, participants agree upon the need to reassess in the near future the GATT provisions relating to export restrictions and charges, in the context of the international trade system as a whole, taking into account the development, financial and trade needs of the developing countries. They request the CONTRACTING PARTIES to address themselves to this task as one of the priority issues to be taken up after the Multilateral Trade Negotiations are concluded.

ANNEX

STATEMENT OF EXISTING GATT PROVISIONS RELATING TO EXPORT RESTRICTIONS AND CHARGES

Introductory observations

1. This statement covers only those GATT provisions that are of particular relevance to export restrictions and charges. The omission of any provision[1] from this statement does not mean that it is not applicable to such restrictions and charges.

2. The subsequent paragraphs are organized as follows:

I. Export restrictions

3. Article XI is entitled "General Elimination of Quantitative Restrictions". Paragraph 1 of Article XI reads with the wording relating to imports omitted:

> "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, ... export licences or other measures, shall be instituted or maintained by any contracting party ... on the exportation or sale for export of any product destined for the territory of any other contracting party."[2]

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[1] Such as Articles XIX and XXIII which provide, under certain conditions, for the suspension or withdrawal of concessions and other obligations under the General Agreement.

[2] A note to Articles XI, XII, XIII, XIV and XVIII provides:

"Throughout Articles XI, XII, XIII, XIV and XVIII, the terms 'import restrictions' or 'export restrictions' include restrictions made effective through State-trading operations".

According to paragraphs 2(a) and (b) of Article XI the above provision does not extend to:

(a) "Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party", and

(b) "... export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade".

For other exceptions to paragraph 1 of Article XI see below paragraphs 6-8.

4. Article XIII is entitled "Non-discriminatory Administration of Quantitative Restrictions". Paragraph 1 of this Article reads with the wording relating to imports omitted: "No prohibition or restriction shall be applied by any contracting party on ... the exportation of any product destined for the territory of any other contracting party, unless ... the exportation of the like product to all third countries is similarly prohibited or restricted."[1] Paragraphs 2 to 4 of Article XIII regulate the non-discriminatory administration of quantitative import restrictions. Paragraph 5 of Article XIII provides inter alia: "In so far as applicable, the principles of this Article shall also extend to export restrictions." Article XIV is entitled: "Exceptions to the Rule of Non-discrimination". Paragraph 4 of this Article reads:

"A contracting party applying import restrictions under Article XII or under Section B of Article XVIII shall not be precluded by Articles XI to XV or Section B of Article XVIII of this Agreement from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use without deviation from the provisions of Article XIII."

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[1] Article XVII is entitled "State Trading Enterprises". Paragraphs 1(a) and (b) of this Article read with the wording relating to imports omitted:

"(a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its ... sales involving ... exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting ... exports by private traders.

(b) The provisions of sub-paragraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such ... sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of ... sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such ... sales."

II. Export charges

5. The following provisions have a bearing on export duties, taxes and other charges:

(a) Paragraph 1 of Article XI, which reads with the wording relating to imports omitted:

"No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, ... export licences or other measures, shall be instituted or maintained by any contracting party ... on the exportation or sale for export of any product destined for the territory of any other contracting party."

(b) Paragraph 1 of Article I, which reads with the wording relating to imports omitted:

"With respect to customs duties and charges of any kind imposed on or in connection with ... exportation or imposed on the international transfer of payments for ... exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with ... exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product ... destined for any other country shall be accorded immediately and unconditionally to the like product ... destined for the territories of all other contracting parties."[1]

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[1] Paragraphs 1(a) and (b) of Article XVII read with the wording relating to imports omitted:

"(a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its ... sales involving ... exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting ... exports by private traders.

(b) The provisions of sub-paragraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such ... sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of ... sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such ... sales."

A note to paragraph 1 of Article XVII provides inter alia:

"The charging by a State enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets."

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(c) Paragraph 1 of Article XXVIII bis, which reads with the wording relating to imports omitted:

"The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on ... exports ..., and conducted with due regard to the objectives of this Agreement and the varying needs of individual contracting parties, are of great importance to the expansion of international trade. The CONTRACTING PARTIES may therefore sponsor such negotiations from time to time."[1]

(d) Paragraph 8 of Article XXXVI, which reads:

"The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties."

A note to this provision states inter alia:

"It is understood that the phrase 'do not expect reciprocity' means, in accordance with the objectives set forth in this Article, that the less-developed contracting parties should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments."

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[1] Article XVII is entitled "State Trading Enterprises". Paragraph 3 of this Article reads:

"The contracting parties recognize that enterprises of the kind described in paragraph 1(a) of this Article might be operated so as to create serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade."

A note to this provision reads with the wording relating to imports omitted:

"Negotiations which contracting parties agree to conduct under this paragraph may be directed towards the reduction of duties and other charges on ... exports or towards the conclusion of any other mutually satisfactory arrangement consistent with the provisions of this Agreement."

(e) Paragraph 1(a) of Article II, which reads:

"Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement."

The schedules annexed to the General Agreement contain only two export duty bindings.[1]

(f) Paragraph 1 of Article VII, which reads with the wording relating to imports omitted:

"The contracting parties recognize the validity of the general principles of valuation set forth in the following paragraphs of this Article, and they undertake to give effect to such principles, in respect of all products subject to duties or other charges or restrictions on ... exportation based upon or regulated in any manner by value. Moreover, they shall, upon a request by another contracting party review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The CONTRACTING PARTIES may request from contracting parties reports on steps taken by them in pursuance of the provisions of this Article."

(g) Paragraph 1 of Article VIII, which reads with the wording relating to imports omitted:

"(a) All fees and charges of whatever character (other than ... export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connexion with ... exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of ... exports for fiscal purposes.

"(b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (a).

"(c) The contracting parties also recognize the need for minimizing the incidence and complexity of ... export formalities and for decreasing and simplifying ... export documentation requirements."

For exceptions to the above provisions see paragraphs 6 to 8 below.

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[1] See GATT, Consolidated Schedules of Tariff Concessions, Volume 3, Geneva, 1952, page 135; and GATT, Third Certification of Changes to Schedules to the General Agreement on Tariffs and Trade, Geneva, 1974, page 763.

III. General exceptions

6. According to paragraph 9(b) of Article XV nothing in the General Agreement shall preclude:

> "the use by a contracting party of restrictions or controls on ... exports, the sole effect of which, additional to the effects permitted under Articles XI, XII, XIII and XIV, is to make effective such exchange controls or exchange restrictions."

7. Article XX entitled "General Exceptions" reads as follows:

> "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
>
> (a) necessary to protect public morals;
>
> (b) necessary to protect human, animal or plant life or health;
>
> (c) relating to the importation or exportation of gold or silver;
>
> (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
>
> (e) relating to the products of prison labour;
>
> (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
>
> (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
>
> (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

(j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960."

8. According to Article XXI entitled "Security Exceptions" nothing in the General Agreement shall be construed:

"(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security."

IV. Other provisions relating to export restrictions and charges

9. In the context of the objectives of paragraph 1 of Article XXXVI, including sub-paragraph (f) of the Article, the following provisions have a bearing on export restrictions and charges:

(a) Paragraph 4 of Article XXXVI:

"Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products, there is need to provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development."

(b) Paragraph 5 of Article XXXVI:

"The rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification of the structure of their economies and the avoidance of an excessive dependence on the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties."

(c) Paragraph 9 of Article XXXVI:

"The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly."

(d) Paragraph 2(a) of Article XXXVIII:

"In particular, the CONTRACTING PARTIES shall:

where appropriate, take action, including action through international arrangements, to provide improved and acceptable conditions of access to world markets for primary products of particular interest to less-developed contracting parties and to devise measures designed to stabilize and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products."

V. Publication and notification

10. Article X is entitled "Publication and Administration of Trade Regulations". Paragraph 1 of this Article reads:

> "Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."

Paragraph 3 of this Article reads:

> "(a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.
>
> (b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts."

11. Paragraph 4(a) of Article XVII, entitled "State Trading Enterprises", reads with the wording relating to imports omitted:

> "Contracting parties shall notify the CONTRACTING PARTIES of the products which are ..... exported from their territories by enterprises of the kind described in paragraph 1(a) of this Article."