Committee on Trade and Development

WORK IN PROGRESS ON NON-TARIFF BARRIERS

Note on Discussions Relevant to the Interests of Developing Countries

1. The CONTRACTING PARTIES at the twenty-sixth session reaffirmed that as the work of the Committee on Trade in Industrial Products, the Agriculture Committee and the Joint Working Group on Import Restrictions proceeds, particular attention should be paid to the problems of developing countries. The Committee on Trade and Development was directed to follow closely the work in progress in the bodies mentioned.

2. The Committee on Trade in Industrial Products established five working groups to deal with: trade-diverting investment, export subsidies, countervailing duties, government procurement and State-trading enterprises; customs and administrative entry procedures; standards acting as barriers to trade; specific limitations to trade; and charges on imports. The Agriculture Committee established four working groups to deal with measures affecting exports, imports, production and various miscellaneous measures. All the bodies have held meetings. The Joint Working Group has conducted detailed consultations on quantitative restrictions of importance to world trade along the lines suggested by the Director-General in section III of document L/3260.

3. The following paragraphs extract from the reports of the various working groups the discussion on issues thought to be of greatest importance to developing countries. No attempt has been made to cover exhaustively all the topics discussed. The purpose is to provide members of the Committee on Trade and Development with an overall picture of the discussion in relation to certain points which might be of greater interest than others. The note includes references to certain proposed solutions to problems whether or not developing countries participated in the actual discussions, such solutions covering generally the interests of both developed and developing countries. For a full account of all the points discussed on any particular issue, the context in which these points were made and the precise formulations used, delegations are invited to refer to the reports of the working groups.

4. The views recorded in the reports of the groups are tentative in character. The work was conducted on the understanding that it was exploratory and preparatory in nature and involved no commitment on the part of any member of the working groups to take or join in any action under discussion at this stage.
COMMITTEE ON TRADE IN INDUSTRIAL PRODUCTS

Working Group 1

5. The Group examined the following subjects - trade-diverting investments, export subsidies, countervailing duties, government procurement and State-trading enterprises in market economy countries.

6. With regard to trade-diverting investment there was broad agreement that the essential element which would justify GATT attention to domestic aids was serious prejudice to trade interests of exporting countries through trade diversion. It was proposed that a set of rules establishing a certain discipline might build on the existing provisions of GATT, that improved notification procedures be instituted and that provision might be made for consultations.

7. The type of solution applicable to the problem of export subsidies might involve the formulation of an interpretative note or set of guidelines, to define the obligations of Article XVI:4 and the Declaration thereto, forbidding the use of export subsidies. Measures which constitute an export subsidy might be clarified and procedures, including notifications and reviews, should be elaborated.

8. In the context of countervailing duties, the injury question was considered to be the main problem. Possible solutions included the need for a code along the lines of the anti-dumping code. It was suggested that the problem was really one of export subsidies and the opinion was expressed that this argument would be valid only after all contracting parties had signed the Declaration prohibiting export subsidies, a step which seemed unlikely in the case of some developing countries.

9. Government procurement was considered to be a problem of a general nature and it was felt that the solution lay in the formulation of a code or set of guidelines which would, inter alia, contain objectives and principles and elements relating to the elimination of existing discrimination between supplying countries.

10. With regard to State trading it was generally agreed that the existing rules of Articles XVII and II:4, as well as the interpretative note ad Articles XI to XV, seemed reasonably adequate in relation to non-discrimination and limitation of protection, but some elaboration of procedures concerning implementation might be considered. It was noted that the notifications were related to State-trading enterprises in developed market economy countries and on that basis the developing countries had participated on the understanding that the Group would base its discussions on State-trading practices of developed market economy countries.

Working Group 2

11. The Group examined the desirability of harmonization of valuation systems, special valuation procedures, anti-dumping practices, desirability of a wider acceptance of BTN classification and certain documentation problems, notably concerning consular fees and formalities. The examination showed that there was
very little scope for separate action on developing countries' problems since both developing and developed countries are faced with a single set of problems caused by lack of uniformity in customs and entry procedures.

12. The problems concerning valuation included the desirability of harmonization of valuation systems and the problems created by special valuation procedures in certain countries where invoice values were not acceptable. It was pointed out by representatives of developing countries that in cases where it was mandatory for the importing country to accept the f.o.b. value or the current domestic value, whichever was the higher, this worked particularly to their disadvantage where internal prices had no direct relationship with prices their goods could obtain in the international market. The method of determining "fair market value" as well as methods used for fixing "reasonable margin of profit" created difficulties, uncertainties and discrimination amongst exporters in developing countries.

13. The Group considered that the application of Article VII would be improved by agreement to principles which would provide for a neutral system of valuation, non-discrimination, and simplicity involving no use of arbitrary or fictitious values. Administration of valuation systems should take account of the need for certainty to traders as to method of valuation for particular classes of goods, publicity to valuation bases, procedural expeditiousness, safeguarding of business secrets and adequate appeals procedures.

14. The developing countries, while not ruling out an overall solution to this problem, were inclined to the view that elaboration of more precise interpretations of Article VII appeared to be more practicable.

15. Most countries felt that the harmonization of valuation systems could contribute substantially to the development of international trade, and they were of the opinion that the f.o.b. and c.i.f. systems of valuation could exist side by side.

16. The Group noted the reservations expressed by developing countries on the anti-dumping code because it had not been possible to reach agreement on the inclusion in it of special provisions to meet some of their specific problems. It was recalled that at their twenty-sixth session CONTRACTING PARTIES hoped that a solution would be found to the problems of developing countries, regarding application of the code to exports from those countries. The Group invited developed countries which had not done so to accede to the code and in the meantime use the code as a standard for the application of Article VI.
17. In connexion with classification, the representative of India referred to the problem facing his country while preparing for the adoption of the BTN. It had been found that because of the technical complexities involved, it was not possible to ensure in all cases that the margins of preference bound under paragraph 2(a) of Article I of GATT would remain unaffected. In fact in some cases in the transposed new tariff it was unavoidable that the margins of preference would be slightly increased.

18. With regard to consular formalities and fees it was suggested that an interpretative note to Article VIII should be drawn up or CONTRACTING PARTIES should take a decision, which would require the phasing out of these formalities and fees in the course of five years, and in the interim fees should not exceed a maximum of $10 per shipment. In respect to customs clearance documentation, it was proposed that an expert sub-committee be established to develop standardized forms for this purpose.

Working Group 3

19. The Group dealt with standards which act as trade barriers. It was generally recognized that the increasing number of standards and regulations resulted in barriers to trade when harmonization is not effected on an international basis and that new ones were likely to develop. This called for international co-operation to minimize adverse trade effects, and in this context it was agreed that the CONTRACTING PARTIES could make a useful contribution. The Group noted that it was important to draw a distinction between compulsory regulations and voluntary standards usually issued by private organizations on a regional, national or international basis because of the different possibilities and limits this entailed for government action. Members of the Group were aware of the inherent difficulties of harmonizing regulations or standards at an international level. With regard to possible solutions, it was felt desirable that the CONTRACTING PARTIES should draw up a set of ground rules on standardization which might include general principles, suggestions for enforcement and measures for consultation. The form to be given to such principles was left open.

Working Group 4

20. The Group examined licensing arrangements, quantitative restrictions including embargoes, bilateral agreements, voluntary restraints, motion picture restrictions including tax matters and screen-time quotas and minimum prices on textile imports.

21. In accordance with the desire of the CONTRACTING PARTIES, as expressed in their Conclusions, that as the work of the Groups proceeds particular attention should be paid to the problems of developing countries, the Group recalled that the Joint Working Group had identified restrictions with respect to which developing countries indicated specific interest in the course of the meeting of that Group as well as the twenty-one items selected by the Group on Residual Restrictions for priority attention. At that meeting some delegations had suggested that the prompt removal, on a most-favoured-nation basis, of illegal
restrictions which bore particularly on the trade of developing countries should receive the highest priority and that, where feasible, time-tables for the elimination or for the enlargement of legal quotas should be set, possibly in relation to the growth of the market, without full reciprocity being required. It was also suggested that when any legal quantitative restriction significantly affected both developing and developed countries' exports, special consideration should be given to its removal on a most-favoured-nation basis in the light of the interest of the developing countries themselves.

22. A proposal made by one delegation and supported by some others involved the prompt elimination of all illegal trade measures; where this was not possible, measures should be relaxed according to a schedule so that they are completely eliminated by 1 January 1972. Countries maintaining illegal restrictions after 1 January 1972 would be required to seek waivers of their GATT obligations, or pay appropriate compensation. Countries obtaining waivers would nevertheless be subject, as is customary, to the provisions of Article XXIII.

23. Some delegations noted that this proposal was substantially the same as that made earlier by New Zealand. The debate on the earlier proposal had shown that for a variety of reasons a proposal to remove illegal restrictions as a priority matter was somewhat unrealistic and even inequitable. Whether a restriction was or was not "legal" in GATT terms was to some extent merely a historical accident. Furthermore, if that approach was adopted it was beyond doubt that the contracting parties would exercise much ingenuity to produce legal justifications for more and more of the restrictions in force, with resulting impairment of the force of GATT's provisions and increasing uncertainty as to which restrictions would be included in such a proposal.

24. One general approach favoured by some delegations would be directed towards the gradual liberalization and the progressive elimination of all restrictions as possibilities arose within the framework of the general programme of the CONTRACTING PARTIES. Each developed country would contribute to this programme of liberalization proportionately within the scope of its quantitative restrictions of all types. These delegations considered that this solution was more realistic and had the merit of not excluding numerous restrictions which would remain outside the scope of other proposals.

25. Special aspects which some delegations felt should be taken into account in any overall solution included, inter alia, the proposal concerning developing countries, previously made in the Joint Working Group. It was also suggested that developing countries having import restrictions not formally authorized by the CONTRACTING PARTIES but which could be justified under Article XVIII:B were urged to invoke the Article and consult as one contribution to the general effort to remove quantitative restrictions. Other countries with import restrictions not now formally authorized by the CONTRACTING PARTIES should also agree to consult under procedures similar to those applicable in the case of invocation of Articles XII or XVIII:B.
26. With regard to bilateral agreements, some countries stated that the proposal for their elimination and surveillance should only be applied to developed countries. They claimed that in the case of developing countries bilateral agreements were a means to maximize trade. These agreements had provided a basis for trading with centrally-planned economies and countries having similar trading systems, had stimulated export efforts and led to diversification of exports of the developing countries concerned. In some cases, they related to the establishment of mutually beneficial co-operation in the industrial and other economic fields. It was therefore impractical to consider elimination of these bilateral agreements. These countries asked the notifying countries to take these facts into account. Some other countries pointed out that, while bilateral agreements may bring short-term benefits to the parties concerned, they usually result in a misallocation of resources and a distortion of trade to the disadvantage of all contracting parties.

27. Developing countries pointed out that licensing was often applied to products supplied mainly by developing countries while similar or competing products from developed countries were exempted. Several countries, referring to several notifications in the Inventory, supported the idea that an important contribution could be made to reduction of the trade restrictive effect of licensing through better administrative procedures for licensing, and supported development of a code which might well cover certain other matters relevant to the work of other groups on non-tariff barriers, especially Group 2.

Working Group 5

28. The Group explored possibilities for reducing or removing non-tariff barriers involving prior deposits, administrative and statistical duties, restrictions on foreign wines and spirits, special duties on imports, discriminatory taxes on motor cars, credit restrictions for importers, variable levies and fiscal adjustments, either at the border or otherwise.

29. Developing countries considered that the case for use of prior deposits by them was substantially different from that of developed countries. They also urged that when developed countries used such schemes the products of interest to developing countries should be excluded in conformity with Article XXXVII.

30. It was agreed that the most desirable solution to the problem of prior deposits would be their elimination as soon as possible.

31. Some delegations favoured arrangements for timely notification of prior deposit schemes to the CONTRACTING PARTIES and for appropriate consultation in such cases along the lines of the provisions of Articles XII and XVIII:B. Other delegations considered that import deposit schemes should be notified and dealt with on a case-by-case basis. Still other delegations believed that countries invoking balance-of-payments justification for import deposits should consult in the GATT Balance-of-Payments Committee.
32. Without pre-judging the issue of the appropriateness of prior deposits as trade measures for balance-of-payments purposes, several countries considered it useful to examine the possibility of developing guidelines which might establish principles to be followed as a means of reducing the harmful effects of prior deposit schemes on international trade. These included whether or not prior deposits were regarded as an additional charge on imports inconsistent with Article II as regards bound items, or as a form of quantitative restriction generally inconsistent with Article XI, they should be used only in the case of balance-of-payments difficulties, and only in circumstances where these measures avoided the use of more burdensome measures. Furthermore prior deposits should be limited in time and the rate should be as low as possible and be reduced as rapidly as possible. Prior deposits should apply at uniform rates to the goods of all countries and to all categories of goods. Products from developing countries should be exempt.

AGRICULTURE COMMITTEE

Working Group 1

33. The Group dealt with measures which affect exports.

34. A number of delegations in proposing that contracting parties adopt as a guiding principle the complete elimination of all governmental aids to exports pointed out that such a policy would put agricultural trade on a commercial basis, tend to reduce incentives for uneconomic production, stop competition between national treasuries which can be to the detriment of all countries, especially the developing countries, and eliminate a source of contention in international relations.

35. A number of other delegations considered that the withdrawal of government aids to exports in isolation would not necessarily lead to the advantages outlined. The removal of export support alone would not result in agricultural trade being conducted on a truly competitive basis since, among other things, individual countries would still be free to provide additional support through their domestic and import policies and the proposal would not, therefore, necessarily reduce incentives for uneconomic production nor stop competition between national treasuries. Prices on the international market would tend to reflect the level of support afforded to agriculture in exporting countries.

36. One delegation suggested that solutions which did not involve a change in existing legislation or policies could be based in particular on price discipline, on harmonization of export aid measures and on strengthened international co-operation. Solutions which did involve such changes, due to the large number of elements of agricultural price and production policies involved, required the search for a common negotiating basis and a negotiating method which would allow all countries to participate meaningfully.
37. Some of the delegations that urged the acceptance of a guiding principle of complete elimination of export subsidies said that there was no inconsistency in seeking action on governmental export aids as such, whether or not countries simultaneously look for some more fundamental solutions based on supply management. These delegations suggested that a series of intermediate steps could be postulated that would be cumulative in their effect leading to the complete elimination of subsidies over a period of time. These intermediate measures could include, following further study, minimum price arrangements applying to products such as certain dairy products. Although the best solution would be the application of paragraph 4 of Article XVI to primary products, pending a decision to this end there was a need to define more precisely the concept of the equitable share of world markets contained in paragraph 3, and to cover specifically the prevention of injury to those countries which did not have recourse to export aids. A valuable contribution in this direction could be made by accepting an obligation not to grant export subsidies which result in prices lower than those of countries that did not grant subsidies.

38. Some delegations, expressing support for the aim of an early elimination of aids to exports, stated that priority consideration should be given to the elimination of such aids to products in which developing countries accounted for a significant share of world trade, such as tobacco, vegetable oils and oilseeds, cereals, meat and others.

39. The Group drew up a list of export aid practices which might be the subject of notification. There was a wide measure of support for the suggestion that export subsidies and other practices included in the list be notified under the existing Article XVI procedures which provided that this be done irrespective of whether in the view of individual contracting parties they were notifiable under Article XVI.

40. Several delegations said that experience had proved that existing consultation procedures were inadequate to meet the objectives under discussion and some delegations considered that there was a need for a permanent body which would conduct consultations.

Working Group 2

41. The Group dealt with measures which affect imports. Some countries suggested that in the efforts which were being made to reach agreement on the basis for general negotiations in the agricultural sector, priority attention to the problems of developing countries could be given by identifying sectors of special interest to these countries, in which action could be taken by CONTRACTING PARTIES on an immediate basis. The Agriculture Committee had recognized that vegetable oils and oilseeds was one such sector. In the view of some delegations, another such sector would be that of processed foodstuffs, which is frequently one of the first industries to be established in developing countries.
42. The Group reverted to the proposals by Nigeria (COM.AG/18 and Corr.1) and Ceylon (COM.AG/19) for the reduction and elimination of tariff and non-tariff barriers to tropical oilseeds and vegetable oils.

43. The representatives of Nigeria and Ceylon, supported by other exporters of these products, expressed the hope that the Group might suggest lines of action to ease the problems faced by developing countries in this connexion, but which would not prejudice possible future action in a broader context. They stressed that particular attention should be given to differential tariff duties. They felt that it was possible to give separate treatment to tropical oils and oilseeds, and in this context referred to the International Olive Oil Agreement and to suggestions made at the special Session of the FAO Study Group on Fats and Oils in January 1970 regarding the possibilities of a buffer stock scheme for lauric oils.

44. The representatives of the countries to which the proposition was addressed stated their positions. One delegation recalled that their country had already announced that restrictions on several of the products under discussion were to be removed by the end of 1971. This delegation added that no additional action on tariffs was expected for the foreseeable future due to the adverse effects that this would have for domestic producers and, because of substitution effects, for certain outside suppliers. They referred to the increased imports of their country and indicated their readiness to consider mutually acceptable solutions in this field.

45. Another delegation indicated that they were unable to take any action at present, and pointed out that their quantitative restrictions on groundnuts were connected with a support programme which involved domestic production controls. Another delegation said that oilseed production in their country was motivated by security grounds and the need to rotate crops, and pointed out that its self-sufficiency ratio was relatively low, there being no quantitative restrictions. An internal levy was applied without discrimination to domestic and imported products and its reduction would not affect the level of imports. He recalled that his country's general support for international commodity arrangements also applied to fats and oils but said that any arrangements should cover the whole sector, in view of the interrelationships between the different products. Another delegation noted that protection in his country was already at a moderate level. Unilateral elimination of the protection could therefore not be envisaged, but could be considered as part of multilateral action. Another delegation said that it could not yet pronounce on the request addressed to it for the relaxation of measures at the frontier, which consisted only of tariffs, as it had not received instructions.
46. One delegation recalled the suggestion that countries might subscribe to a standstill which had been made at a previous meeting (L/3320, paragraph 15) and proposed the text of such a standstill. Some delegations stated that, although in principle in favour of the standstill if it were to be accepted by major trading countries, the fact that their countries were to engage in certain negotiations meant that they would have to reserve their position with regard to its duration. Another delegation indicated that legal reasons prevented it from formally accepting the text but that its government could declare its intention not to change its present system of policy in this field.

47. It was agreed that it would be desirable to examine further the question of the standstill with a view to seeing if agreement could be reached on the text of a standstill or a series of declarations of intent which went in that direction. It was understood that the adoption of the standstill would not exclude the examination of possibilities for further action.

48. The representatives of developing exporting countries said that the discussion reflected the awareness of other delegations of the problems of developing countries in this sector, and expressed their appreciation of the willingness on the part of certain developed countries to consider possibilities for liberalization if other consuming developed countries were prepared to take similar action. They hoped that this willingness on the part of these countries indicated that it was possible to treat problems of tropical oil and oilseeds separately. They expressed the hope that if other consuming countries considered taking similar action, contracting parties could move towards a solution of problems facing developing countries in this sector.

Working Group 3

49. The Group dealt with measures which affect production.

50. Several delegations expressed the view that commodity arrangements might in certain cases provide an appropriate solution to some of the problems facing agricultural trade. They pointed out however that existing commodity agreements tended to concentrate on the price element and did not as a rule bear directly on agricultural policies; in order to be effective such agreements should contain provisions on domestic production policies and on adjustment of supply. Some

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1 Whereas trade liberalization offers substantial potential for expansion of consumption and trade in oilseeds and products, with consequent benefits to producing and consuming countries, contracting parties hereby declare that as a preliminary step to this goal they shall, to the fullest extent possible— that is, except when compelling reasons, which may include legal reasons, make it impossible— refrain from introducing or increasing the incidence of, customs duties or non-tariff barriers on such products.
delegations saw certain disadvantages in attempts to control the world market and said that some of the other suggestions put forward might be more fruitful. Representatives of some developing countries said that their main interest lay in tropical products which were very important for their trade and development. In their view the most feasible way of dealing with production problems in this area was through international commodity agreements. In this connexion they pointed out that they did not possess the resources to subsidize their production or exports. Moreover, the representatives of these developing countries pointed out that in many instances their producers received prices that were below world levels and that did not represent an incentive to production.

51. Several delegations said that the margin of support approach put forward during the Kennedy Round merited further consideration. Representatives of developing countries pointed out that generally they were not in a position to offer support to agricultural production and that they would therefore not be required to conform to the principle of the freezing of the margin of support that had been referred to during the Group's discussions.

Working Group A

52. The Group dealt with health and sanitary regulations, marketing standards, packing and labelling regulations, customs and administrative procedures, miscellaneous charges and taxes and prior deposits.

53. Several delegations suggested as a basic principle that health and sanitary regulations should not be more rigid than necessary to achieve their essential purposes. It was pointed out that regulations sometimes took the form of complete prohibitions of imports and suggested that this should not be necessary, even in a disease-free country, if there were other cast-iron ways of keeping out the disease. Some delegations said that certificates by authorities in exporting countries might be more frequently accepted by importing countries. Delegations of some developing countries said that they had experienced some difficulties in the implementation of regulations and suggested that there should be a greater degree of cooperation between exporting and importing countries with respect to inspection, testing and research facilities. Some delegations said that inspection and testing requirements should be simplified. However, the final decision on these matters must inevitably rest with the importing authorities who had a duty to protect the health and sanitary standards of their country.

JOINT WORKING GROUP ON IMPORT RESTRICTIONS

54. The Joint Working Group met in April 1970 to consider the problems of quantitative restrictions including, inter alia, their relevance to the trade of developing countries. In this connexion, some delegations suggested that cases in which illegal quantitative restrictions bore particularly on the trade of developing countries should receive the highest priority and, where feasible, that time-tables for their elimination or for the enlargement of quotas, possibly in relation to the growth of the market, should be set without reciprocity being required. When any quantitative restriction significantly affected both developing and developed countries' exports, special consideration should be given to the product on a most-favoured-nation basis in the light of the interest of the developing countries.
55. Some delegations, while agreeing with the view that quantitative restrictions which were illegal should be removed promptly, referred to the provisions of Article XXXVII:1(a) and suggested that no distinction need be made between quantitative restrictions that were legal and those that were illegal, especially where they affected the trade of developing countries. These delegations pointed out that considerable exploratory work on identification of restrictions which adversely affected trade of developing countries had been done by the Group on Residual Restrictions. That Group had selected twenty-one items from the list of quantitative restrictions affecting trade of developing countries. The Joint Working Group should recommend that restrictions on these items as well as those in respect of which developing countries indicated specific interest in the course of the discussions should be removed on a priority basis without expecting reciprocity from them.

56. The items singled out in the discussions were live animals of the bovine species, meat and edible meat offals, fish, crustaceans and molluscs including shrimps, dried inedible shrimps, dried leguminous vegetables shelled, bananas, coffee, tea, hop cones and lupulin, edible seaweed, biscuits etc., vegetables and fruits prepared or preserved by vinegar or acetic acid or otherwise than by vinegar or acetic acids, fruit, fruit peel and parts of plants preserved by sugar, jams, fruit jellies, marmalades, fruit puree and fruit paste, fruit otherwise prepared or preserved, unmanufactured tobacco, unroasted iron pyrites, natural graphite, tungsten ores, lignite, lead oxides, sodium anhydride, gloves, mittens etc., handkerchiefs, shawls, scarves, mufflers etc., bed linen, table linen etc., umbrellas and sunshades, tableware and household articles of porcelain or china, electric batteries, portable electric batteries and magnets, lamps, radio and television reception apparatus, pleasure and sports boats for marine use, lenses, prisms, refracting telescopes, cinematographic cameras.