Preparatory Committee

ANNOTATED LIST OF SUBJECTS

Background Note by the Secretariat

At the request of the Preparatory Committee, the secretariat recently circulated a paper designed to bring its discussions into better focus (PREP.COM/W/5). The present paper contains notes dealing with the items listed in Parts Two and Three of that paper. These notes are intended to be factual in character; they summarize the background, the state of any work in progress in other GATT bodies and suggestions which have been made regarding possible action by Ministers.

The Safeguard System

- Safeguards, voluntary export restraints, orderly marketing arrangements.

While there continued to be other important outstanding issues in this area, negotiations during the later stages of the Tokyo Round focussed on two main issues. The first was the proposal by some contracting parties that safeguard action might be limited to those sources of imports that were causing or threatening injury and the concern of other contracting parties that there should be no weakening of the disciplines against the arbitrary or subjective use of safeguard measures which most-favoured-nation application was seen to provide. The second issue was whether voluntary export restraints and orderly marketing arrangements should be covered by the disciplines of the GATT.

At the end of the Tokyo Round, the Committee on Safeguards was set up to continue discussions and negotiations. Two other decisions taken at that time may also be relevant. In the Understanding on Notification, Surveillance and Dispute Settlement contracting parties have undertaken, to the maximum extent possible, to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement, without prejudice to the status of these measures under GATT. In addition, the decision establishing the Sub-Committee on Protective Measures was designed to provide a forum for discussion of protective measures including safeguard measures affecting products of trade interest to developing countries. Work is continuing in the Committee on Safeguards. The Committee reached some conclusions in April 1981 (L/5151). Since then the Committee has considered information about actions taken under Article XIX and other actions which appear to serve the same purpose and which, from secretariat estimates, appear to cover more trade and more items than Article XIX actions.

In the Committee it has been suggested that Ministers should take decisions on the avoidance of the use of safeguard measures outside GATT and the phasing out of
such measures, increased transparency in an operative Safeguards Committee and negotiations on other elements. It has also been suggested that Ministers should take decisions on other substantive issues e.g. the coverage of the rules (i.e. the question of voluntary export restraints and orderly marketing arrangements), the geographical coverage of the rules (i.e. the question of selectivity), the conditions and criteria for taking safeguard action, and multilateral surveillance and discipline.

- Structural Adjustment

It has been noted that structural adjustment takes place as economies respond to changes in supply and demand both for domestically produced goods or goods produced abroad and traded internationally and that it is thus a continuing process. Pressures may operate on governments to intervene in the process of adjustment, particularly in periods of slow growth. At the sectoral level, this intervention typically takes the form of measures aimed at regulating the process of adjustment to allow time for enterprises to rationalize their use of factors of production or to allow these factors to find alternative employment. However, measures taken carry the risk of becoming permanent and thus of indefinitely postponing the process of adjustment.

The link between safeguard measures and adjustment assistance measures was made by some delegations during the Tokyo Round. Since that time, discussions have taken place on adjustment assistance in several GATT bodies, e.g. the Consultative Group of 18, the Committee on Trade and Development, and the Textiles Committee, but the focus of work on this subject is now the Working Party on Structural Adjustment and Trade Policy. The Working Party has examined studies on the relationship between developments in trade and changes in production structures and on the relevance of articles and instruments of the GATT to the process of structural adjustment. It is collecting information on the experience of contracting parties in this area. The Working Party is expected soon to discuss how it might deal with the information already made available to it and what arrangements might be made for the exchange of views and discussions in GATT on policy measures by governments to deal with adjustment problems which in their view are related to developments in international trade, with a view to facilitating the use of measures aimed at the liberalization of trade.

In earlier discussions of the safeguards issue, it has been suggested that Ministers might decide to invite contracting parties notifying safeguard measures to provide information regarding measures adopted by them for dealing with underlying problems of structural adjustment (which might be provisions for the phasing out of safeguard measures) and that any review of such measures by the CONTRACTING PARTIES should also provide for a review of the accompanying adjustment policies and measures.

Agriculture in GATT

- Agriculture
- Framework for international trade in agriculture
The issues in the agricultural area concern market access, competition on export markets, and, related to these, national agricultural policies. Among numerous measures which are used or can be used to limit access are tariffs, variable levies, quantitative restrictions, mixing regulations, state trading, bilateral agreements and health and sanitary restrictions. Export subsidies distort competition in export markets in times of surplus and export restrictions and charges in times of shortage. Details of national agricultural policies vary greatly but the features of most interest in the present context are those designed to maintain and stabilize farmers' incomes above fluctuating free market levels, either by increasing the prices for their products or by the granting of subsidies. Adequate information about measures and policies is often lacking. While some results were achieved in the Tokyo Round, it has been noted that the internationally accepted rules and obligations and their application in the agricultural area are the source of continuing friction and controversy and no fully satisfactory solution was found to the question of the GATT institutional framework for cooperation in this area. Disputes relating to export subsidies on some agricultural products have put the GATT's dispute settlement mechanisms under strain (see below).

Agricultural issues are now being examined in a number of GATT bodies. Disputes relating to agricultural products arising under the General Agreement, the number of which has increased in recent years, are dealt with by the Council, normally through the use of Panels. Several MTN Codes such as those on Subsidies and Countervailing Duties, Anti-Dumping, Standards, Valuation and Licensing Procedures relate to all products, including agricultural products. Questions relating to agricultural products have in particular arisen under the Subsidies Code. The Dairy and Meat Arrangements established Councils and Committees for their administration. However, at the moment, the only available forum in which the full range of issues in the agricultural area can be discussed is the Consultative Group of Eighteen which is not a decision-making body. The secretariat has provided documentation for the Consultative Group of Eighteen's discussions on cooperation on agriculture in the GATT. When the Consultative Group of Eighteen meets again on 4-7 May 1982 it is to consider the contribution which it could make to the work of the Preparatory Committee.

Among the conclusions of the Consultative Group of Eighteen were that Ministers should deal with the main problems of market access, distortion of competition on export markets, and related domestic agricultural policies. It was suggested that GATT rules should be more effectively implemented and improved, that existing rules should be universally accepted, generally applied and rigorously interpreted in the same way by all and that full use should be made of existing possibilities under the rules, e.g. high tariffs should be reduced, the level of bindings improved and codes signed. It was also suggested that transparency should be increased, that a body for the consideration of agricultural issues should be established and that the operation and effective implementation of the dispute settlement provisions should be improved (see below).
Tariffs and Non-Tariff Measures

- Tariffs

The tariff reductions resulting from the Tokyo Round are being implemented in accordance with the agreed timetable, a process which will be completed by 1 January 1987. The average level of tariffs in the industrialized countries will then be relatively low although some of their individual rates will remain high and problems of tariff escalation remain. The percentage of bound tariffs varies considerably among contracting parties. A number of technical questions relating to the GATT schedules and tariff nomenclatures are also of importance in this area.

The Committee on Tariff Concessions provides a forum for discussion of questions relating to tariffs. Such questions may also arise in other GATT bodies: of these the Committee on Trade and Development is the most relevant in this connexion. The Committee on Tariff Concessions has been concentrating on supervising the task of keeping the GATT schedules up to date and on the staging of tariff reductions, both specifically referred to in its terms of reference. It is also considering the implications for the GATT of the adoption of the CCC Harmonized System for Commodity Description. In addition, the secretariat has completed a pilot study on tariff escalation (TAR/W/26, COM.TD/W/361). This study is also of interest to the Committee on Trade and Development, which has itself given attention to tariff escalation affecting exports of developing countries. The Tariff Committee met on 21 April 1982 to discuss its possible contribution to the Ministerial Meeting.

Notes on the Harmonized System and rules of origin have been circulated to the Preparatory Committee in PREP.COM/W/2, p.2 and on tariff escalation in PREP.COM/W/6. In this last paper, it has been suggested that tariff escalation is a major problem and that Ministers give renewed impetus to its elimination/substantial reduction. It has also been suggested that Ministers might support the move to the Harmonized System and stress that any renegotiations of GATT schedules that this entailed should be carried out with a view to maintaining benefits provided by present bindings.

- Non-Tariff Measures

While progress was made in the Tokyo Round, many non-tariff measures remain outside the safeguard and agricultural areas referred to above. The revised Inventory of Non-Tariff Measures relating to industrial products is evidence of this. There are many different types of non-tariff measure. At this stage reference will be made in particular to quantitative restrictions, export restrictions and charges and subsidies.

- Quantitative Restrictions

Little progress was made in this area during the Tokyo Round. Many restrictions remain and these are in some cases discriminatory. While several bodies collect information on quantitative restrictions (such as the Joint Working Group, the Committee on Trade and Development and the Balance-of-Payments Committee) full information is not always available in the GATT and, where information is available, there is often ambiguity about the legal status of restrictions under the General Agreement.
There is no single body in the GATT dealing with these issues and many different GATT bodies deal with quantitative restrictions in one way or another. The Committee on Trade and Development and its Sub-Committees on Protective Measures and Trade of Least-Developed Countries deal particularly with quantitative restrictions affecting products of export interest to developing countries. Some GATT bodies deal with restrictions imposed for particular purposes (balance of payments, health and safety, safeguards). Restrictions in particular sectors or restrictions in a particular country context are examined in other bodies. Further bodies deal with particular aspects (licensing procedures).

Suggestions for Ministerial consideration of non-tariff barriers in the areas of safeguards and agriculture have been dealt with above. Other suggestions relating to quantitative restrictions have been made in the Committee on Trade and Development. These suggestions were based on the results of informal plurilateral consultations on quantitative and other import restrictions affecting products of interest to developing countries. During these consultations a number of specific suggestions were made regarding possible action by Ministers in this area. The Committee agreed that the Ministerial Meeting "presented an opportunity for the consideration of specific measures of trade liberalization and of appropriate modalities for carrying forward the unfinished process of liberalization in this area. It further agreed that it could carry out preparatory work to this end, with a view to facilitating decisions by Ministers" (Note on proceedings to be issued).

- Export Restrictions and Charges

During the Tokyo Round, the participants in the negotiations examined the provisions in the General Agreement relating to export restrictions and charges and agreed that a reassessment of these provisions should be undertaken in the context of the international trade system as a whole, taking into account the development, financial and trade needs of the developing countries. In their 1979 Work Programme, the CONTRACTING PARTIES referred to this question of the Consultative Group of Eighteen which invited delegations to submit papers on the matter.

- Subsidies

Lack of transparency is a particular problem in the area of subsidies, partly because of the fear that notifications of subsidies might attract countervailing action. There are clear indications of a recent increase in the use of subsidies - economic developments have increased pressures on governments for some form of assistance, which has often been granted in the form of subsidies because acceptance of GATT obligations has decreased governments' freedom to impose measures at the border. The GATT imposes stricter obligations with regard to export subsidies on non-primary products than with regard to production subsidies. A number of important disputes (relating to agricultural products) have recently revealed a number of problems concerning the interpretation of these texts e.g. the meaning of the words "equitable share of world trade", and "primary product", and the reference period to be used. These disputes have also revealed the limitations of the newly-adopted dispute settlement procedures, a subject dealt with below.

Recent disputes relating to subsidies have been dealt with by the GATT Council, the working parties on sugar, a number of Panels and the Committee on Subsidies and Countervailing Measures. This Committee is examining the state of notifications.
No specific suggestions have been made for action by Ministers.

**Tropical Products**

Tropical products have received special attention for many years in the GATT, in particular because of their importance to many developing countries, including least developed countries. Tropical products are not, generally speaking, produced by the developed countries and in many cases enter these markets freely. However, tariff and non-tariff obstacles do exist in some cases for at least three reasons. Some tropical products are (or are considered to be) substitutes for temperate products, e.g. in the vegetable oil/animal fat area. Some tropical products are subject to duties in order to provide margins of preference for associated countries. Finally, obstacles to trade in processed tropical products provide protection for domestic processing industries. Other problems exist. Some countries have, for example, stressed the problem of low and unstable prices for their exports and internal taxation on these products. Others have referred to problems of production and marketing. Tropical products may be dealt with in many GATT bodies but a focus for GATT activities in this area is provided by the Committee on Trade and Development. This Committee has just completed a first consideration of the results of informal consultations similar to those held on quantitative restrictions. These were aimed at exploring possibilities and conditions for further liberalization of trade in tropical products and of quantitative restrictions. The Committee agreed that the Ministerial Meeting "presented an opportunity for the consideration of specific measures of trade liberalization and of appropriate modalities for carrying forward the unfinished process of liberalization in this area. It agreed that it could carry out preparatory work to this end, with a view to facilitating decisions by Ministers" (Note on proceedings to be issued).

**Dispute Settlement**

- Notification, consultation and surveillance
- Dispute settlement

Confidence in the GATT system and, indeed its credibility, depend on the degree of support that the rules command and on the good functioning of its dispute settlement procedures. At the end of the Tokyo Round the CONTRACTING PARTIES "reaffirmed their adherence to the basic GATT mechanism for the management of disputes based on Articles XXII and XXIII" and adopted an Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance "with a view to improving and refining the GATT mechanism". It is a relatively short time since the adoption of the Understanding but a number of difficulties have already arisen in this area. There continues to be a lack of transparency with respect to a number of measures, as has been noted in relation to the issue of safeguards, but the main difficulties have been with the dispute settlement provisions themselves. The provision for conciliation has not been effective. There have been delays in adopting terms of reference for panels and in constituting them. There have also been difficulties with the time limits laid down in the Understanding, in getting panel reports adopted and, once they have been adopted, in getting their conclusions implemented. Difficulties have also been experienced with the operation of the dispute settlement procedures of MTN Codes, in particular that on Subsidies and Countervailing Duties.
The Council is the main body responsible for the operation of the dispute settlement provisions. It holds special meetings to conduct a regular and systematic review of developments in the trading system giving particular attention, inter alia, to matters which have been subject to consultation, conciliation or dispute settlement procedures. The last special meeting of this type was held in November 1981, at which the Chairman of the Council listed a number of questions which arose in this area (C/M/153,p.2). The next is to take place in the late spring of 1982.

Some delegations have indicated that they will be tabling papers on this subject.

Full implementation of the GATT

- Part IV of GATT
- Greater participation of developing countries in world trade and GATT system
- Technical assistance for developing countries

Among the main issues have been the need for the more effective implementation of the Part IV commitments and for a full implementation of the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (containing the enabling clause). There is also a need for the effective application of provisions on special treatment for the least developed countries. Technical assistance for developing countries is of key importance if these aims are to be reached.

The Committee on Trade and Development is preparing a contribution on these issues.

A number of specific suggestions for possible action by Ministers were made at the last meeting of the Committee on Trade and Development (Note on proceedings to be issued). The discussions on the Decision have highlighted the need, on the one hand, for objective criteria, transparency and better opportunities for consultations when GSP treatment is modified or withdrawn in relation to individual developing countries and the importance, on the other hand, of a readiness by developing countries to contribute to the more effective functioning of the trading system by participating more fully in the framework of rights and obligations under the General Agreement.

- Full implementation of GATT rules and removal of exceptions to general rules of GATT (in waivers, accession protocols, Article XXXV, etc.)
- Association of new countries with the GATT system

The GATT rules are not fully applied at the moment. Contracting parties apply Part II of the General Agreement to the extent that it is not inconsistent with their prior mandatory domestic legislation. Many exceptions to the general rules are also permitted which result in different levels of obligations, for instance under individual Protocols of Accession or under certain Articles of the General Agreement itself (such as waivers under Article XXV). Problems relating to the application of the General Agreement also arise from divergent interpretations of their meaning. Many of the substantive problems
underlying this situation relate to safeguards, agriculture and discriminatory quantitative restrictions.

The association of further governments with the GATT depends on the extent to which the GATT covers their individual interests and concerns. An improvement in the operation of the GATT system would be one way of making the GATT relevant for these governments.

Problems relating to the application of the rules are dealt with on a case-by-case basis, usually in the Council in the first instance. The question of the definitive application of the GATT provisions was last studied in 1965 (L/2375 and Add.1). However this question was raised again in September 1977 in the Consultative Group of Eighteen.

MTN Agreements and Arrangements

Several points relating to the MTN Agreements and Arrangements have been made in other sections above (i.e. in sections relating to Subsidies and Countervailing Duties and Dispute Settlement). At the end of the Tokyo Round, the CONTRACTING PARTIES took action on the results of the negotiations. They reaffirmed their intention to ensure the unity and consistency of the GATT system and to this end decided to oversee the operation of the system as a whole and take action as appropriate (BISD, 26 Suppl., p.201).

Work is in progress in the Committees and Councils established under the MTN Agreements and Arrangements. They report regularly to the CONTRACTING PARTIES. A number of MTN Agreements foresee negotiations aimed at broadening and improving them. It has also been suggested that there is a need to revise certain provisions in other codes.

The GATT System in the 1980's

Trade negotiations among developing countries
Sector specific problems
- Fisheries
- Textiles
- Non-ferrous metals, minerals
- High technology products
Other
- Counterfeiting
- Services
- Investment performance requirements and trade-related investment incentives
- Trade practices of multinational enterprises
- Double pricing systems
- Domestic legislation or draft legislation of a protectionist nature
- Exchange rate problems
Trade negotiations among a number of developing countries, including some which are not contracting parties, have been held in the GATT. The results of these negotiations are incorporated in a special Protocol which is covered by the enabling clause. The Committee of Participating Countries established under the Protocol provides a permanent forum for the mutual expansion of trade and negotiation of preferences. One of the items - textiles - has been the subject of a recently completed negotiation for the extension of the Multifibre Arrangement. Some of the other items have been the subject of some work in the GATT. For instance, the pilot study on tariff escalation referred to above relates to copper products and therefore to non-ferrous metals and minerals. However, most of these items have recently been raised in the GATT for the first time.

Delegations have been asked to explain their interest in these items and present suggestions. The question of the regime to be applied in the textile sector after the expiry of the present Arrangement in 1986 has been raised. Papers have been circulated on the following items:

- Non-Ferrous Minerals
- Trade in High Technology Goods
- Trade in Counterfeit Goods
- Trade in Services
- Trade-related investment issues

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PREP.COM/W/2, p.3
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