Group of Negotiations on Goods (GATT)
Negotiating Group on Non-Tariff Measures

EXPERIMENT RESTRICTIONS AND CHARGES

Background Note by the Secretariat

Introduction

1. At its meeting of 19 May 1989, the Negotiating Group requested the secretariat to prepare a background note on export restrictions (MTN.GNG/NG2/10, paragraph 14). The present note contains some information on export restrictions and charges, their nature, purpose and coverage, relevant GATT provisions and the discussion which has taken place in the past.

Background

2. The economic or commercial reasons for which export restrictions or charges (except charges for services rendered) may be applied include the following:

(a) **Raising the price of exports and improving terms of trade:** Countries which export a given natural-resource product sometimes impose an export tax or quota which will raise the foreign price of the product, as long as demand for it abroad is inelastic. In an effort to combat the effects of commodity price fluctuations some international commodity agreements (e.g. the International Coffee Agreement) have established export quotas for individual participants, whose objective has been to stabilize and/or increase prices. Other agreements (e.g. the International Tin Agreement) have relied on buffer stocks to achieve the same purpose. However, such measures will only be effective if exporters of the given product adopt concerted policies. Controls of this nature have rarely been operative in the long-term. Either new producers have emerged which have not participated in the policies designed to maximize prices through restrictions on sales, or substitutes for the product have been developed in such a way as to reduce the inelasticity of demand for it.

(b) **Protection of processing industries:** Since taxes or quotas on exports imposed by individual governments will tend to lower the domestic price of the product in question and raise its foreign price, they have sometimes been justified as an instrument for protecting infant industries. It is thus argued that export controls on raw materials will encourage domestic producers to
use them as inputs for processing industries and therefore will raise the value-added content of exports. Since customs tariffs tend to escalate in line with the degree of processing of imports, charges on exports are sometimes designed to restore the exporter's competitiveness. It has sometimes been suggested that an "optimum" may be reached through negotiations between importers and exporters in which importers would undertake to reduce the escalation in their tariffs while exporters would similarly undertake to reduce differences in export duties applicable to raw materials and to processed products. Such arrangements would still enable countries to maintain uniform export duties designed to improve terms of trade.

(c) Revenue: Some countries levy export taxes for revenue purposes. These apply mostly to commodity exports in some developing countries which rely for revenue on indirect taxes rather than the taxation of income.

(d) Domestic price stabilization: At times of rising inflation or perceived shortages of certain commodities, some countries have imposed restrictions on exports, so as to dampen domestic price rises. Such cases occurred on a considerable scale in the early 1970's. However, such action led to competitive "beggar-thy-neighbour" situations whereby different exporters applied similar policies for other commodities in short supply and benefits expected from them have failed to materialize. At the same time, importers' access to supplies of commodities has been threatened by such policies.

(e) Conservation of exhaustible natural resources: Some countries have imposed restrictions on exports of exhaustible natural-resource products, such as energy products, on the grounds that market prices do not reflect the long-term social costs of the depletion of these resources and in an attempt to slow it down while at the same time maximizing their earnings. This has especially been the case in countries which have a limited capacity to absorb income from the exploitation of natural resource products and which have therefore been tempted to slow down their rate of exploitation. However, restrictions on exports of exhaustible natural resource products will not be effective if they are not accompanied by limitations on their production.

3. The exact nature of the measure taken will largely depend on the precise objective pursued by the country in question and on how it intends to allocate the benefits obtained from the measure. For instance, an export quota will be preferable from the producers' point of view, to the extent that the "rent" element which normally arises from it is attributed to them. Export taxes will be preferred if governments want to keep the increased revenue for themselves.
4. Some export restrictions are applied for non-commercial or non-economic reasons. Thus, some countries ban the export of strategic materials either entirely or to given countries. There are also cases of countries having imposed comprehensive trade embargoes for non-commercial reasons. As recognized in Article XX(f), countries may also ban the export of national treasures of artistic, historic or archaeological value. This paper does not deal with restrictions imposed for non-commercial reasons. A note by the secretariat on Article XXI which deals with the security exceptions to the rules of the General Agreement, can be found in MTN.GNG/NG7/W/16. The present note will not deal either with voluntary export restraints, on which background information can be found in MTN.GNG/NG9/W/2/Rev.1 and Corr.1, and in MTN.GNG/NG9/W/6.

5. Information on export taxes can sometimes be found in customs tariffs. The Inventory of Non-Tariff Measures (Industrial Products) and the notifications made to the Negotiating Group on Agriculture (AG/FOR/REV/-) also contain some information on export restrictions. Some of the notifications made to the Negotiating Group on Non-Tariff Measures, which have been sorted by the secretariat in MTN.GNG/NG2/W/19/Rev.1 also deal with export restrictions.

6. In the past, problems in relation to export restrictions and taxes have been raised because importing countries have wished to improve conditions of access to supplies. However, as will be seen in the section of this paper which summarizes past discussion in the GATT, attempts at strengthening disciplines which relate to export restrictions have faced opposition from countries which have seen them as affecting their sovereignty over their natural resources or because exporters of products to which such restrictions apply have been unwilling to negotiate the reduction of these restrictions in the absence of a parallel reduction in restrictions affecting their trading partners' imports of products which use materials affected by export restrictions.

Relevant GATT provisions

7. A listing of GATT provisions relating to export restrictions and charges can be found in the Understanding (MTN/FR/6) on this subject which was elaborated in the Framework Group and adopted by the Trade Negotiations Committee of the Tokyo Round (see Appendix for the text of the Understanding and paragraphs 11 to 13 below summarizing discussions in the Tokyo Round). The provisions of the General Agreement which most directly concern export restrictions can be summarized as follows:

(a) **Quantitative restrictions:** Article XI:1 which lays down the basic rule prohibiting quantitative restrictions applies to exports as much as to imports. However, as for imports, there exist exceptions to this rule. Articles XI:2(a) and 2(b) allow for the imposition of export prohibitions or restrictions temporarily applied to relieve critical shortages of foodstuffs or other essential products, or necessary to the application of standards or regulations for the classification, grading or
marketing of commodities. However, Article XIII requires that import restrictions be applied without discrimination, though under Article XIV:4, contracting parties which face balance of payments problems can deviate from the non-discrimination rule in order to direct their exports in such a manner as to increase their currency earnings. Article XVII:1(a) requires that state trading or other privileged enterprises act in their policies involving imports and exports in a manner consistent with the general principles of non-discriminatory treatment, which apply to private traders. The notification requirements of Article XVII:4(a) also apply to exports. Articles XX(g), (h), (i) and (j) authorize the adoption of measures relating to the conservation of exhaustible natural resources, if such measures are made effective in conjunction with restrictions on domestic production or consumption, or are undertaken in pursuance of obligations under intergovernmental commodity agreements or if they involve restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a government stabilization plan, or if they are essential to the acquisition or distribution of products in general or local short supply. The exceptions are subject to the specific conditions described in the relevant sub-paragraphs and to the general requirement contained in Article XX that the measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.

(b) Export charges: The General Agreement permits the imposition of charges on exports. However, the most-favoured-nation treatment laid down in Article I has to be extended to the application of export charges. Article XXVIII bis states that "negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports, ... are of great importance to the expansion of international trade". In a note to paragraph 3 of Article XVII, it is stated that "negotiations which contracting parties agree to conduct under this paragraph may be directed towards the reduction of duties and other charges on imports and exports ...". Article II:1(a) requires contracting parties to accord to the commerce of other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to the General Agreement. While this language has been interpreted as
enabling the binding of export concessions in Schedules, the remaining provisions of Article II, which protect import concessions, do not apply to export concessions.

(c) General: Article X lays down that "laws, regulations, judicial decisions and administrative rulings of general application, ... pertaining to ... rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports ... shall be published promptly in such a manner as to enable governments and traders to become acquainted with them". Articles XXXVI:4 and XXXVI:5 permit developing countries which depend on the exportation of a limited range of primary products, to take action to stabilize and improve market conditions.

Past discussion in the GATT

8. The drafters of the General Agreement considered but rejected the possibility of a complete abolition of export restrictions. During negotiations on the text of the Havana Charter on which the GATT is based, some parties were of the opinion that in some countries export duties have the same purpose as import duties in others and that they had to be negotiated too. They pointed to cases of raw material processing industries jeopardized by the import tariffs of other countries, which could be protected through the imposition of export taxes on raw materials, and thought that therefore there might be a good case for negotiations (E/PC/T/C.II/SE/PV/1, pages 11-12).

9. In 1948 two complaints were raised in the GATT, which involved country discrimination in the levying of export taxes. However, these complaints were subsequently withdrawn, following bilateral compromises (CP.3/SR.19, CP.3/33, L/82/Add.1).

10. In 1949, a complaint was brought by a contracting party which argued that the export control licences implemented by another contracting party discriminated against it. The CONTRACTING PARTIES, however, formally decided that the maintaining contracting party had not "failed to carry out its obligations under the Agreement through its administration of the issue of export licences" (CP.3/SR.22).

11. In a 1950 Report on "The Use of Quantitative Restrictions for Protective and Other Commercial Purposes" the CONTRACTING PARTIES discussed the question of quantitative restrictions, including those applying to exports and came to the conclusion that, while the objectives of a given export restriction would have to be determined on a case-by-case basis, the following types of restrictions generally fall outside the exceptions provided for in the General Agreement:

(i) export restrictions used by a contracting party for the purpose of obtaining the relaxation of another contracting party's import restrictions;
(ii) export restrictions used by a contracting party to obtain a relaxation of another contracting party's export restrictions on commodities in local or general short supply, or otherwise to obtain an advantage in the procurement from another contracting party of such commodities;

(iii) restrictions used by a contracting party on the export of raw materials, in order to protect or promote a domestic fabricating industry; and

(iv) export restrictions used by a contracting party to avoid price competition among exporters.

12. While the possibility exists to incorporate export concessions in schedules bound under the GATT, only two cases apparently exist both involving concessions relating to tin exports extended in the early years of the GATT (Schedule XIX - United Kingdom, Section D, Malayan Union, GATT, 1952). One of the reasons why there are not more concessions of this sort is possibly because the rules of the General Agreement, as presently drafted, do not provide a sufficiently detailed legal framework to prevent export concessions from being invalidated. There have also been two cases of a contracting party making import tariff commitments for processed goods dependent on the absence of export limitations on the raw materials contained in such goods (Schedule XIX - United Kingdom, pages 12 and 82, GATT, 1952).

13. During the Tokyo Round negotiations, the question of export restrictions was taken up in various fora. A Note was issued by the secretariat in response to a discussion held in Group 3(b) on the desirability of additional data. This Note contains information on relevant GATT provisions as well as on the possibilities of negotiating export concessions (MTN/3B/9). During the discussion which was held in Group 3(b) on the basis of this Note, a number of delegations from exporting countries said that the question of export restrictions was not among the most urgent issues to be taken up in the negotiations, and that other issues, e.g. tariff escalation for semi-processed and processed products were of much greater importance. Others pointed out that export restrictions constituted an urgent problem because more and more countries resorted to them. Delegations from developing countries were concerned by the current rise in raw material prices and felt that their countries had no alternative but to increase exports so as to be able to meet the rising cost of imports. For these reasons, access to markets continued to be the most pressing problem for which they were seeking solutions in the Multilateral Trade Negotiations. They stressed that they were not prepared to accept a link between commitments on access to supplies and commitments on improved access to markets for the exports of developing countries (MTN/3B/18).
14. In the Group "Sector Approach" of the Tokyo Round negotiations, which had been set up "to carry out an examination of the possibilities for the coordinated reduction or elimination of all barriers to trade in selected sectors as a complementary technique", some discussion was held on the question of export measures applying to ores and metals. However, lack of progress in the reduction or elimination of tariffs and non-tariff measures affecting natural resource-based products, apparently adversely affected the possibility of concessions relating to export measures (MTN/SEC/1-6). One suggestion relating to possible action on export measures had been to elaborate provisions:

- establishing the purposes for and the conditions under which export restrictions might or might not be used;
- relating to the binding of export taxes and the inconsistencies surrounding their use (MTN/SEC/W/21).

15. In the "Framework" Group of the Tokyo Round negotiations, suggestions were put forward for exploring the question of whether or not there was a need for greater comparability between GATT rules for handling export restrictions and those for handling import restrictions. Participants which were advocating action to deal with export restrictions were concerned by the economic hardship caused by decreased supplies and increases in prices resulting from the imposition of export restrictions. Some participants envisaged a code of conduct which would have prohibited export restrictions while others were only prepared to negotiate supply obligations on a product-by-product basis provided that major importing countries made substantial moves in the direction of dismantling trade barriers which they maintained against imports of processed resource products. Subsequently, the "Framework" Group engaged in an examination of existing GATT rules concerning the application of restrictions at the border that affect exports, taking into account the development needs of developing countries. As part of this exercise, the Group drafted an "Understanding regarding export restrictions and charges" (MTN/FR/6, pages 5/1-5/10, reproduced in the Appendix) which was adopted by the Trade Negotiations Committee at the end of the Tokyo Round (MTN/28 and Corr.1). In the Understanding the participants requested the CONTRACTING PARTIES to reassess, as one of their priority tasks after the conclusion of the Tokyo Round, the provisions relating to export restrictions and charges, in the context of the international trade system as a whole, taking into account the development, financial and trade needs of the developing countries. However, at the time when the Understanding was adopted by the Framework Group, a number of participants expressed dissatisfaction with the lack of progress made in the removal of import barriers affecting natural resource products and considered that any reassessment of GATT provisions relating to export restrictions would be unbalanced if it did not also deal with the linked question of access to markets. Another view was that two of the guiding principles in the reassessment task would be "the sovereignty of states over their natural resources and the need for developing countries to utilize their resources for their development in the most optimal manner as considered appropriate by them, including processing of their raw materials, setting up industries to diversify their economies and ensuring supplies to domestic industries (MTN/FR/W/21-23).
16. The Understanding was submitted to the CONTRACTING PARTIES at their 35th session held in November 1979 (L/4884 and Add.1). Prior to this and as part of its examination of the GATT's programme of work arising out of the Tokyo Round negotiations, the Consultative Group of Eighteen took up at its October 1979 meeting a suggestion for the establishment of a Working Party to examine rules on export controls. One view was that the permanent sovereignty of states over natural resources had to be preserved in any GATT effort in this area. Another view shared by some exporters and importers of raw materials was that the problems of access to supplies and of access to markets were linked.

17. In the preparations leading to the meeting at Ministerial level of the CONTRACTING PARTIES in 1982, one delegation suggested the inclusion in the agenda of export restrictions with a view to pointing to the trade-distorting effects of such practices. However, the matter was not included in the Declaration adopted at the end of the meeting (BISD, 29S/9).

18. In the Working Party on Trade in Certain Natural Resource Products which had been set up in 1984 to examine, in accordance with the Ministerial Decision of 1982, problems falling under the competence of the General Agreement relating to tariffs, non-tariff measures, and other factors affecting trade in certain natural resource products, some discussion was held on export restrictions affecting non-ferrous metals and on problems relating to access to fish supplies. At the conclusion of its work, the Working Party noted that negotiations on these problems did not fall within its mandate and that the best means for seeking to reduce or eliminate barriers to trade falling under the competence of GATT would be through a process of multilateral negotiations. Some participants were of the view that access to fish resources fall beyond the purview of GATT negotiations.

19. In the examination of a dispute involving restrictions maintained by a contracting party on exports of varieties of fish unless they were processed, the CONTRACTING PARTIES found that such restrictions could not be justified under Articles XI or XX as had been claimed by the maintaining country. In particular, they found that for a trade measure to be justifiable under Article XX(g), it had to be primarily aimed at the conservation of an exhaustible natural resource or at rendering conservation policies effective (L/6268).

20. In the Uruguay Round Negotiating Group on Natural Resource-Based Products, it has been suggested that problems relating to export restrictions and taxes should be studied and that suitable solutions should
be found to them. However, other delegations have stated that they were not prepared to deal with these questions in the framework of the Negotiating Group (MTN.GNG/NG3/W/11 and 14). A recent submission in this Group points to trade-distorting effects which export taxes on natural resource-based products are held to have (MTN.GNG/NG3/W/23).

21. In the Surveillance Body of the Uruguay Round, one participant notified an export prohibition imposed by another participant on certain tropical woods as violating the standstill commitment and that participant's obligations under Article XI (MTN.SB/SN/1). The participant maintaining the measure stated that this prohibition was justified by its efforts to rehabilitate its tropical forests and preserve the country's natural resources. At the same time the programme for tropical woods was vital to the country's economy, export earnings, debt-servicing and employment. The measures in question were therefore consistent with Articles XI:2(a) and XXXVI:5 (MTN.SB/2-9).

22. On 8 June 1989, a contracting party announced its intention to resort to Article XXIII:2 on quantitative restrictions maintained by one of its trading partners on the export of copper scrap, as these restrictions were held to contravene Article XI:1 (L/6518).
APPENDIX

Tokyo Round Understanding Regarding Export Restrictions and Charges

The participants in the Multilateral Trade Negotiations have examined the various existing provisions of the General Agreement relating to export restrictions and charges. The Annex contains a statement of these provisions.

In the light of the examination referred to, participants agree upon the need to reassess in the near future the GATT provisions relating to export restrictions and charges, in the context of the international trade system as a whole, taking into account the development, financial and trade needs of the developing countries. They request the CONTRACTING PARTIES to address themselves to this task as one of the priority issues to be taken up after the Multilateral Trade Negotiations are concluded.
ANNEX TO UNDERSTANDING

Statement of Existing GATT Provisions
Relating to Export Restrictions and Charges

Introductory observations

1. This statement covers only those GATT provisions that are of particular relevance to export restrictions and charges. The omission of any provision from this statement does not mean that it is not applicable to such restrictions and charges.

2. The subsequent paragraphs are organized as follows:

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1Such as Articles XIX and XXIII which provide, under certain conditions, for the suspension or withdrawal of concessions and other obligations under the General Agreement.
I. Export restrictions

3. Article XI is entitled "General Elimination of Quantitative Restrictions". Paragraph 1 of Article XI reads with the wording relating to imports omitted:

"No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, ... export licences or other measures, shall be instituted or maintained by any contracting party ... on the exportation or sale for export of any product destined for the territory of any other contracting party."

According to paragraphs 2(a) and (b) of Article XI the above provision does not extend to:

(a) "Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party"; and

(b) "... export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade".

For other exceptions to paragraph 1 of Article XI see below paragraphs 6-8.

4. Article XIII is entitled "Non-discriminatory Administration of Quantitative Restrictions". Paragraph 1 of this Article reads with the wording relating to imports omitted: "No prohibition or restriction shall be applied by any contracting party on ... the exportation of any product destined for the territory of any other contracting party, unless ... the exportation of the like product to all third countries is similarly

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1 A note to Articles XI, XII, XIII, XIV and XVIII provides:

"Throughout Articles XI, XII, XIII, XIV, and XVIII, the terms "import restrictions" or "export restrictions" include restrictions made effective through State-trading operations".
prohibited or restricted". Paragraphs 2 to 4 of Article XIII regulate the non-discriminatory administration of quantitative import restrictions. Paragraph 5 of Article XIII provides *inter alia*: "In so far as applicable, the principles of this Article shall also extend to export restrictions". Article XIV is entitled: "Exceptions to the Rule of Non-discrimination". Paragraph 4 of this Article reads:

"A contracting party applying import restrictions under Article XII or under Section B of Article XVIII shall not be precluded by Articles XI to XV or Section B of Article XVIII of this Agreement from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use without deviation from the provisions of Article XIII."

II. Export charges

5. The following provisions have a bearing on export duties, taxes and other charges:

(a) Paragraph 1 of Article XI, which reads with the wording relating to imports omitted:

"No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, ... export licences or other measures, shall be instituted or maintained by any contracting party ... on the exportation or sale for export of any product destined for the territory of any other contracting party."

1 Article XVII is entitled "State Trading Enterprises". Paragraphs 1(a) and (b) of this Article read with the wording relating to imports omitted:

"(a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its ... sales involving ... exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting ... exports by private traders.

(b) The provisions of sub-paragraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such ... sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of ... sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such ... sales."
(b) Paragraph 1 of Article I, which reads with the wording relating to imports omitted:

"With respect to customs duties and charges of any kind imposed on or in connection with ... exportation or imposed on the international transfer of payments for ... exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with ... exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product ... destined for any other country shall be accorded immediately and unconditionally to the like product ... destined for the territories of all other contracting parties."

(c) Paragraph 1 of Article XXVIII bis, which reads with the wording relating to imports omitted:

"The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis, directed to the

1Paragraphs 1(a) and (b) of Article XVII read with the wording relating to imports omitted:

"(a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its ... sales involving ... exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting ... exports by private traders.

(b) The provisions of sub-paragraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such ... sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of ... sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such ... sales."

A note to paragraph 1 of Article XVII provides inter alia:

"The charging by a State enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets."
substantial reduction of the general level of tariffs and other charges on ... exports ..., and conducted with due regard to the objectives of this Agreement and the varying needs of individual contracting parties, are of great importance to the expansion of international trade. The CONTRACTING PARTIES may therefore sponsor such negotiations from time to time. 

(d) Paragraph 8 of Article XXXVI, which reads:

"The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties."

A note to this provision states inter alia:

"It is understood that the phrase "do not expect reciprocity" means, in accordance with the objectives set forth in this Article, that the less-developed contracting parties should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments."

(e) Paragraph 1(a) of Article II, which reads:

"Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement."

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1 Article XVII is entitled "State Trading Enterprises". Paragraph 3 of this Article reads:

"The contracting parties recognize that enterprises of the kind described in paragraph 1(a) of this Article might be operated so as to create serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade."

A note to this provision reads with the wording relating to imports omitted:

"Negotiations which contracting parties agree to conduct under this paragraph may be directed towards the reduction of duties and other charges on ... exports or towards the conclusion of any other mutually satisfactory arrangement consistent with the provisions of this Agreement."
The schedules annexed to the General Agreement contain only two export duty bindings.1

(f) Paragraph 1 of Article VII, which reads with the wording relating to imports omitted:

"The contracting parties recognize the validity of the general principles of valuation set forth in the following paragraphs of this Article, and they undertake to give effect to such principles, in respect of all products subject to duties or other charges or restrictions on ... exportation based upon or regulated in any manner by value. Moreover, they shall, upon a request by another contracting party, review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The CONTRACTING PARTIES may request from contracting parties reports on steps taken by them in pursuance of the provisions of this Article."

(g) Paragraph 1 of Article VIII, which reads with the wording relating to imports omitted:

"(a) All fees and charges of whatever character (other than ... export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with ... exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of ... exports for fiscal purposes.

"(b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (a).

"(c) The contracting parties also recognize the need for minimizing the incidence and complexity of ... export formalities and for decreasing and simplifying ... export documentation requirements."

For exceptions to the above provisions see paragraphs 6-8 below.

III. General exceptions

6. According to paragraph 9(b) of Article XV nothing in the General Agreement shall preclude:

"the use by a contracting party of restrictions or controls on ... exports, the sole effect of which, additional to the effects permitted under Articles XI, XII, XIII and XIV, is to make effective such exchange controls or exchange restrictions."

7. Article XX entitled "General Exceptions" reads as follows:

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(a) necessary to protect public morals;

(b) necessary to protect human, animal or plant life or health;

(c) relating to the importation or exportation of gold or silver;

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

(e) relating to the products of prison labour;

(f) imposed for the protection of national treasures of artistic, historic or archaeological value;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
(j) essential to the acquisition or distribution of products in
general or local short supply; provided that any such measures
shall be consistent with the principle that all contracting
parties are entitled to an equitable share of the international
supply of such products, and that any such measures, which are
inconsistent with the other provisions of this Agreement shall
be discontinued as soon as the conditions giving rise to them
have ceased to exist. The CONTRACTING PARTIES shall review the
need for this sub-paragraph not later than 30 June 1960."

8. According to Article XXI entitled "Security Exceptions" nothing in the
General Agreement shall be construed:

"(a) to require any contracting party to furnish any information the
disclosure of which it considers contrary to its essential
security interests; or

(b) to prevent any contracting party from taking any action which it
considers necessary for the protection of its essential security
interests:

(i) relating to fissionable materials or the materials from
which they are derived;

(ii) relating to the traffic in arms, ammunition and implements
of war and to such traffic in other goods and materials as
is carried on directly or indirectly for the purpose of
supplying a military establishment;

(iii) taken in time of war or other emergency in international
relations; or

(c) to prevent any contracting party from taking any action in
pursuance of its obligations under the United Nations Charter
for the maintenance of international peace and security."

IV. Other provisions relating to export restrictions and charges

9. In the context of the objectives of paragraph 1 of Article XXXVI,
including sub-paragraph (f) of the Article, the following provisions have a
bearing on export restrictions and charges:

(a) Paragraph 4 of Article XXXVI:

"Given the continued dependence of many less-developed
contracting parties on the exportation of a limited range of
primary products, there is need to provide in the largest
possible measure more favourable and acceptable conditions of
access to world markets for these products, and wherever
appropriate to devise measures designed to stabilize and improve
conditions of world markets in these products, including in
particular measures designed to attain stable, equitable and
remunerative prices, thus permitting an expansion of world trade
demand and a dynamic and steady growth of the real export
earnings of these countries so as to provide them with expanding
resources for their economic development."

(b) Paragraph 5 of Article XXXVI:

"The rapid expansion of the economies of the less-developed
contracting parties will be facilitated by a diversification of
the structure of their economies and the avoidance of an
excessive dependence on the export of primary products. There
is, therefore, need for increased access in the largest possible
measure to markets under favourable conditions for processed and
manufactured products currently or potentially of particular
export interest to less-developed contracting parties."

(c) Paragraph 9 of Article XXXVI:

"The adoption of measures to give effect to these principles
and objectives shall be a matter of conscious and purposeful
effort on the part of the contracting parties both individually
and jointly."

(d) Paragraph 2(a) of Article XXXVIII:

"In particular, the CONTRACTING PARTIES shall:

where appropriate, take action, including action through
international arrangements, to provide improved and acceptable
conditions of access to world markets for primary products of
particular interest to less-developed contracting parties and to
devise measures designed to stabilize and improve conditions of
world markets in these products including measures designed to
attain stable, equitable and remunerative prices for exports of
such products."

V. Publication and notification

10. Article X is entitled "Publication and Administration of Trade
Regulations". Paragraph 1 of this Article reads:

"Laws, regulations, judicial decisions and administrative rulings of
general application, made effective by any contracting party,
pertaining to the classification or the valuation of products for
customs purposes, or to rates of duty, taxes or other charges, or to
requirements, restrictions or prohibitions on imports or exports or on
the transfer of payments therefor, or affecting their sale,
distribution, transportation, insurance, warehousing, inspection,
exhibition, processing mixing, or other use, shall be published
promptly in such a manner as to enable governments and traders to
become acquainted with them. Agreements affecting international trade
policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."

Paragraph 3 of this Article reads:

"(a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

(b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts."

11. Paragraph 4(a) of Article XVII, entitled "State Trading Enterprises", reads with the wording relating to imports omitted:

"Contracting parties shall notify the CONTRACTING PARTIES of the products which are ... exported from their territories by enterprises of the kind described in paragraph 1(a) of this Article."