GENERAL AGREEMENT ON
TARIFFS AND TRADE

Committee on Trade in Agriculture

SUMMARY OF POINTS RAISED DURING THE MEETING
OF THE COMMITTEE HELD ON 7-8 APRIL 1986

Note by the Secretariat

Introduction

1. At its 7-8 April meeting the Committee pursued its in-depth examination of all the approaches referred to in the Recommendations adopted at the 40th Session of the CONTRACTING PARTIES and of the way in which they could be elaborated as a basis for possible future negotiations aimed at achieving the objectives embodied in these Recommendations (L/5900 refers). For this purpose the Committee had before it and examined a revision of the Draft Elaboration (AG/W/9/Rev.2). Under other matters the Committee also discussed the organization of its further work, including the question of the report to be submitted by the Committee in terms of paragraph 4 of L/5900 and the contribution that the Committee might make to the Preparatory Committee (PREP.COM(86)SR.2, paragraph 34 refers). The present note summarizes the main points raised in the course of the discussions on the revised document and the outcome of the discussions on other matters.

Measures affecting access

2. With regard to the section of the revised Draft Elaboration on quantitative restrictions (paragraphs 13 to 17), it was submitted that it would be necessary to devise a realistic approach and one that took full account of the specific characteristics of agriculture. The Annex IV approach sought to achieve feasible solutions based on a revision and modification of the terms of Article XI:2(c)(1) and the last paragraph of Article XI:2. In this view it was considered that the ideas in Annex A-I, including the suggestion in paragraph 5 thereof, were worth exploring, along with criteria for exceptions related to other elements of domestic policies such as food security and regional development. One example mentioned was the adjustment of the minimum access obligation to take account of particular production and consumption structures prevailing in each country by grouping together certain commodities and their processed products and treating them as "similar commodities". In this view it was considered that there should be a smooth transition into the negotiating stage and that an active and co-operative role for the CTA was essential.
3. It was also pointed out that certain recent developments were not without influence on the work of the CTA and that while the overall goal should be to improve the situation of trade in agriculture, it was open to question whether, in the light of the respect shown for the existing rules, a two-stage approach involving improvements in the rules and disciplines followed by negotiations on the basis of the modified rules, continued to be valid. In this view the existing rules should be applied and respected before discussion of their improvement was undertaken. Another and more classical approach, it was submitted, would be for lists of requests to be presented. Such an approach might involve certain parties being asked, for example, to do something on subsidies, to do something about waivers, to give up obscure marketing board practices, and to conduct state trading in a more transparent manner. In this view a double-track approach was not essential because both operations, the improvement in the rules and the negotiation of commitments on access and subsidies, could be undertaken simultaneously. It was indicated that while this idea had been raised at an earlier stage in the work of the CTA it had been neglected in the revised document. Another view taken was that as conditions in agricultural trade had deteriorated since the CTA was established, it was all the more imperative that the Committee should address the problems it was created to deal with and not slacken its efforts in this regard.

4. A number of observations were made regarding the implications to be drawn from the manner in which the "tariffs only" approach was presented in the revised document and about the viability of such an approach having regard to what were described as the realities of trade in agriculture. One question raised was whether request/offer procedures or a formula technique was envisaged for converting quantitative restrictions and variable levies into bound tariffs. It was suggested that some elaboration was needed as to how domestic markets would adapt to a tariffs-only approach. It was also noted that the need for a transition or adjustment period was a common feature of a number of the approaches outlined, including the tariffs-only approach, and that some combination of the ideas involved might be devised.

5. With regard to the suggested definition of effective regulation of production in paragraph 5 of Annex A-I, it was pointed out that in a situation where production remained constant but consumption declined the effect would be to generate more surpluses. It was indicated that unless minimum access commitments were respected in such a situation the concept of effective regulation of production would not represent any improvement in terms of access. In this connection it was submitted that minimum access commitments should be determined as a matter of principle having regard to levels of self sufficiency and not, as the revised document appeared to suggest, on an ad hoc request/offer basis. Furthermore, the notion of an "undue increase" in production relative to consumption could imply that any increase in consumption should be met from increased domestic production rather than from stocks or from imports. In these circumstances it was suggested that it would be necessary to tighten up the concept of "effective regulation of production" in order to ensure that the criterion could not be circumvented and lead to further increases in self sufficiency levels.
6. In this view it was considered that it would have to be a basic condition of any formulation of effective regulation of production that there should be, as outlined in Annex A-VI, a discipline on production above self sufficiency where the internal price was higher than the world price. Such a discipline, it was submitted, should apply not only to quantitative restrictions but to all restrictive regimes, including variable levies and other minimum import price arrangements. It was also noted that what was important was the effect of domestic production constraints rather than the particular mechanisms employed. The range of possible production measures might nevertheless be covered in an illustrative list. Some examples mentioned were lowering prices, limiting guaranteed prices to a fixed quantum of production, diversion programmes, and any programme which, although not necessarily geared to production control across the board, has the demonstrable effect of reducing production. It was submitted that, in line with the suggestions in Annex A-VI, if this effect was not apparent provision would have to be made for access additional to that provided under the minimum access obligation.

7. An area where it was considered in several of the views expressed that the revised Draft Elaboration was deficient was in relation to the question of specific characteristics and problems of agriculture. In this regard it was pointed out that as all aspects of agriculture were interrelated, there were difficulties inherent in those approaches or suggestions which sought to deal with particular categories of measures in isolation or which sought to convert measures that were intimately related to domestic price support measures to tariffs. It was indicated that such approaches ran counter to the notion that every country had the right to apply the type of measure it considered appropriate in order to protect and assure the viability of its domestic agriculture. It was also considered that the alternative approach on access referred to in the last sentence of paragraph 41 should be presented as an option in its own right rather than as a counter argument to approaches which, in this view, were considered to be unrealistic.

8. It was also noted that many attempts had been made in the Committee to define the difficult concepts of Article XI, such as effective restriction of production and the proportionality rule of the last paragraph of Article XI. In several of the Annexes the proportionality rule had been expressed as a minimum access commitment with a direct relationship to production levels. While in theory this concept was not regarded as difficult, it was observed that it was important to recognize that self-sufficiency levels vary greatly from country to country and from commodity to commodity. Accordingly where self-sufficiency ratios are substantially less than 100 per cent minimum access commitments should be related to the realities of the market and should not be tied too closely to the concept of negotiating fixed percentages of commitment across the board. Although this was recognized in certain sections of the revised document, there were nevertheless frequent references to fixed percentages of market access, in some cases 10 per cent and in others 20 per cent. In this view, what needed to be recognized, having regard to the importance attached to negotiations on access leading to real trade liberalization, was that there would be circumstances where such percentages would not be appropriate for particular markets and commodities.
9. It was suggested that reference should be made in the section of the document dealing with voluntary restraint agreements to VRAs being treated as a form of safeguard action not in conformity with Article XIX. The object, it was submitted, should be to eliminate such measures and thus allow greater access. In this view, it was also considered that ex post facto disciplines linked to the effects of minimum import price arrangements were unlikely to be workable. It was suggested that an alternative approach would be to provide: (i) that, in principle, all minimum prices have prohibitive effects and should not therefore be employed; (ii) that if a country nevertheless proposes to introduce minimum import price arrangements the country concerned should first have to demonstrate, as a condition precedent to obtaining approval to apply such measures, that the proposed measures would not have prohibitive or restrictive effects. A further element of this suggested approach would be that the trade impact of permitted minimum import price arrangements should be subject to annual review.

Subsidies affecting trade

10. It was submitted that two themes emerging from the work of the Committee under Options A and B could provide the basis for more integrated approaches on subsidies. One involved the concept of phasing out export subsidies and the other the concept of reinforcing the role of Article XVI:1 with respect to price depression and to market displacement, both globally and in individual markets. An approach along these lines, which was also directed to resolving the discordance in the obligations under Article XVI, was outlined as follows:

"Articles XVI:2, XVI:3 and XVI:4 recognize the especially harmful effects that subsidies on the export of any product may have on world trade and Article XVI:4 (elaborated by Article 9 of the Subsidies/Countervailing Code) prohibits such subsidies on products other than primary products. Under Article XVI:3 however, export subsidies on agricultural products are currently permitted providing that they do not result in a contracting party "having a more than equitable share of world trade in the product" concerned. Article XVI:1 does not prohibit the use of other subsidies but, at least in spirit, is aimed at providing redress for contracting parties who suffer or are threatened with "serious prejudices" by the operation of a subsidy by any other contracting party on a particular product.

Under the current rules however, redress for serious prejudice is limited to consultation rights only and the "more than equitable share of world trade" test under Article XVI:3 has proven incapable of being translated into a meaningful discipline.

Building on the existing philosophy in Article XVI, the current rules applying to subsidies on agricultural exports could be made more operationally effective by:

(a) a phasing-out (implemented through an appropriate period, say ten years) of direct export subsidies on agricultural products, i.e. subsidies granted on the occasion of, or in connection with, the export of agricultural primary products, to replace existing Article XVI:3 and to parallel the discipline in Article XVI:4 and Article 9 of the Subsidies Code. This phasing-out would be coupled with a prohibition on the introduction of new export subsidies;
(b) a strengthening of Article XVI:1 to provide an obligation for any contracting party causing or threatening "serious prejudice" through the use of any subsidy which operates directly or indirectly to increase exports to remove the cause of prejudice. For the purposes of this proposal serious prejudice would be intended to encompass market displacement as enunciated under Annex B-II as well as the concept of global displacement and depressed prices contained in Annex B-III.

The effect of such a strengthening of the rules would be to effectively prohibit direct export subsidies which have the most distorting effect on trade. While not prohibiting other subsidies it would also enable any adverse trade effect caused, for example, by production subsidies of one kind or another to be dealt with more effectively than under the existing provisions of Article XVI:1.

Under the present provisions of Article XVI, producer-financed "stabilization" subsidies are not considered to involve a subsidy on exports within the meaning of Article XVI:3 provided that:

(a) the system has resulted or is so designed to result in the sale of the product for export at a price higher than the comparable price charged for the like product to buyers in the domestic market;

(b) the system is so operated or is designed to operate ... as not to stimulate exports unduly or otherwise seriously prejudice the interest of other contracting parties.

Under the above proposal for making the rules on subsidies on agricultural exports more operationally effective, producer-financed subsidies would continue to be judged on the basis of these criteria.

11. It was observed that one advantage of dropping the equitable share rule in favour of a strengthened rule on serious prejudice would be that the latter concept was inherently less vague and unquantifiable. It also offered scope for establishing more precise criteria for dealing with specific disputes. Some of these criteria, it was suggested, might not be all that different from those outlined as guidelines under Article XVI:3. In this view, it was considered that consideration would also need to be given to the attribution of the onus of proof, one possibility being to draw up a list of situations in which a prima facie case of serious prejudice would be deemed to exist unless there was an adequate rebuttal of the primary facts by the subsidizing country, or the subsidizing country was able to show that, notwithstanding the facts as established, other or special factors were responsible. Procedurally this would involve two stages: one in which the complainant had the initial onus of establishing the primary facts to the satisfaction of a panel; a second stage in which the onus as described would have to be rebutted by the respondent. In this connection it was noted that the definition of a list of special factors as outlined in SCM/53 might offer further scope for developing more precision in the dispute settlement procedures.
12. With regard to the conditions governing a producer-financed export subsidy system, it was indicated that if such a system were to result in a real improvement there would need to be some limitation on the extent to which guaranteed prices that were above world market levels could be jacked up, or some limitation on the quantum of production that could benefit from guaranteed prices. Correspondingly there would have to be a freeze, or some equivalence of restraint, on deficiency payments and other price and income support arrangements. The key issue, it was submitted, was not so much whether the system was producer-financed but rather the extent to which production along with income and price supports, were restrained or controlled. It was suggested that a concept worth exploring as a means of making two-price systems more workable by ensuring that such systems did not get out of control, would be that two-price systems should be subject to effective regulation of production criteria.

13. In a statement made in which one participant reserved its position and rights regarding the informal proposals outlined in Annex B-V, it was indicated that in interpreting the provisions of Article XVI, SCM/53 had introduced certain notions that had no legal status in the GATT and that were less clear than the provisions of the Code they purported to clarify.

14. Another observation made was that it was important to bear in mind when discussing subsidies that different climatic and other conditions of production prevailed throughout the world and that whereas certain countries enjoyed more favourable conditions, others did not. In this view it was considered perfectly legitimate that each country should be entitled to invoke its autonomy with regard to the remuneration of its producers. In certain regions the levels of remuneration, and thus production prices, were relatively high. Were all forms of direct export assistance to be suppressed the result, it was suggested, would be that exports from certain regions would no longer be possible. The countries concerned would consequently be obliged to consume their own production with the result that there would be no scope for imports. It was indicated moreover, that in a situation where there were two levels of price, one created by efficient producers and one by high-cost producers, the introduction of deficiency payments aimed at lowering world prices by about 25 per cent would not be a solution. In this view the proposals outlined in paragraph 10 above would confront high-cost producers with having to adjust to the costs of a prohibition on direct export subsidies and, at the same time, with having to compensate third countries which were determined by an international tribunal to have suffered serious prejudice as a result of non-prohibited subsidies. It was suggested that such a legalistic approach would go beyond the realms of economic reality.

15. In this view it was also noted that producer-financed export subsidy arrangements were in conformity with the existing rules where their effect was, or concurrent action was being taken, to reduce domestic production. It was suggested that a logical consequence of the assertion that it made no difference whether or not producers met the cost of exports, was that the obscure practices of marketing boards, which had an influence over the determination of internal and export prices, should also be eliminated along with state-trading enterprises.
With regard to approaches which sought to combine the optional approaches under paragraph (b) of the Recommendations it was pointed out that the two approaches were to be elaborated in parallel. It was also noted that there were other possibilities consistent with the maintenance of the existing rules, such as stabilization arrangements for certain products involving concerted action, as appropriate, on prices, stocks, and export or import quotas.

16. In this general context, views were also exchanged on the nature of the improvements in the existing rules envisaged under Option B, with the points being made that the existing rules were widely considered to be unworkable, and that the extent to which account was taken of the specificity of agriculture in the context of particular approaches was a matter that should be assessed in relation to the nature of the particular price or income support arrangements applied.

Sanitary and Phytosanitary Measures

17. One view expressed with regard to the ideas outlined in paragraph 70 of the revised document was that the concept of treating health and sanitary measures as a species of safeguard action or of introducing a standstill on such measures would not be acceptable. It was also considered that these measures should be judged by experts from a purely technical viewpoint. Another view was that the role of the Committee was to analyse rather than to negotiate the various suggestions made and that in this sense the content of paragraph 70 could be supported. Reference was also made in this connection to concerns regarding the extent to which such measures were relied on in certain areas to exclude important exporters and their discriminatory effects in terms of market sharing. In this view it was considered that the manner in which such measures were applied and their adverse effects on trade warranted an approach being adopted that would lead to a better balance of rights and obligations in this area under the GATT.

General Observations

18. A general comment that was endorsed in a number of the views expressed was that while the approaches contained in AG/W/9/Rev.2 were not exhaustive, they were a faithful reflection of the work over the last three years and provided a solid basis upon which to initiate negotiations. It was indicated, moreover, that it was a strongly-held belief that it would be a major error to revert to the good old days of "request and offer" and to believe that the status quo in terms of the rules negotiated in 1947, which had been emasculated to such an extent that the exceptions had become the rule, was something that should have to be endured. In this view, it was considered that a fundamental review of the GATT provisions relating to agriculture had to be undertaken and that the revised Draft Elaboration represented a solid framework on which to initiate such a negotiating process.

19. In the course of several observations made it was indicated that, contrary to what was said in this regard in paragraph 2 of AG/W/9/Rev.2, the specific characteristics of agriculture and the need for a balance of rights and obligations had not been adequately taken into account throughout the revised document. In this, as well as in a number of
other views expressed, there should either be a separate chapter on the important general considerations in paragraph 3 of the Recommendations and/or an assessment made as to how each of the suggested approaches measured up in terms of paragraph 3. In this regard reference was made to approaches, such as the tariffs only approach and proposals for the suppression of direct export subsidies, which sought to discipline or eliminate measures other than those applied by their sponsors and which took no account of the specificity of agriculture or of the need for a balance of rights and obligations. It was indicated that it was for these reasons that doubts had arisen as to whether a two phase approach, involving negotiations on the rules and then on specific commitments, continued to be viable or realistic. In this view, it was also considered that paragraph 4 of the Recommendations, to which reference was made in the section of the revised document dealing with "objectives", was to be regarded as not just one of a number of objectives but as the very foundation for negotiations.

20. Some reservations were also expressed with regard to the manner in which the question of special and differential treatment had been dealt with in certain parts of the revised document, particularly on the access side where it was suggested that a listing of possibilities or a generic reference might be appropriate. Reference was made as well to the need to mention possible undertakings on standstill and rollback in connection with voluntary export restraints.

21. In another observation made it was pointed out that while AG/W/9/Rev.2 was a useful document in that it included practically all suggestions and possible approaches, it had no official status. It was also noted in this view that no consensus had yet emerged on selecting any of the options as a basis for future negotiations and that decisions of this kind were a matter for negotiation in the New Round. Another view expressed was that the revised document constituted a very significant contribution to the general process of reflection and to the elaboration of negotiating options. It was observed that the function of the Committee was not to narrow down the range of options but to ensure that all specific options were properly reflected and analysed. In this regard, it was also indicated that it was easier to destroy a document than to build it up and that if there was dissatisfaction with the way in which certain matters were presented, those concerned should table specific or more articulate proposals for inclusion in the document.

22. The general thrust of some other views expressed in this general connection was: that by virtue of the Recommendations it was incumbent on the Committee as a further and necessary stage of its work to see how each the proposed approaches measured up in terms of their conformity with the elements contained in paragraph 3 of the Recommendations; that the questions dealt with in paragraph 3 of the Recommendations were to be regarded more as matters to be resolved in the substantive negotiation phase; that the revised document was in large part devoted precisely to those provisions of the General Agreement which recognized
the specificity of agriculture and sought to develop a number of approaches designed to make these provisions more operationally effective; that the concept of balance of rights and obligations in its broadest sense involved questions of reciprocity which were within the province of sovereign governments, and that in these circumstances it was not feasible to attempt to assess the various approaches inter se according to this or any other vague and essentially subjective yardstick. It was also suggested that it was only by taking full account of the specificity of agriculture that it would be possible to make real progress in the direction of improved conditions of trade for agriculture.

Other Matters

23. Under this item views were exchanged on how the further work of the Committee should be organized. It was agreed that the Committee would consider reporting to the Preparatory Committee and that the Chairman should consult informally regarding the preparation of a draft report and the date for the next meeting of the Committee. It was also agreed that a further revision of the Draft Elaboration should be undertaken by the secretariat.