Committee on the Legal and Institutional Framework of the GATT

THE PROVISIONS OF THE GATT AND THE WORK OF THE CONTRACTING PARTIES RELATING TO ECONOMIC DEVELOPMENT

Note by the Executive Secretary

At the meeting of Committee III in March/April it was suggested that the provisions of the GATT might be expanded to make more specific provision for the work of the CONTRACTING PARTIES in furthering the development of the trade of the less-developed countries. On the recommendation of the Council this suggestion was included in the agenda of the ministerial meeting in May, and in accordance with the Conclusions adopted by the Ministers the Committee on the Legal and Institutional Framework was established with the following terms of reference:

"Taking full account of the views expressed by Ministers at the meeting held on 16-21 May, to examine all aspects of the problems related to the provision of an adequate legal and institutional framework which would enable the CONTRACTING PARTIES to discharge their responsibilities in connexion with the work of expanding the trade of less-developed countries, and to report with appropriate recommendations to the twenty-first session."

In GATT/AIR/338 of 11 July, contracting parties were invited to submit any specific proposals they might wish to put forward for consideration by the Committee. Thus far, no proposals have been received. However, as part of its work, the Committee may wish to consider certain tentative suggestions which have been issued by the Executive Secretary on earlier occasions, namely, (i) a note on the expansion of the provisions of the GATT (C/31) dated 25 April 1963, and (ii) a note on procedures for consultations on balance-of-payments restrictions maintained by less-developed countries (L/1623) dated 15 November 1961. For the convenience of members of the Committee these documents, in slightly modified form, are reproduced hereunder.

Further, the Committee might wish to give consideration to a suggestion which was touched upon in discussions some years ago to the effect that less-developed countries might be authorized to impose temporary import surcharges as an alternative to quantitative restrictions when confronted with balance-of-payments difficulties. This suggestion is also outlined in the following note.
The Committee may also wish to consider whether it would be desirable to examine other articles of the GATT or procedures thereunder - for example, the adequacy of Article XX in relation to the negotiation of commodity agreements and international price stabilization arrangements (which might be considered in the light of the remarks by Ministers at their meeting in May 1963), and the procedures and obligations required of newly acceding less-developed countries.

If the Working Group on Preferences should put forward recommendations which, if approved, would require a modification of the GATT, the Committee may wish to prepare the text of amendments to give effect to these recommendations.

A. The work of the CONTRACTING PARTIES in the field of economic development

1. During the meeting of Committee III in March/April 1963 it was suggested that the authority of the General Agreement in the field of activity on which the Committee has been engaged might be extended by the creation of "a stronger institutional framework" to reflect the concerns and the responsibilities of the CONTRACTING PARTIES in relation to the development of the trade of less-developed countries. It was pointed out that, while many of the activities of the CONTRACTING PARTIES are related to specific articles of the GATT, other important activities, which are likewise designed to further the objectives set out in Article I (revised), are based on more general provisions relating to joint action. In view of their significance and the emphasis which the CONTRACTING PARTIES attach to the development of the trade of the less-developed countries, it was suggested that the provisions of the GATT might be expanded to make more specific provision for this sector of the work of the CONTRACTING PARTIES and thereby to demonstrate the essential dynamism of the General Agreement. (See L/1989, paragraphs 19 and 63.)

2. The activities of the CONTRACTING PARTIES, to which the suggestion refers, have been one of the principal features of the Programme of Action directed towards the expansion of international trade, which was adopted by the CONTRACTING PARTIES in 1958. At the ministerial meeting three years later, when progress under this Programme was reviewed, the Ministers adopted a Declaration recognizing the need for a rapid and sustained expansion in the export earnings of the less-developed countries and the need for all governments to make a conscious and purposeful effort through the adoption of concrete measures to this end including the reduction to a minimum of the restrictions inhibiting access to markets for the export products of these countries. The Declaration also recognized that the less-developed countries needed to develop their export trade in other than traditional products and should be provided with increased opportunities to sell in world markets the industrial goods which they can produce economically. The Ministers requested the CONTRACTING PARTIES to take this Declaration as a basis for their future work in this field.
3. Article XVIII of the General Agreement which relates to "Governmental Assistance to Economic Development" recognizes that the attainment of the objectives of the GATT will be facilitated by the progressive development of countries whose economies can only support low standards of living and which are in the early stages of development. But the subsequent paragraphs deal only with what might be called the negative side of the problem. In these paragraphs it is recognized that it may be necessary for less-developed countries, in order to implement their development programmes and policies, to take protective measures by restricting imports. Facilities are provided for the raising of bound rates of duty and for the application of quantitative import restrictions whether for balance-of-payments purposes or in order to promote the establishment of new industries. The other, positive, side of the task upon which the CONTRACTING PARTIES have embarked in recent years - assistance to the less-developed countries in developing their economies and expanding their export trade - finds no expression in Article XVIII.

4. If the provisions of the General Agreement are to be enlarged to institutionalize and give fuller expression to the responsibilities and activities of the CONTRACTING PARTIES in relation to the development of the trade of less-developed countries, consideration might be given to the adoption of new provisions which, by way of illustration, might be framed along the following lines:

Preambular paragraphs might make provision for the following points:

(i) Recognize the importance and necessity of the rapid economic development of less-developed countries and its relevance for the attainment of the objectives of the General Agreement.

(ii) Recognize that such economic development depends in large measure upon the ability of less-developed countries to increase their export earnings in order to maintain and increase their imports from other contracting parties, and share equitably in the growth of international trade which the CONTRACTING PARTIES have as a common objective and to which this development will contribute.

(iii) Recognize that many less-developed countries remain dependent upon the export of primary products as a main source of export revenue and upon stable and remunerative prices for such exports.

(iv) Recognize, however, that a long-term solution depends upon the diversification of the economies of the less-developed countries and the existence of conditions whereby such countries are assured of access to markets for their exports on favourable terms.
The substantive paragraphs might be along the following lines:

(v) The CONTRACTING PARTIES agree that it is their intention to study sympathetically the endeavours of the less-developed countries to expand their export earnings and to assist such efforts by pursuing policies directed toward increasing access to their markets for the exportable products of such countries.

(vi) Accordingly, the CONTRACTING PARTIES agree:

(a) In the implementation of the provisions of the General Agreement to accord high priority to the reduction and elimination of barriers to exports of particular interest to the less-developed countries.

(b) In the carrying out of negotiations in relation to tariffs and other barriers to trade, under procedures specifically provided for in the General Agreement or under procedures agreed upon by the CONTRACTING PARTIES, to give particular attention to products of export interest to the less-developed countries.

(c) So far as possible, to refrain from imposing or maintaining measures of taxation which may hamper growth of consumption of products of interest to the less-developed countries and which are applied specifically to those products.

(d) To co-operate together and with other international organizations, in order to stabilize and improve the conditions of trade in primary products.

(vii) The contracting parties further agree to consult regularly regarding paragraphs (i) to (vi) above and to co-operate in joint action to further the objectives in paragraphs (i) and (ii), including the conclusion when appropriate of multilateral arrangements or agreements for that purpose.

(viii) In pursuing these aims the CONTRACTING PARTIES shall take full account of the development plans and policies of the countries concerned and shall seek co-operation with the specialized agencies and such other intergovernmental organizations as have a major rôle in assisting the economic development of such countries.

B. Temporary import surcharges imposed for balance-of-payments reasons

5. The GATT looks upon the customs tariff as the legitimate and least harmful form of protection and condemns the quantitative control of imports. It might therefore be argued that it would be in keeping with GATT philosophy to allow
a contracting party, which is confronted with balance-of-payments difficulties, to impose import surcharges as an alternative to the imposition of restrictions under Article XII, the former being less harmful to international trade. Moreover, where a contracting party is implementing a financial stabilization scheme in order to redress its balance of payments the imposition of surcharges would bring additional revenue whereas quantitative restrictions would cause an increase in prices of imported products without raising revenue for the Treasury.

6. During recent years several contracting parties have obtained waivers to impose temporary import surcharges on bound and unbound items in order to alleviate balance-of-payment difficulties, and it may be considered preferable to modify the rules of GATT in order to legitimize this type of measure. This could be done by an amendment of Article XVIII to which the CONTRACTING PARTIES would recognize that countries, eligible in invoke Sections A, B and C of the Article, when confronted with acute problems of internal disequilibrium involving a demand for imports in excess of their availabilities of foreign exchange, could restrict importation either by quantitative control or by surcharges. The use of import surcharges might be subject to the following conditions:

(a) that the balance-of-payments criteria of Section B are met;

(b) that the surcharges are non-discriminatory;

(c) that the surcharges would be the subject of consultation under procedures comparable to those at present included in Section B; and

(d) that the surcharges are progressively reduced as the balance-of-payments situation improves and are eliminated when no longer justified on balance-of-payments grounds.

7. The imposition of temporary surcharges might be permitted also as an integral part of a stabilization scheme approved by the IMF.

8. It is suggested that this approach, as an alternative to the granting of waivers, would provide further evidence of the desire of the CONTRACTING PARTIES to make the GATT a positive instrument of trade co-operation and to take full account of the special needs of less-developed countries.

C. Consultations on balance-of-payments restrictions

9. Under the provisions of the General Agreement, contracting parties applying restrictions under Article XII or Article XVIII:B to safeguard their monetary reserves are required to enter into periodical consultation with the CONTRACTING PARTIES. Until now all such consultations have been conducted by
the Committee on Balance-of-Payments Restrictions and discussions have been conducted in accordance with a single "Plan for Consultations" (BISD, Seventh Supplement, pages 97-98) which is based on those provisions in the General Agreement. No distinction is drawn between consultations with less-developed countries and those with contracting parties not belonging to that category.

10. The present provisions of Article XVIII were introduced into the Agreement in 1955 after a thorough review of the operation of the General Agreement in the preceding years. As noted in the Review Working Party report, it was felt at that time that less-developed countries faced additional problems justifying the provision of certain special facilities for them. As far as the use of restrictions for balance-of-payments reasons is concerned, the new provisions "recognize that the reserve problem for these countries is one of the adequacy of the reserves in relation to their programme of economic development; ... in order to safeguard their external position, these countries may need over a period of time to control the general level of their imports in order to prevent it from rising beyond the means available to pay for imports as the progress of development programmes creates new demands" (see BISD, Third Supplement, page 183, paragraph 44). This recognition is spelt out also in paragraph 2 of the new Article XVIII. In the "Plan for Consultations" referred to above, provision is made for the discussion of "special considerations affecting the availability of, or the need for, monetary reserves" and "factors, either external or internal, affecting the various elements of the balance of payments, such as exports and imports". Although this plan was to be used for consultations with less-developed countries and other countries alike, experience has shown that questions relating to export earnings are prone to come up more prominently in consultations held with non-industrialized countries.

11. Since 1958, the CONTRACTING PARTIES, in the light of the findings of the Haberler report, have given increasing attention to the problems faced by less-developed countries in their attempt to expand their exports in order to increase their capacity for making import and other payments. There has been a growing recognition that less-developed countries cannot be expected to meet their development requirements without some improvement in the world market, or better access to various markets, for their products. It is generally agreed that improvements in this direction could be more easily brought about with a better understanding of the needs of the less-developed countries and the problems they face. To this end, Committee III has deliberated these problems from various angles. In the course of its work, the Committee has gained valuable experience not only in the problems faced by less-developed countries in expanding their exports, but in the balance-of-payments implications of their development plans. Following an examination of the Indian and Pakistani Five-Year Plans the Committee has made arrangements for the discussion of any development plans or elements thereof that might be submitted to it.
12. It would appear that consultations with less-developed countries on their import restrictions and deliberations in Committee III generally bear on subjects which are often closely related if not identical. A duplication of efforts could very well be avoided if there were greater co-ordination of an amalgamation of the efforts so far separately pursued. To take full advantage of the valuable knowledge and experience that has been gained by Committee III it is suggested that consultations with less-developed countries on their balance-of-payments restrictions might in future be conducted by that Committee. Whilst the consultations would, of course, continue to be on the basis of the existing provisions the Committee would in addition benefit from the opportunity provided by such consultations to proceed simultaneously with its examination of development plans and steps which might be taken to increase the export earnings of consulting countries. If this suggestion were agreeable to the CONTRACTING PARTIES, the Committee should be instructed either to conduct such consultations itself or to make suitable arrangements for the conduct of such consultations under its supervision. The present Committee on Balance-of-Payments Restrictions would continue to conduct the consultations with contracting parties whose restrictions are governed by Article XII.