GENERAL AGREEMENT ON
TARIFFS AND TRADE

Multilateral Trade Negotiations
Group "Framework"

STATEMENT OF UNITED STATES REPRESENTATIVE
ON 21 FEBRUARY 1977

My Government views the scope and intent of these negotiations, concisely recorded in the Tokyo Declaration, as fully consistent with the United States broad objective of improving the GATT as an effective instrument of international economic co-operation. We believe the vitality of the GATT has been firmly rooted in some basic principles - principles which give a needed assurance of stability and continuity in the evolution of the trading system. Essential to the application of those principles has been a fundamental recognition by participants that rights could be defined and preserved only through the undertaking of corresponding obligations in the trading system.

Since the beginning of the Tokyo Round, the United States has sought to improve the structure of rights and obligations in specific areas of the trading system. That is a method of work which consciously excludes wholesale reformulation of GATT principles. Our overall approach in the Framework Group, as in other MTN groups, will be characterized by a careful examination of the existing GATT framework, in the expectation that whatever problems now exist can be identified and appropriate solutions devised in a negotiating context. In each case we expect to be pragmatic and constructive.

Let me turn now to the basic orientation of my Government regarding the five topics outlined by the Chairman of the Trade Negotiations Committee at its meeting last November as a possible basis for the work of this Group. We understand that some delegations continue to have reservations regarding one or more of these elements, and it would be our intention to address them in ways which hopefully would provide those delegations the option of participation without prejudice to their own positions. With respect to some of the items, my delegation will be providing brief papers to the GATT secretariat for circulation to this Group, as a contribution to the further consideration of those matters.
The legal framework for differential and more favourable treatment for developing countries in relation to the GATT provisions, in particular the MFN clause

In practical terms, differential and more favourable treatment for and among developing countries has been widely accepted and, through various arrangements, implemented. Where such arrangements between developed and developing countries, or among developing countries, have been inconsistent with the GATT principle of non-discrimination, the waiver procedures of the GATT have often been used. Such waivers are generally of limited duration, and have included procedures for surveillance and review of the arrangements.

Many developing countries have questioned the appropriateness of this legal basis for differential and more favourable treatment. We are, therefore, prepared to examine this legal framework with a view to addressing the concerns of developing countries, in keeping with our objective of making the GATT a more viable institution in which all countries participate fully.

My Government does not, however, expect to relegate the most-favoured-nation principle to some residual rôle. It remains the fundamental basis on which all countries benefit from the reduction of trade barriers achieved over the thirty years of GATT existence. We believe that any exceptions from this principle should be strictly limited, and that in the case of individual developing countries an exception ought not to go beyond legitimate developmental needs, in either time or extent of measures involved. In our view, this principle and criteria which guard against its abuse are essential to any satisfactory legal framework for differential and more favourable treatment.

Another essential consideration to that framework is that it does not include disincentives to trade barrier reductions benefiting all contracting parties. We could not agree to new formulations which would impede the continued reduction or elimination of restrictions to trade on a most-favoured-nation basis. Both developed and developing countries will benefit from further MFN reductions. Efforts to this end should not be discouraged, even unintentionally, but rather encouraged.

Likewise, the impact on third countries of specific provisions for differential and more favourable treatment must be taken into account. A concession extended on a preferential basis may have an adverse affect on the legitimate trade interests of other countries. We do not believe that benefits accruing under the GATT (or any agreement negotiated thereunder) can be disregarded; thus, the implementation of differential and more favourable treatment must inevitably depend upon the satisfaction of legitimate interests of third countries.
Finally, any legal framework including the concept of differential and more favourable treatment benefiting developing countries cannot, in our view, impose an obligation on the part of a developed country to extend such treatment. The GATT legal framework is designed—appropriately, in our view—to accommodate trade concessions agreed to multilaterally, rather than to impose obligations on countries to make such concessions.

My Government believes the existing framework for differential and more favourable treatment successfully meets all of these concerns I have outlined—but that is not to say that it is therefore the only satisfactory solution. It does, however, suggest that the point of departure should be examination of the existing legal framework. To the extent examination reveals any serious defects, consideration can be given to possible improvements.

Safeguard action for balance of payments and economic development purposes

The GATT framework for handling safeguard measures for balance-of-payments purposes has been discussed at length, most recently as a major theme in deliberations of the GATT Consultative Group of 18 (CG.18). Some useful documentation was discussed and enlarged in the work of that Group and would make a helpful contribution to discussion of the issue here in the Framework Group.

In addition, the CG.18 reviewed at some length a suggested approach for improvement of the existing GATT framework in this area presented by the United States representative. As a result of that review the United States modified its suggestions in several respects to incorporate ideas from other delegations. At this time we are asking the secretariat to circulate this revised suggestion for review in the Framework Group.

We expect that our suggested approach will be new to many MTN participants who were not present during the previous discussions. For this item, as for others, we believe the initial review by this Group should focus on the adequacy of the existing GATT framework. The paper we are circulating is explicitly for purposes of discussion, and we can be flexible with regard to the elements of any solutions which might ultimately be developed.

Essentially, the United States is suggesting a two-part approach to the balance-of-payments question. First, we believe that developed countries should consider adopting a declaration not to impose trade measures of any kind for balance-of-payments reasons, with review of the issue then exploring conditions under which departures from the basic obligation might be required. An agreement along these lines among developed countries would be of substantial benefit to developing countries. Second, we are suggesting a strengthening of existing GATT procedures to ensure more effective and constructive international review of trade measures taken for balance-of-payments purposes under the current GATT obligations.
We acknowledge the view of some participants that the time is not right to undertake work of this kind, but we disagree. In our judgment it is both appropriate and necessary that this major round of GATT negotiations confronts the major trade issues, rather than shrinking from those issues until some brighter day comes. We accept that current uncertainties in the international monetary system may warrant a more deliberate approach than otherwise, but they are not a basis for ignoring the need to improve GATT's rôle in this crucial area.

The fact that we have not addressed safeguard measures for economic development purposes does not mean that we are not willing to examine this question. We would only note that the Article XVIII provisions for special and more favourable treatment to developing countries have been available in their present form since 1955 and, with the exception of the balance-of-payments provisions, have rarely been used. Therefore, an examination of those provisions and the reasons for their non-use would, in our view, be an appropriate starting point.

Consultation, surveillance, and dispute settlement procedures (Articles XXII and XXIII)

This subject too has figured in some previous discussions, most recently in the Consultative Group of 18 (CG.18). It is my Government's view that improvements here would be important to an improved trading framework. This need not imply any substantial revision of Articles XXII or XXIII; we think the basic GATT design - a balance between the need for fair and effective application of agreed rules and the need for flexibility to shape satisfactory solutions for particular cases - is a good one. But we are concerned that the present operation of this approach in some respects is not as effective as has been the case in the past.

With particular reference to the consideration of this subject in last October's CG.18 meeting, which was stimulated by a useful secretariat discussion paper, the United States believes that improvements in existing procedures could be explored in the following areas:

- Notification. The absence of any general requirement under the GATT that trade restrictive measures be notified to the contracting parties, even though such measures often have an adverse effect on the interests of individual countries, has been especially troublesome in recent years. The United States has already proposed (in Group "Safeguards") - and plans to discuss in this Group - the negotiation of a general requirement whereby all contracting parties would notify restrictive or potentially restrictive trade measures to be taken or which have been taken.
- Surveillance and consultation. In general the review of trade measures has been left to the GATT Council or to ad hoc groups. We believe that approach, while a good start, leaves something to be desired. We would like to examine possibilities for regular and effective international review of trade measures affecting the interests of contracting parties, through some improved provision for regular surveillance and consultation.

- Improvement of procedures for resolving specific disputes. The GATT properly emphasizes resolution of disputes through consultation and conciliation, but in some cases contracting parties have not been able to resolve issues on a mutually satisfactory basis in that way and the matter has been submitted to a GATT panel. We have several suggestions to make on the operation of panels which might help GATT dispute settlement procedures to function more effectively.

- Assistance to developing countries. We support exploring the possibility of some greater rôle for the secretariat to assist developing countries in the dispute resolution process, as well as more effective implementation of the 1966 decision of the CONTRACTING PARTIES providing special procedures in this area for developing countries.

We are circulating a brief note outlining these concerns for consideration in the Framework Group.

Reciprocity and fuller participation in the framework of rights and obligations

I want to state plainly at the outset that my Government believes the provisions of GATT Article XXXVI:8 (and their embodiment in the Tokyo Declaration) are adequate in their present form. They clearly provide that developed countries do not necessarily expect equivalent concessions from developing countries in trade negotiations. Thus our approach to the reciprocity question at this stage of the Framework Group's work will be to gain an understanding of the problems developing countries perceive with that Article XXXVI standard.

The United States is firmly convinced that the concept of reciprocity in its traditional sense has served the GATT well. It has ensured that contracting parties derive specific benefits from membership corresponding to their specific concessions. Knowledge that derogation of a GATT obligation could result in withdrawal or reduction of a similar benefit has lent a certain discipline to the world trading system.

But the meaning of reciprocity has altered in recent years in at least two ways: first, as just mentioned, through the non-equivalence concept in Part IV of the GATT; and second, through the evolution of trade negotiations themselves from an item-by-item, quid-pro-quo approach to the far more complex endeavour that we have in the Tokyo Round, where many benefits will be mutually achieved in the context of codes and interpretative guidelines. Against this background, we are doubtful that special reciprocity rules for developing countries can be made much clearer. Attempts with which we are familiar to approach the question in terms of new word formulations have not struck us as very promising.
Moreover, the question of reciprocity in our judgment is only one element of a broader question: the fuller participation of developing countries in the rights and obligations created under the GATT. Much of the emphasis by developing countries recently has focussed on rights, but we do not think the corresponding question of obligations should be disregarded. The premise on which the GATT rests, that all countries stand to benefit from mutually agreed disciplines on unilateral trade actions, is still fundamental.

In this light, it is my Government's view that since the purpose of special and more favourable treatment for developing countries in the trading system is to assist in achieving development objectives, justification for such treatment ceases as each development objective is met. Thus we have stated in the past and will continue to state our expectation that developing countries should be prepared over time to accept increasing obligations under the trading system, i.e. progressively to forego that special treatment. This principle is fundamental to our views on special and more favourable treatment for developing countries, and it provides a basis under which the United States can address the interests of developing countries in improvement of the trading framework in the most positive manner.

We are not implying a single arbitrary mechanism for assuring gradual assumption of fuller obligations under the trading system by developing countries. Indeed, we see the need for flexibility to accommodate trade and development needs in a manner both economically sound and politically feasible. While we believe that a range of economic indicators could be considered, including, but not limited to broad economic criteria, in order to reach a determination of the level of development, we do not necessarily expect that developing countries would give up special and more favourable treatment in all areas at the same time. As a starting point, however, there should be some reliable presumptive basis for objective examination, from time to time, of the need to continue the special treatment being provided.

We expect to return to this question in more concrete terms in the future work of this Group.

GATT rules on export restrictions

We know well that some delegations have strong reservations on this topic. For our part, we strongly believe it is an important subject and one that is relevant to this Group, but we are prepared to move in a deliberate and neutral way in order to maximize the possibility that those delegations will find an appropriate basis for participating in the discussion. It is not our intention to deal with the subject itself at any length in this statement.
Moreover, I would like to say, for purposes of clarification, that we view consideration of this topic in the Framework Group to be of limited and specified scope: as on other topics, we would hope to begin with an examination of the existing GATT provisions. We do not expect in this Group to talk about obligations to guarantee supplies, or absolute prohibitions on export controls, or domestic policy measures on investment, production, or stockpiling. There is nothing which we envisage the Group discussing that would bear on the question of each nation's sovereignty over its own natural resources. We have no intention of seeking to negotiate specific so-called supply access commitments in this Group.

On the other hand, we would expect discussion in this Group eventually to explore the question of whether there is not a need for greater comparability between GATT rules for handling export restrictions and those for handling import restrictions. There would be an implied focus on the question of fair administration of export restrictions. Notification, consultation, temporariness, non-discrimination, and some accommodation of burdens created for others might all be points for discussion.

To facilitate an objective and non-prejudicial discussion, we will be circulating a brief note reviewing the relevant GATT provisions in this area. At this time we are not suggesting any specific work programme for the Framework Group.

I would also like to mention, by way of background, that my Government is elsewhere making an effort to contribute to the examination of specific measures in this area - which many delegations had previously called for - through the use of the GATT Inventory of Non-Tariff Measures. The United States last week filed approximately ninety notifications of export restrictive measures to the NTM Inventory, affecting nearly fifty developing and developed NTM participants, in order to build up a partial data base in this area. I want to emphasize that those notifications are not accusatory, nor are they negotiating requests, nor do they call for active work at this time in this or any other NTM group. Hopefully, they will be informative, both for other delegations and my own.

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I hope that these remarks have clarified the general approach of the United States to the work of the Framework Group. We recognize there are anomalies between existing GATT rules and current practice, we recognize that some rules have proved inadequate, and we recognize that the world economy may have evolved in ways which were not foreseen thirty years ago; but we believe a thorough and careful approach is needed in the work of this Group. That will be our attitude toward each topic and will be the aim of the papers that we will contribute. It is not our intention to endorse change for the sake of change, nor to negotiate solutions which do not reflect a shared exploration of problems. We fully intend to be constructive and co-operative, but not unquestioning. We look forward to meaningful results in all areas of these negotiations, results that will represent a genuine commitment of negotiating partners and which will be worthy of our mutual objectives.
ANNEX A

Safeguard Action for Balance-Of-Payments Purposes

Over the past years, there has been considerable discussion of the GATT framework for dealing with safeguard measures for balance-of-payments purposes. In particular, this has been a major theme in the discussions of the GATT Consultative Group of 18 (CG.18). A good background paper (GATT document L/4200 of 18 July 1975) proved useful in the CG.18 review and would provide useful information for discussion of the issue in the Framework Group.

In addition, the CG.18 has reviewed at some length a suggested approach for improvement of the existing GATT framework presented by the United States representative. As a result of that review, the United States modified its suggestions in several respects to incorporate ideas from other delegations (L/4429, Report of Activities of CG.18). The United States is submitting this revised suggestion, set forth below, for review in the Framework Group.

Certain countries have argued strongly that trade measures generally are not a desirable means of addressing balance-of-payments problems and that emphasis should be on limiting the use - at least by developed countries - of trade measures. The United States agrees. Alternative policies for adjustment, including exchange rate adjustment, are preferable to trade restrictions. The United States has, therefore, suggested that an agreement be sought to develop provisions limiting the use of trade measures for balance-of-payments purposes.

In this regard, an element to be addressed should be the obligations which developed countries might undertake. As a working hypothesis, developed countries might consider adoption of a declaration under which they would not impose trade measures of any kind for balance-of-payments reasons. Of course, in certain exceptional circumstances, the imposition of trade measures might be unavoidable. Review of the issue would clarify the extent to which departures from the basic obligation might be required, and criteria could then be developed for such circumstances. In this regard, the United States believes that where trade measures are necessary, they should be temporary, and subject to other specified conditions.

Any agreement along these lines among developed countries would be of significant benefit to developing countries. The United States recognizes that the ability of the developing countries to accept further restrictions on the use of trade measures is more limited than for developed countries.

At an appropriate time, the relationship of provisions in any new agreement of this kind to the rules and practices of the International Monetary Fund will need to be considered.
The second element in the United States approach is directed toward strengthening existing GATT procedures to ensure more effective and constructive international review of trade measures taken for balance-of-payments purposes. The Consultative Group of 18 was able to discuss at some length the specifics of this proposal and the United States hopes that this Group can draw upon that discussion and the convergence of views reached.

In the United States view, existing GATT procedures for review by the contracting parties of trade measures for balance-of-payments purposes would be significantly improved by implementation of the following recommendations:

(i) any contracting party which imposes any trade measure for balance-of-payments purposes should immediately notify such action to the contracting parties. In the event such contracting party fails to notify the contracting parties within a reasonable time, any other contracting party may so notify the contracting parties;

(ii) the Balance-of-Payments Committee should review all trade measures taken for balance-of-payments purposes, fully appraise the trade actions taken in terms of their conformity with the GATT, including, in light of the appropriate provisions, the effect of such actions on the trade of the developing countries and examine whether alternative trade measures or adjustments to reduce distortions might not be possible. In so doing the Committee should pay due attention to limitations that might exist with respect to the flexibility of the country concerned in adjusting to disturbances in the international economy;

(iii) The GATT secretariat should prepare objective trade policy oriented studies on the measures taken; such studies should include the effect of measures taken on the trade of the developing countries;

(iv) in evaluating actions taken by developing countries, the Balance-of-Payments Committee should take account of the special needs of those countries;

(v) as part of its in-depth analysis, the Committee ought to examine the implications of trade restrictions imposed by other countries that may have precipitated the specific action in question;

(vi) the Committee should report its conclusions and state fully the reasons behind its decisions so as to build by a body of commentary that could facilitate the development of guidelines governing future trade actions for balance-of-payments purposes;
(vii) the surveillance rôle of the Committee should be enhanced to enable it to follow up and review actions that are taken in light of the Committee's recommendations or conclusions.

Attached is a background paper which explains in some detail these suggestions for procedural improvements.
ATTACHMENT

RECOMMENDATIONS FOR IMPROVEMENT OF GATT PROCEDURES
GOVERNING TRADE MEASURES TAKEN FOR
BALANCE-OF-PAYMENTS PURPOSES

Background Paper

(i) Any contracting party which imposes any trade measure for balance-of-payments purposes should immediately notify such action to the CONTRACTING PARTIES. In the event such contracting party fails to notify the CONTRACTING PARTIES of such action within a reasonable time; any other contracting party may so notify the CONTRACTING PARTIES.

The obligation of a contracting party to notify the CONTRACTING PARTIES of the imposition or intensification of trade restrictions taken for balance-of-payments reasons is already implicit in the consultation obligations contained in Articles XII:4(a) and XVIII:12(a). However, it has occasionally been the case that contracting parties have failed to notify such measures. Without proper notification, international review procedures cannot operate effectively. Accordingly, there should be provision for third-party notification of balance-of-payments trade measures to the contracting parties in cases where the party taking the measures fails to notify the GATT within a reasonable period of time.

(ii) The Balance-of-Payments Committee should review all trade measures taken for balance-of-payments purposes, fully appraise the trade actions taken in terms of their conformity with the GATT, including, in light of the appropriate GATT provisions, the effect of such measures on trade of developing countries, and examine whether alternative trade measures or adjustments reduce distortions might not be possible. In so doing the Committee should pay due attention to the limitations that may exist with respect to the flexibility of the country concerned in adjusting to disturbances in the international economy.

The balance-of-payments exception to the general GATT prohibition on the use of quantitative restrictions reflected the widespread use of quantitative restrictions for balance-of-payments purposes at the time the GATT was drafted. Trade measures other than quantitative restrictions were not generally used and are not provided for under the balance-of-payments provisions of the GATT. However, since the mid-1950's contracting parties have turned increasingly to surcharges and import deposit requirements for balance-of-payments purposes.

Both surcharges and deposit measures have been brought before the GATT on an ad hoc basis but regular review procedures within the GATT have not been developed. In some cases, surcharges and prior deposits are reviewed by the Balance-of-Payments Committee. In others, they have been reviewed by working groups. In a significant number of cases, the measures have not been notified to, or reviewed by, the contracting parties at all.
Provision for review by the Balance-of-Payments Committee of all restrictive trade measures taken for balance-of-payments purposes would allow regular and thorough surveillance procedures. It would eliminate the current dual practice of review by working groups (generally favoured for developed countries actions) and review by the Balance-of-Payments Committee and provide regular procedures for notification to, and review by, the contracting parties of all restrictions imposed for balance-of-payments purposes.

Objections have been raised that adoption of regular review procedures for trade measures other than quantitative restrictions taken for balance-of-payments reasons would encourage their use. Based on recent experience, it appears difficult to maintain that present practice effectively discourages their use (indeed, providing procedures for regular review should discourage, rather than encourage, their use). Furthermore, and more importantly, such regular review procedures would not in any way prejudice the legal rights of any contracting party to question the GATT consistency of a surcharge, a prior deposit requirement or any other trade measure. To the extent import surcharges have been reviewed by the contracting parties, procedural assimilation has not changed the rights of the countries affected thereby. In some of its conclusions on surcharges, the Balance-of-Payments Committee has reaffirmed the rights of adversely affected contracting parties by stating that the review in no way precludes recourse under the appropriate provisions of the General Agreement. This practice should continue.

Increased use of restrictive trade measures for balance-of-payments purposes is, of course, cause for legitimate concern. In light of the trend towards greater flexibility in exchange rate adjustments, the need for such trade measures - at least on the part of most developed countries - has been reduced. The cure to the problem is not, however, to avoid the development of effective international review procedures. Rather, it is to develop improved rules restricting the use of trade measures for balance-of-payments purposes. An effort in this direction would complement efforts to improve GATT surveillance procedures.

In addition to establishment of regular review procedures for all trade restrictions imposed for balance-of-payments reasons, existing practice could be materially improved by better review of the trade effects of such restrictions. Currently, the Balance-of-Payments Committee discussion of the trade effects of balance-of-payments measures concentrate on the nature of quotas for specific goods or special tax or import regulations which are detrimental to a particular country's trade interests. There is little or no discussion of the operation of the trade measures as a whole and no general review of alternative trade measures or adjustments to the trade measures taken which could reduce the trade distorting effects.
Without appraisal of the overall trade effect of a balance-of-payments measure, it is difficult to determine accurately the consistency of the measure with the understanding that developed countries should take maximum efforts to avoid action which adversely affects the export opportunities of the developing countries and the requirements of the GATT governing non-discrimination in the application of quantitative restrictions, surcharges or prior deposit measures. Assuming that the necessary information is provided, the Balance-of-Payments Committee should review the trade impact of balance-of-payments measures and would be in a position to recommend either alternative trade measures or adjustments to the trade measures taken with a view towards reducing trade distortions.

Where justification for trade measures is found to exist, there should be a strong presumption in favour of measures that have a less distorting effect on trade. Review by the Balance-of-Payments Committee should fully reflect this policy objective and where appropriate adjustments or alternative measures should be recommended to the party taking the balance-of-payments action.

(iii) The GATT secretariat should prepare objective, trade-policy-oriented studies on the measures taken. Such studies should include the effect of the measures taken on the trade of developing countries.

Background information on balance-of-payments consultations is now provided by (i) the IMF and (ii) the country taking the trade action. The IMF supplies an assessment of the consulting country's external financial position and the most recent Fund reports on economic developments in the country (or where not available, a specially prepared economic background paper). The consulting country submits a "basic document" describing the operation of the trade restrictions, their effects, and the general policy behind their use.

At present, the GATT secretariat does not prepare independent studies on the trade measures taken. As a result, the background information does not generally provide a basis for effective appraisal by the contracting parties of the trade impact of such measures. This, in turn, limits the ability of the contracting parties to suggest adjustments to reduce distortions or the impact of such measures on developing countries. The information provided by the IMF is not intended to focus on the trade effects of balance-of-payments trade measures. While the "basic document" prepared by the consulting country generally includes an appraisal of the effects of the import restrictions on trade, the amount of information provided has varied considerably and the analysis has frequently been incomplete. For example, the trade effects of restrictions have rarely been quantified.
Trade policy oriented studies on the effect of trade actions taken for balance-of-payments purposes would provide a basis for better focused and more productive consultations in the Balance-of-Payments Committee on the trade effects of such actions. The GATT secretariat is well equipped to undertake such studies and should be encouraged to do so.

(iv) In evaluating actions by developing countries, the Balance-of-Payments Committee should take into account the special needs of such countries.

The recent world economic disruptions have had a particularly hard impact upon many developing countries and have aggravated what in many cases already were serious balance-of-payments difficulties. The worsened balance-of-payments problems of the developing countries does argue for a more sympathetic and constructive consultative process by the contracting parties. In this connexion, review of measures imposed by developing countries might include examination of long-term import restrictions maintained by others which significantly limit the export opportunities of such countries and are a cause of their balance-of-payments difficulties. Where balance-of-payments restrictions are found to be justified, the emphasis of consultation would be on a mutually beneficial effort to make appropriate adjustments in order to reduce trade distortions and minimize the administrative burdens resulting from the trade actions taken.

Some of the recent changes in IMF policies (major liberalization of IMF Compensatory Financing Facility, etc.) may lessen the need of the developing countries to impose trade measures for balance-of-payments purposes. However, the developing countries do not, in practice, enjoy the same flexibility as most developed countries to adjust their exchange rates. In this regard, in any review of the existing GATT rules governing balance-of-payments actions, the contracting parties might usefully examine the operation of Article XVIII:B to determine whether the use of surcharges and prior deposits might be permitted (provided the eligibility criteria for Article XVIII:B actions are met).

Recognition of the special balance-of-payments needs of the developing countries should not be taken as a basis for weakening international procedures for review of balance-of-payments trade actions of the developing countries. Special rules are appropriate, but only in the context of satisfactory review procedures by the contracting parties. As noted above, the key is to ensure that the process of review should become more constructive.
The Balance-of-Payments Committee ought to examine, as part of its in-depth analysis, not only the specific action taken by an individual country with respect to its own balance-of-payments problems, but also the implications of trade restrictions imposed by other countries that may have precipitated the specific action in question.

In certain cases, balance-of-payments restrictions may be imposed, at least in part, in order to offset the loss of export opportunities resulting from restrictions imposed by other countries. In particular, where the export earnings of a country are heavily dependent upon exports of a given product (or products), trade restriction on such product can precipitate a serious balance-of-payments problem. While difficulties of this nature will arise most frequently in the case of developing countries, they may also affect certain developed countries.

Where there is a clear cause and effect relationship between balance-of-payments restrictions imposed by one country and trade restrictions on its exports maintained by other countries, review by the contracting parties of the balance-of-payments measures should, if it is to be complete, also involve review of the relevant trade restrictions.

In this connexion, however, care will have to be taken to prevent a balance-of-payments consultation from becoming a general review of various trade restrictions maintained by several contracting parties. This would blur the focus of the Balance-of-Payments Committee function and weaken, rather than strengthen, the operation of the Committee.

The Committee should report its conclusions and discuss them narratively so as to build up a body of commentary that could facilitate the development of guidelines governing future trade actions for balance-of-payments purposes.

There has been a general hesitancy on the part of the Balance-of-Payments Committee to state the reasons for conclusions reached. This appears to reflect a concern for development of a consensus on the particular trade measures reviewed. While expedient for short-term purposes, this approach sacrifices the longer-term benefits of developing general criteria, by way of precedents, which could guide contracting parties in planning financially motivated trade controls. Full discussion of the reasons for Committee conclusions would also tend to promote a more sharply focused review of trade measures and, as a result, improve the consultative process.

A clear statement of the reasons behind Balance-of-Payments Committee review would, on balance, appear to be desirable. However, care should be taken not to restrict the flexibility of the Committee to reach the appropriate conclusions in each particular case. For this reason, the conclusions reached, and the reasons therefore, should be viewed as general guidelines but not binding precedent for future cases.
(vii) The Committee's surveillance role should be enhanced to enable it to follow up and review actions that are taken in light of the Committee's recommendations or conclusion.

The effectiveness of the Balance-of-Payments Committee is seriously compromised by its present inability to follow up and review actions taken in response to Committee recommendations or conclusions. Such follow-up review need not involve a detailed analysis of the balance-of-payments measures taken and their trade effects. Indeed, in many cases, follow up might require no more than a written submission indicating the steps taken to meet the recommendations or conclusions of the Committee. Until there is effective provision for review of implementation of Committee recommendations, surveillance by the contracting parties will not be complete.
The effective operation of GATT provisions governing consultations, surveillance, and dispute settlement are important to successful implementation of the General Agreement. Suggestions for improvement have recently attracted considerable attention. The United States believes that improvement of the existing procedures can be a significant element of any general effort to improve the framework for the conduct of world trade.

This is not to suggest that there is any need for substantial revision of Article XXII or XXIII. Although the present operation of the procedures is not as effective as in the past, the basic GATT design—a balance between the need for fair and effective application of agreed rules and the need for flexibility to shape satisfactory solutions for particular cases—is a good one. In the United States view, efforts should be focused on strengthening rather than fundamentally revising the existing structure in order to enable the GATT to better deal with present and future problems.

Background papers upon which the Group might draw in discussion of this issue have been prepared by the secretariat (MTN/SG/W/7 and MTN/SG/W/8 prepared for the Safeguards Group). In addition, the secretariat developed a number of questions on these issues for the October 1976 meeting of the GATT Consultative Group of 18. This secretariat paper could be usefully employed in discussion of consultation, dispute settlement and surveillance in the Framework Group. Based upon our own review of some of the questions raised, we believe that improvements in the existing procedures are particularly important in the following areas:

1. Notification. One of the main problems with the operation of the present rules and procedures is the failure of countries to regularly notify restrictive trade measures taken which have, or can have, an adverse effect on the interests of other contracting parties. There is no general requirement under the GATT that trade measures be notified to the Contracting Parties and, in recent years, the absence of such requirement has been felt. The United States believes that a provision should be negotiated under which all CONTRACTING PARTIES would notify restrictive or potentially restrictive trade measures to be taken or, where prior notification should prove impossible, which have been taken. Such notification would, of course, be without prejudice to the views held by the contracting party taking the measure as to its conformity with or relevance to the General Agreement. In the event any contracting party failed to notify a trade measure to the GATT within a reasonable period of time, any other contracting party would be free to notify the CONTRACTING PARTIES of such action.
2. Surveillance and consultations. Regular and effective international review of trade measures affecting the interests of contracting parties would be greatly facilitated by improved provision for regular surveillance of measures affecting trade. For certain areas surveillance procedures already exist - for example, GATT Balance-of-Payments Committee, Textiles Surveillance Body. However, for general purposes review of trade measures is left to the GATT Council or ad hoc groups. The Council meetings do not, and are not designed to, provide full review of actions taken which affect the interests of some or all contracting parties. Ad hoc review has not worked particularly well. Improved notification provisions and regular surveillance would facilitate the GATT consultative process by encouraging open discussion of trade problems. The existing emphasis of the GATT provisions on resolution of disputes through consultation and conciliation is appropriate and should be retained.

3. Improvement of procedures for resolving specific disputes. The emphasis of the GATT is properly on resolution of disputes through consultation and conciliation. In certain cases, however, disputes between contracting parties are not or cannot be resolved on a mutually satisfactory basis through consultation and the matter is submitted to a GATT Panel. While the panel procedure is designed to provide prompt and impartial resolution of disputes, it has not always functioned satisfactorily, especially over the past several years.

In order to revitalize the specific dispute settlement procedures of the GATT, the United States believes that (1) there should be time-limits governing the selection and operation of GATT Panels; (2) the Panels should in all cases provide full written opinions explaining the basis for findings reached and (3) there should be a standing roster of eligible panelists to facilitate panel selection.

Finally, in order to encourage impartial review of disputes by the panel, the United States believes that the work of the panel should be focused on determining questions of fact and the application of agreed rules to the facts.

4. Developing countries. The United States believes that the interests of all countries, but that particularly the interests of developing countries and smaller developed countries, are served by improving the GATT procedures for prompt and impartial review and resolution of disputes. However, the United States recognizes that there are special problems which face developing countries in connexion with the operation of the GATT dispute settlement procedures. In this regard, the United States supports exploring the possibility of (1) a greater role for the secretariat in assisting developing countries in connexion with matters arising under the GATT dispute settlement procedures and (2) more effective implementation of the 1966 decision of the CONTRACTING PARTIES on procedures for developing countries under Article XXIII.
ANNEX C
Export Restrictions

Many countries, including the United States, have become increasingly concerned about steps taken by governments to restrict the export of goods to their trading partners. There appears to be a growing awareness that such restrictions, taken by different methods and in a variety of circumstances, can cause both economic hardship to other countries, due to decreased supplies and increased prices of the restricted goods, and uncertainty and apprehension about the reliability of "normal" trading conditions. Examples of the use of export restrictions including, in recent years, export restrictions on metal scrap, logs, hides and skins, grains, and some minerals, are contained in the notifications of export restrictive measures recently transmitted by the United States for inclusion in the GATT Inventory of Non-Tariff Measures.

The varied concerns of some governments over the use of export restrictions has led to a questioning of whether the rules of the GATT appropriately address the implications of these kinds of trade measures. Since the GATT provisions on export restrictions are defined in very general terms, with broad exceptions, the application of the GATT in that area has, in our view, been minimal and ineffective.

Consequently, the United States suggests that the Framework Group begin its work on this issue by examining the existing GATT provisions on export restrictions for purposes of clarifying their meaning and identifying areas in which review might be useful. To assist such an examination, we have attached a brief summary of the appropriate provisions, raising some preliminary questions. We believe that the Group's activities in this area could productively focus on the GATT's provisions and their adequacy, and that questions concerning product-specific problems may be best handled elsewhere.

As both an importer and exporter of raw materials, we appreciate the need for balance respecting the concerns of both importing and exporting interests in efforts to improve the framework of the GATT in this area. We believe these efforts would be fostered by the active participation of MTN participants in this discussion.
Export Restrictions: Relevant GATT Provisions

At a general level, the regulatory scheme of the GATT applies to exports in much the same manner as imports. A distinction is drawn between quantitative restrictions (e.g. prohibitions on exports, export licensing, etc.) and cost restrictions (e.g. export duties or taxes). The former are generally prohibited (Article XI), but the latter are not prohibited unless a contracting party has agreed to bind the rate of duty or other charge (Article II). Both are subject to a broad rule of non-discrimination (Articles I and XIII).

However, the rules applicable to export restrictions are in important respects less complete than those governing import restrictions and, in addition, are subject to major exceptions.

A. Exceptions to general rules

Article XI itself contains two major exceptions to the prohibition of quantitative restrictions on exports. Article XI:2 permits quantitative export restrictions to prevent or relieve critical shortages of essential products or to apply "standards or regulations for the classification, grading or marketing of commodities in international trade".

Article XX contains various exceptions to the general rules governing both quantitative export restrictions and export duties and taxes. Article XX(i) (which applies expressly to export restrictions) permits their use to ensure essential supplies for a domestic processing industry during periods when domestic prices of inputs are held below world prices as part of a government stabilization programme. This exception is subject to two qualifications: first, it may not be used as a means of increasing the exports of, or affording protection for, the domestic processing industry; and second, it may not be administered in a discriminatory fashion.

Other parts of Article XX implicitly apply to export restrictions. Article XX(j) allows measures that facilitate the acquisition or distribution of any product "in general or local" short supply. These measures must be "consistent with the principle that other contracting parties are entitled to an equitable share of the international supply" of the affected products and, if inconsistent with other GATT provisions, they must be temporary. Under Article XX(g) measures to conserve "exhaustible natural resources", when applied in connexion with restrictions on domestic production or consumption, may be imposed. And, Article XX(h) enables measures to be taken in conjunction with inter-governmental commodity agreements.
B. Export duties and taxes

Export duties and/or taxes are not prohibited under the GATT, subject to the most-favoured-nation rule of Article I. However, Article II which deals generally with binding of duties and taxes does not expressly apply to duties and taxes on exports, although there is precedent for inclusion of export duty concessions in the GATT schedules. The application of Article II to such concessions could be clarified.

C. Non-discrimination

The MFN rule of the GATT applies equally to duties or other charges on imports and exports. The rule of non-discrimination in the application of quantitative restrictions (Article XIII), however, is far more complete in its application to restrictions on imports than on exports. Article XX rules out arbitrary or unjustifiable discrimination but does not define these terms.

D. Other aspects

Other GATT provisions might also be appropriately examined. For instance, it has sometimes been noted that the national treatment provisions of Article III do not apply to exports. On the other hand, the publication/administration requirements of Article X do apply. We note too that some of the export restrictions recently notified by the United States to the MTM Inventory are implemented by State-trading enterprises, a fact which raises the question of the obligations of such enterprises under Article XVII. There may be still other provisions where the situation is unclear or application doubtful.

Finally, general questions of notification and surveillance of export restrictions, and the possibility of guidelines for restraint on the extent and duration of restrictions, should also be included in a general review of the application of the GATT to restrictions on exports.