International Trade Law

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1.1 Trade and Customs Co-operation

1.1.1 Trade

Today's multilateral trading system originated in the negotiations, initiated during the Second World War between the United States and Britain, on the shape of the post-war international economy. The need was discussed for international institutions for trade comparable to what were to become the International Monetary Fund (IMF) [see 211 A] and the Bank for International Reconstruction and Development (IBRD, often called the "World Bank") [see 221 A]. The form and function of a third pillar to the new international economic system was formalized when the US presented proposals for an International Trade Organization (ITO) to a conference in London in 1946. These proposals were reviewed at subsequent conferences in New York, Geneva and Havana. The final version, completed in Havana in March 1948, became known as the Havana Charter [see 111.02]. The General Agreement on Tariffs and Trade (GATT) came into being as part of the negotiations at a conference in Geneva in 1947 [see 111 A]. Ultimately the US refused to ratify the Charter, but the GATT has remained in force.

Today, the main agreement regulating international trade is still the GATT [see 111.01]. It was first amended in March 1955 and Part IV, which provided special treatment for developing countries, was added in February 1964. As the growth in membership made further amendments difficult, the parties turned to the adoption of various GATT codes during the Tokyo Round of negotiation (concluded in 1979). Some of these codes have expanded the coverage of GATT; others have provided details of application. The most recent round of multilateral negotiations under GATT began in September 1986 at Punta del Este, Uruguay. The Uruguay Round, the most ambitious to date, is attempting to move the GATT into new substantive areas of trade such as services, intellectual property and trade-related investment while, at the same time, reforming existing areas.

This section also deals with UNCTAD [see 111 B] and the ITC [see 111 C], which directly address issues of the developing countries. GATT and UNCTAD agreements covering trade activities world-wide are summarized.

Regional agreements, which are outside the scope of this book – such as those of the European Communities (EC) and the North American Free Trade Agreement (NAFTA), as well as provisions of some organizations such as the recommendations and decisions of the Organisation for Economic Co-operation and Development (OECD) which is limited to its 24 member countries – have also had a significant global impact on international trade.

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SELECTED BIBLIOGRAPHY


(1) The GATT Trade Negotiations Committee on 15 December 1993 adopted the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations. Just prior to publication, an additional commentary has been added to this section which covers this development [see 111.21].
GLOBAL ECONOMIC CO-OPERATION


111 A – GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

ORIGIN OF THE GATT

The GATT was never intended to be an organization and still is not, in the legal sense. It came into being as a result of a first round of tariff negotiations at the Geneva conference of 1947 on the proposed International Trade Organization (ITO). Subsequent tariff negotiations were to be conducted under the auspices of the ITO once it was established. In order to ensure that the agreed concessions at the Geneva conference would not be undercut by other trade measures, the GATT incorporated many of the commercial policy provisions of the ITO draft charter (as reflected in Chapter IV of the Havana Charter) [see 111.02].

The General Agreement was initially brought into effect by a “Protocol of Provisional Application” (effective 1 January 1948). This allowed prospective signatories to avoid having to present the GATT for domestic approval should this be necessary.

By the time the final ITO draft charter – the Havana Charter – was completed in 1948, a new US Congress had been elected. It was opposed to most trade policies of the administration and was particularly hostile to the Havana Charter’s social welfare agenda (Chaps. II and III). Support from the American business community had also decreased as a result of the detrimental impact of the new tariff levels under the GATT and the fact that the UK could not be persuaded to give up its system of Commonwealth Preferences. In December 1950, the US administration quietly issued a press release which stated that it would not be re-submitting the Charter to Congress for approval. This effectively destroyed the ITO as it seemed futile to establish such an organization without the support of the world’s leading economic power. The demise of the ITO did not, however, signal the end of multilateral trade as evidenced by the growth of the GATT.

The GATT gained *de facto* status as a specialized agency of the United Nations in 1952, through an exchange of letters between the Secretary-General and the Executive-Secretary of the GATT.
THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The primary goal of the GATT is international trade liberalization. Its text is composed of articles which provide for the reciprocal reduction of tariffs, and those which set out obligations on trade practices which can act to counter the effect of agreed tariff concessions [see 111.01 for a fuller description].

The General Agreement has evolved through periodic rounds of multilateral negotiations on substantive aspects of the Agreement: the Geneva Round (1947), the Annecy Round (1949), the Torquay Round (1950-1951), the Geneva Round (1955-1956), the Dillon Round (1961-1962), the Kennedy Round (1963-1967), the Tokyo Round (1973-1979), and the Uruguay Round (1986-) [see 111.19].

Prior to the Kennedy Round, these negotiations dealt primarily with reducing tariffs, as efforts to expand policy areas had met with resistance. However, by the end of the Tokyo Round in 1979, the need to confront the increasing use of non-tariff barriers, particularly by developed countries, led to the adoption of a number of codes dealing with specific practices [see 111.07 to 111.14].

Notwithstanding the principle of non-discrimination found in Article 1 of the GATT, the GATT Codes bind only those contracting parties (CPs) which have ratified them. Generally speaking, these Codes have not been ratified by developing countries and have tended to fragment the GATT system, creating different obligations for developed and developing countries. The negotiations of the Uruguay Round are attempting to correct this fragmentation by assimilating the Tokyo Codes into the main body of the General Agreement.

Given the limited scope of the GATT, concerned states have agreed in other forums to co-ordinate other aspects of trade having extraterritorial economic impact. The operations of transnational enterprises have also encouraged co-ordination of policy between states independently of the GATT. Some of these measures are reflected in the resolutions and recommendations of institutions such as UNCTAD [see 111 B] and the OECD.

The Uruguay Round seeks to broaden the scope of the GATT and reintroduces the idea of a comprehensive international trade organization to co-ordinate international economic activities, as was envisaged in the Havana Charter.

STRUCTURE

Having come into being as a provisional trade agreement, the GATT did not provide for a formal institutional structure to implement and administer its provisions. The only body envisaged in the General Agreement was the contracting parties meeting in conference and acting together on a consensual basis: "the CONTRACTING PARTIES" (expressed in capitals when designated in their collective capacity).

Although the Agreement contains no authority for the creation of other bodies, the CPs have, in fact, developed other institutional mechanisms: the Council of Representatives; Committees, Working Parties and Panels; the Consultative Group of Eighteen; and the position of Director-General.

(i) The CONTRACTING PARTIES

The CONTRACTING PARTIES is the only body in the GATT system with the power to legislate and give definitive interpretations of the Agreement. It is the body in which disputes are determined and in which the conformity of CPs' trade policies with the GATT is decided. The CONTRACTING PARTIES also have the authority to grant waivers from GATT obligations to CPs under Article XXV-5. Decisions are taken by consensus and parties involved in a dispute always maintain the right to oppose any decision.
(ii) The Council of Representatives
The Council, established by a decision of the CONTRACTING PARTIES of 4 June 1960, acts as the executive body of the GATT. Its legal status is that of the CONTRACTING PARTIES's inter-sessional assembly. Membership is open to all CPs and two-thirds are represented in the Council. Its chairman is elected on a yearly basis by the CONTRACTING PARTIES.

The Council prepares the sessions of the CONTRACTING PARTIES, sets the agenda, and also oversees the work of subsidiary bodies, such as panels and committees (defined hereafter), and makes recommendations about their reports to the CONTRACTING PARTIES. It appoints panel members and sets out the terms of reference of panels. The Council plays a pivotal role in the final determination of a dispute in that only panel reports adopted by Council are presented to the CONTRACTING PARTIES, and are thus eligible to be given effect. Decisions of the Council are taken by consensus and parties involved in a dispute maintain the right to vote opposing a decision. While the principle of consensus has slowed down the implementation process of many panel decisions, it does seem necessary to ensure that economically powerful nations agree to a regime of dispute settlements.

(iii) Committees/Working Parties/Panels
It is in the committees, working parties and panels that the actions and activities of the GATT take shape.

(a) Committees. Committees are established to deal with fundamental issues on a continuing basis. Some of these committees reflect traditional concerns of the CPs—for example, the Committee on Balance of Payments Restrictions and Tariff Concessions. The Committee on Trade and Development, established under Part IV of the Agreement, is evidence of the growing place of developing countries in the GATT system. Committees are also set up to direct multilateral trade negotiations, and various committees exist under the 1979 codes negotiated at the Tokyo Round.

Membership on any of these committees is open to all CPs. The chairpersons of most of these committees are appointed by the Council. The chairperson of the Committee on Trade and Development is by custom from a developing country and the chairperson of the multilateral negotiation committee is the Director-General.

(b) Working Parties. Working parties are established by the Council on an ad hoc basis to deal with specific issues delegated by it. These working parties report back to the Council, which may adopt their recommendations. Membership is open to any CP wishing to be included.

(c) Panels. Panels are established by the Council when parties to a dispute have been unable to settle their differences under the consultation procedure [see 111.18]. Members of panels act in their individual capacities as trade experts and not as representatives of their governments. Panel reports must be adopted by the Council before being presented to the CONTRACTING PARTIES.

(iv) The Consultative Group of Eighteen
The Group is a consultative body, established to provide advice to the Council on key trade policy issues. Originally created in 1965, the Group was permanently established by a decision of the CONTRACTING PARTIES in 1979. By advising CPs on new developments in international trade, the Group facilitates the way CPs carry out their GATT obligations.

The Group's membership is restricted to 18, one of which is the EC and a majority of which (ten) are developing countries. Given the balanced nature of its composition and the fact that the chairperson of the Group is the Director-General, the Group's recommendations have great influence in the Council.
The Director-General

The Director-General is the chief administrative officer of the GATT. The position reflects the evolution of the original position of Executive Secretary. While the Director-General may play a major part in attempting to mediate trade disputes or differences over policy issues in the Council or among CPs, his or her main function lies in being the chairperson of the multilateral negotiations. A recent example of this has been the focal role Arthur Dunkel has played in maintaining the momentum of the Uruguay Round.

The Director-General also oversees the GATT Secretariat which provides administrative and research services to the various bodies of the GATT.

CO-OPERATION

The GATT co-operates with the IMF [see 211 A] for the application of the Tokyo decisions in favour of developing countries [see 111.15, 111.16 and 111.17], and for the application of Article XII (Restrictions to Safeguard the Balance of Payments) and Art. XVIII (Governmental Assistance to Economic Development). The CONTRACTING PARTIES are obliged to consult with the IMF in cases dealing with monetary reserves, balance of payments or foreign exchange arrangements (Art. XV).

In practice, since the breakdown of the par-value system [see 2.1], the IMF can no longer adequately perform its advisory function regarding the level of import restrictions required in such cases.

The GATT also co-operates with UNCTAD through the International Trade Centre [see 111 C] and, informally, with the OECD.

In the present Uruguay negotiations, the GATT has collaborated with the World Intellectual Property Organization (WIPO) [see 160 A] for the negotiation of TRIP issues (Trade Related Intellectual Property). If the Multilateral Trade Organization (MTO) envisaged by the Uruguay Round proposals comes into being [see 111.19], it would offer a continuous forum to develop co-operation with other international organizations, and thereby could extend the links between trade and the environment [see section 4], trade and labour standards [see 1.4], and other areas.

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111 B – UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

UNCTAD is the principal organ of the General Assembly in the field of trade and development. It is a permanent body, created by Resolution 1995(XIX) on 30 December 1964, and its budget forms part of the normal UN budget [see 001 A]. It is composed of representatives of 185 member states who meet in a Conference every four years. Many intergovernmental and non-governmental organizations participate in its work as observers.

UNCTAD was formed as a result of pressure from developing countries, following the beginning of the GATT round of negotiations of 1960. Most European

(1) The name of this proposed organization has now been changed to World Trade Organization [see 111.21].
countries had by then resolved their balance of payment problems following the Second World War but the gap between rich and poor countries was increasing.

From its inception, UNCTAD sought to be an alternative forum to the GATT where developing countries could express their views. UNCTAD's objective is to encourage the development of international trade by promoting the specific interests of the developing countries. It engages in deliberations, policy analysis, negotiations, implementation follow-up and technical co-operation. One of its most important functions is to review and facilitate the co-ordination of activities of other bodies within the UN system in the field of international trade and related problems of economic development. It also liaises with the General Assembly and commissions, bodies and working groups of ECOSOC [see 001 A].

UNCTAD has been very active in providing an institutional setting for the negotiation and adoption of multilateral agreements in areas such as commodities, trade and shipping. Since 1964, UNCTAD has been recognized as having special responsibilities within the UN system for the negotiation of new international commodity agreements and for the renegotiation of existing ones. It approved in 1976 an Integrated Programme for Commodities [see 121.02] which was followed by the conclusion in 1980 of the Common Fund for Commodities [see 121 B] and other international commodity agreements [see 1.2.1 and 1.2.2]. It has also served as a forum for the negotiation of terms of reference for autonomous international study groups on particular commodities [see 1.2.3].

UNCTAD drafted the set of principles for the control of restrictive business practices [see 111.05] and laid down the basis for the establishment of the well-known target of 0.7 per cent of gross national product for official development assistance accorded by developed countries. The Generalized System of Preferences (GSP) [see 111.05] was established under UNCTAD's auspices in 1970. More recently UNCTAD has assisted developing countries in the negotiation on the Global System of Trade Preferences Among Developing Countries (GSTP) [see 111.20].

With regard to maritime issues, UNCTAD has reached agreements on international conventions on liner conferences [see 183.15], on multimodal transport [see 180.01] and on the registration of ships [see 183.21].

Against the background of the changing nature of the North-South debate and of the evolution in the global political and economic environment, the eighth Conference of UNCTAD took place in Cartagena de Indias, Colombia in February 1992. Member states decided to establish a new partnership for development by focusing on the analysis of national experiences so as to enable them to draw appropriate lessons for the formulation and implementation of policies at the national and international levels and for international economic co-operation. Another salient element is the recognition of common interests of countries in different regions and of different levels of development.

On that basis, the Cartagena Commitment formulates policies and measures at the national and international levels in the interconnected fields of finance, trade, commodities, technology and services with a view to accelerating the development process. It further sets out policy recommendations on relatively novel concepts in the development dialogue, particularly "good management" at both the national and the international levels, the role of the market, the importance for development of democratic systems based on popular consent and public accountability, and the observance of human rights both as a moral imperative and as an important factor for development. A particularly important feature is the priority attached to the elimination of poverty and the mandate given to UNCTAD to focus its attention on poverty alleviation, thereby examining issues closely related to human development. The Commitment also provides guidelines for expanding work in UNCTAD on sustainable development.
Traditionally, member states have been divided into four geographic groupings: (A) the Afro-Asian group, (B) primarily OECD countries, (C) Latin American countries, and (D) Eastern Europe. In practical terms, however, another geopolitical alignment has replaced this formal division: on one side are the OECD countries and on the other are the Group of 77 [see 233 A] (currently 129 members) together with the countries of central and eastern Europe (D), China and Israel are considered independently. Since the Cartagena Conference, the group system role in substantive discussions has greatly diminished.

The UNCTAD Conference usually meets every four years at ministerial level to formulate major policy guidelines and decide on a programme of work. UNCTAD has a permanent Secretariat in Geneva headed by a Secretary-General who is nominated by the UN Secretary-General and approved by the General Assembly. Following Cartagena, the executive body of UNCTAD will remain the Trade and Development Board which will continue to meet biannually, and in addition in “Executive Session”, and report to the General Assembly through the Economic and Social Council (ECOSOC) [see 001 A].

However, the Board has established new subsidiary machinery to implement the programme of work agreed to at UNCTAD VIII (Cartagena, 1992). Topics of a general nature will be taken up by standing committees, while questions of a more technical character will be examined in ad hoc working groups.

Standing Committees:
- Commodities;
- Poverty Alleviation;
- Economic Co-operation among Developing Countries; and
- Developing Services Sectors: Fostering Competitive Services Sectors in Developing Countries.

Ad Hoc Working Groups:
- Trade Efficiency;
- Comparative Experiences with Privatization;
- Expansion of Trading Opportunities for Developing Countries; and
- Interrelationship between Investment and Technology Transfer.

Other Main Bodies:
- Special Committee on Preferences; and
- Intergovernmental Group of Experts on Restrictive Business Practices.

All UNCTAD member states are eligible to participate in the work of these bodies. In light of the provisions of the Cartagena Commitment, external bodies – such as enterprises, trade unions, the academic community and non-governmental organizations – will be more closely associated with UNCTAD’s work.

CO-OPERATION

UNCTAD consults with intergovernmental, regional and non-governmental bodies. UNCTAD also maintains close liaison with many commissions and working groups of the UN (such as the UNCTC) and the GATT [see 111 A]. In the near future, the secretariat of the United Nations Commission on Transnational Corporation (UNCTC) will be transferred to Geneva and will work under UNCTAD supervision.
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PUBLICATIONS

UNCTAD produces a good Handbook of International Trade and Development Statistics. There are the annual Trade and Development Report, the Least-Developed Countries Report and the UNCTAD Commodity Yearbook. The UNCTAD Bulletin is published six times a year. There are occasional publications as well. Conference resolutions are found in Report of the Conference on Trade and Development at its # Session. Resolutions and decisions of the Trade and Development Board are found in Trade and Development Board, Official Records, Supplement #.

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111 C – INTERNATIONAL TRADE CENTRE UNCTAD/GATT (ITC)

ITC was established by the CONTRACTING PARTIES of the GATT [see 111 A] on 19 March 1964 as part of the GATT's efforts to expand the trade of developing countries. ITC was then a division of the GATT secretariat, responsible for helping developing countries promote their exports by providing trade information, advice on export marketing, marketing techniques and training.

In 1967 UNCTAD [see 111 B] and the GATT recommended that ITC be jointly operated by the two organizations. This new status was approved by the GATT, the UN General Assembly and UNCTAD, and took effect on 1 January 1968 under a similar mandate. In 1974, ITC was officially recognized as a “joint subsidiary organ” of the GATT and the United Nations, the latter acting through UNCTAD. Its regular budget is financed by the GATT and the United Nations. Its technical co-operation budget is financed by the United Nations Development Programme (UNDP) [see 222 A] and by voluntary contributions from individual governments.

ITC is headed by an Executive Director. Appointment and promotion of professional staff is subject to the approval of the GATT and UNCTAD. ITC does not have a membership of its own but contracting parties of the GATT and members of UNCTAD are de facto members of ITC. Representatives of these governments meet annually at ITC’s intergovernmental Joint Advisory Group (JAG).

The work of ITC involves technical co-operation in four main areas: institutional infrastructure, including business organizations, for trade promotion and export development; product and market research, development and promotion; import operations and techniques; and human resource development for trade promotion.

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The General Agreement on Tariffs and Trade (GATT) is divided into four parts. Part I consists of the first two articles, which concern the most-favoured-nation obligation and bindings. Part II (Arts. III to XXIII) contains the substantive commercial policy provisions and Part III includes most of the procedural provisions and certain miscellaneous substantive provisions such as customs unions and free-trade areas (Art. XXIV). Part IV, added to the original agreement in 1964, deals with trade issues in regard to developing countries (Arts. XXXVI to XXXVIII).

GUIDING PRINCIPLES

The GATT system attempts to achieve its primary goal of international trade liberalization through various principles, the most important of which are:

- the non-discrimination principle expressed in most-favoured-nation treatment (MFN) and national treatment (NT);
- the exception to the non-discrimination principle in favour of regional preferences;
- the use of tariffs as the only acceptable form of protection and the reduction of tariffs through reciprocal concessions;
- the prohibition against quantitative restrictions (QRs);
- the possibility of safeguard, antidumping and antisubsidy measures; and
- the promotion of the trade of developing countries.

1. The Non-discrimination Principle

The most-favoured-nation (MFN) (Art. I) and national treatment (NT) (Art. III) principles together comprise the general non-discrimination principle formally introduced into international trade relations by the GATT.

The MFN standard requires that any "advantage, favour, privilege, or immunity" granted by one contracting party (CP) to a product of another country, in relation to imports or exports, will be accorded "immediately and unconditionally" to like products from all CPs. This provision has magnified the effect of tariff reductions as any tariff concession made by a CP is automatically made available to all other CPs. The clause applies not just to tariffs but also to the wide range of measures which can regulate goods through the complete process of bringing a product to market and selling it.

The National Treatment (NT) obligation (Art. III) requires that once goods from other CPs have entered a member state they must be treated, in regard to internal
taxation and regulation, in the same manner as goods produced in that member state. Like the MFN clause, the scope of the NT clause is extremely wide and covers all laws, regulations and requirements affecting the sale, purchase, transportation, distribution and use of products in a domestic market.

General Exceptions: There are a number of exceptions to the MFN principle which allow for the preferential treatment of goods from certain CPs. These exceptions include preferential regional trading arrangements (e.g. customs unions and free trade areas) and discriminatory treatment in favour of developing countries (Part IV).

Other exceptions allow CPs to avoid specific GATT obligations. Thus, the CONTRACTING PARTIES may grant waivers from GATT obligations under Article XXV-S. Exceptions to protect national security are authorized under Article XXI. The possibility exists to impose antidumping duties against one trading partner only (as opposed to safeguard measures, which must be imposed in a non-discriminatory way – Art. XIX). Article XX provides for general exceptions to protect health, public morals and, significantly, the environment. This last exception is the source of increased debate as more trade-restrictive measures are implemented to protect the environment.

2. Regional Groupings
Although mentioned as an exception to the MFN principle, the right to form a regional economic grouping is a fundamental characteristic of the present international trading system. Regional arrangements are neither good nor bad for international trade and most economists would agree that only the practice of a regional arrangement can reveal its actual impact. While regional economic integration has never been prohibited by the GATT, Article XXIV attempts to impose conditions to ensure that regional groupings inside the GATT are “trade creative” generally. Probably because of the consensus principle, none of the notified regional groupings has ever been opposed by the Council.

The trend towards bilateral and regional preferential arrangements may, however, threaten the goal of multilateral trade liberalization in the long term. While the European Communities and the North American Free Trade Agreement, for instance, have increased, or are likely to increase, trade between their member states, they can also decrease trade between the region in question and other CPs. The conflict between the US and the EC on subsidies as well as the bilateral negotiations between the US and Japan on the “Structural Impediment Initiative” are evidence of some polarization between CPs.

3. Reciprocity of Tariff Concessions
Tariffs are taxes on the value, weight or volume of goods. They are the form of protection that the GATT authorizes as they are the most transparent and thus the most easily regulated. Tariff concessions in the GATT are made on a reciprocal basis.

The GATT’s focus has primarily been on tariff reduction. This has been extremely effective, as reflected in the lowering of the average industrial tariff in developed countries from over 50 per cent in 1947 to approximately 5 per cent in 1990.

Prior to the Kennedy Round (1963-1967), tariff bindings were negotiated item by item with no particular binding being final until an agreement on all items being negotiated was reached. In the Kennedy Round, tariff bindings of industrialized countries moved to a linear approach whereby a country would offer to reduce its bindings by a set amount on an across the board basis. In the Tokyo Round (1973-1979), the linear approach was modified to allow for a larger proportion of higher tariff rates to be included in the Agreement than lower tariff rates. The use of this modified linear approach is estimated to have reduced the average tariff on durable industrial products by approximately 35 per cent.
4. Elimination of Quantitative Restrictions
Quantitative restrictions or quotas are restrictions on the number, volume, value or origin of imported goods. They are prohibited by Article XI primarily because they stifle competition and because their administration is less transparent than tariffs.

There are, however, many exceptions to the general prohibition. The main ones include permitting the use of quotas on imports of agricultural and fish products where quotas are necessary to implement government measures designed to stabilize national markets in the affected product (Article XI-2). Thus, Japan can use this provision to restrict its rice market, and Canada and other countries can use it to operate their supply management systems through marketing boards.

As well, Article XII permits the use of quotas on a temporary basis during a balance of payments crisis and Article XVIII allows quotas to be used by developing countries to assist in the establishment of a particular industry for the purpose of furthering national economic development.

Voluntary Export Agreements (VEAs) - that is, agreements between a state and a firm or a group of firms limiting the number of exports from one country - and Voluntary Export Restraints (VERs), alleged to be voluntary restrictions on exports from one state to another, bypass the GATT prohibition on quota restrictions. Under the Uruguay Round proposals, VERs and similar arrangements would be prohibited. However, antidumping and antisubsidy actions would still be outside GATT control and could be used in place of VERs by CPs to restrict import levels.

5. Safeguard Measures, Antidumping and Antisubsidy Actions
Article XIX allows a CP to take temporary protective measures in the face of a sudden increase in fairly traded imports which are causing or threaten to cause serious injury to a domestic industry. In such circumstances the affected CP is to take action only to the extent necessary, on a temporary basis. The GATT's safeguard clause is a form of the usual "safety-valve" provision found in most trade agreements. Safeguard measures must be imposed on a non-discriminatory basis after notification to the GATT secretariat and compensation must be offered to CPs.

In practice, this clause has proved to a certain extent ineffective. CPs often bypass GATT control by using VERs or VEAs (grey area measures outside the scope of the GATT) or by resorting to antidumping and antisubsidy actions.

6. The GATT and the Developing Countries
From its very beginning the GATT has struggled with the role and place of developing countries within the GATT system. At the centre of this struggle has been the extent to which developing countries should be subject to the full discipline of the GATT principles and standards. The GATT's history shows that the result of this struggle has been continual movement towards lessening the extent of these obligations. Such action is becoming even more imperative now for many reasons, including the fact that today developing countries make up the vast majority of CPs and countries associated with the GATT. Five of the major steps in this evolution within the GATT are as follows:

Amendment of Article XVIII - Governmental Assistance to Economic Development (1955): These were the first major amendments to the GATT to deal with the specific circumstances of developing countries. They allowed the governments of these countries to take actions inconsistent with GATT principles in order to protect infant industries and deal with balance of payment problems.

Adoption of Part IV - Trade and Development (1964): Part IV was added to the General Agreement to clarify the position of developing countries within the GATT system. Developing countries would not be required to make the same concessions as developed countries on tariffs or on the removal of non-tariff barriers (note particu-
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larly Article XXXVI-8). Part IV does not, however, provide a specific legal basis for preferential arrangements with or between developing countries.

The Creation of the ITC (1964): As part of the effort to help developing countries expand trade, on 19 March 1964, in parallel to the adoption of Part IV of the GATT, the CONTRACTING PARTIES created the International Trade Centre [see 111 C]. Today this Centre is a semi-autonomous institution under the joint sponsorship of GATT and UNCTAD.

The General System of Preferences (1971): Pursuant to waiver granted under Article XXV-5, developed countries were authorized to grant, for a period of ten years, preferential treatment (i.e. lower tariffs) to developing countries on a wide range of goods [see 111.05]. Although labelled preferential, it has been argued that the GSP has had the dubious effect of forming patterns of trade for developing countries which are determined by developed countries.

The Tokyo Round Decisions (1979): Three decisions were made at the end of the Tokyo Round which affected the differential treatment granted to developing countries under the GATT. The first and most important of these was “Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries” (L/4903), more commonly referred to as the “Enabling Clause” [see 111.15]. Its primary purpose was to institutionalize the right of developing countries to grant preferential treatment to developing countries, instead of its being reliant on a waiver. The Enabling Clause also provided for the extension of the General System of Preferences established in 1971 [see 111.05].

The other two decisions dealt with trade measures which developing countries could take when there was a balance of payments crisis [see 111.16] and to safeguard infant industries [see 111.17].

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Access : CON (Art. XXXIII)
Reserves : PAU (Art. XXXI, XXXV)
Duration : USP
Deposit : GATT, UN (Art. XXVI)
Language : Eng, Fre (Art. XXVI)

Modific. : Protocol (Dillon Round) 1962 (15.08.62); Supplementary Protocol 1963 (07.07.63); Protocol (Kennedy Round) 1967 (01.01.68); Supplementary Protocol 1967 (-); Protocol 1971 (11.02.73); Protocol (Tokyo Round) 1979 (01.01.80); Supplementary Protocol 1979 (01.01.80)


111.02 – HAVANA CHARTER ESTABLISHING AN INTERNATIONAL TRADE ORGANIZATION – UN

Concluded: 24.03.1948, Havana

The Havana Charter was intended to establish, within the UN system, a multilateral trade organization, the International Trade Organization (ITO), to administer and co-ordinate economic activities of states and enterprises affecting international trade. Through promoting international co-operation in the fields of trade and employment, the ITO was to contribute towards the United Nations' goal of global “stability and
well-being which are necessary for peaceful and friendly relations among nations” (Art. 1).

The Charter was divided into nine chapters. The first laid down the Charter’s purposes and objectives, and the remaining chapters dealt with the following subjects: fair labour standards and employment (Chapter II); specific needs of European reconstruction and the special rights of developing countries (Chapter III); a wide range of commercial policies that affect the flow of trade, namely, tariffs, preferences, internal taxation, regulation, quotas, subsidies, dumping and safeguarding measures (Chapter IV); standards relating to restrictive business practices used by firms (Chapter V); intergovernmental commodity agreements (Chapter VI); the structure and function of the ITO (Chapter VII); the settlement of disputes (Chapter VIII); and general provisions such as trading relations with non-members and security exceptions (Chapter IX). Disputes under the provisions could be referred to the International Court of Justice [see 001 B] or to arbitration.

In light of the current debate taking place in the Uruguay Round over the need to address domestic regulation, trade in services, barriers to investments, and all trade-related areas including intellectual property rights, the Havana Charter prophetically reflects the present negotiators’ desires to co-ordinate all aspects of commercial policies in international trade. The idea of the ITO also has many parallels with the Uruguay Round’s proposed Multilateral Trade Organization. Moreover, the emphasis put on the relationship between domestic employment and international trade (Chapter I) is also indicative of the Uruguay Round negotiators’ conviction that international stability and well-being can only be achieved by relating and integrating domestic and external economic policies.

G.M. and H.J.C.


111.03 – CONSTITUTION OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT – UNCTAD


The aspirations of developing countries were somewhat dampened after the GATT negotiations of 1960-1961 as they believed their interests had not been properly taken into account. In the meeting of ministers of the CONTRACTING PARTIES of the GATT in 1961, the need for some concessions in favour of developing countries was raised. Also in 1961, the UN General Assembly expressly recognized the need for special treatment for underdeveloped countries [Res. 1707(XVI) 1961].

In 1962 the UN General Assembly recommended that ECOSOC [see 001 A] convene the UN Conference on Trade and Development. Between 1962 and 1964, UNCTAD was formed and its purpose was to claim preferential treatment for developing countries along similar lines to Article 15 of the Havana Charter [see 111.02].

On 30 December 1964, the UN General Assembly, under Article 22 of the UN Charter, formally recognized UNCTAD as one of its permanent bodies, and its Charter was adopted by Resolution 1995(XIX). One of the fundamental aspects of the Charter is expressed in General Principle VIII, which advocates an exception to the GATT most-favoured-nation principle in favour of developing countries.

The formation of UNCTAD paved the way towards the adoption of Part IV of the GATT and led to the adoption of the Generalized System of Preferences [see 111.05] and the Global System of Trade Preferences [see 111.20].

G.M.
111.04 - INTERNATIONAL TRADE CENTRE CNUCED/GATT – ITC

Adopted: 12.12.1967, UNGA Res.2297(XXII)
In force: 01.01.1968

The International Trade Centre was established by the CONTRACTING PARTIES of the GATT on 19 March 1964. In 1968 the United Nations, through UNCTAD, joined the GATT as a co-sponsor of ITC. The resolution approving this joint sponsorship was adopted by the UN General Assembly on 12 December 1967 (Res. 2297(XXII)) and took effect on 1 January 1968 [see 111 C].

111.05 - GENERALIZED SYSTEM OF PREFERENCES – UNCTAD

Adopted: 13.10.1970, Dec.75 (S-IV)

The UN General Assembly launched the idea of preferential treatment and tariff preferences for developing countries in 1961. UNCTAD [see 111 B], established between 1962 and 1964, continued to promote the idea of preferential treatment to developing countries, and in 1965 the OECD set up a Special Group on Preferences which acknowledged the need for tariff preferences in favour of developing countries. In 1968 UNCTAD reached a unanimous agreement on the proposed Generalized System of Preferences (GSP). A Special Committee on Preferences was established as a subsidiary organ of UNCTAD's Trade and Development Board. Developed countries participated in the negotiations through the OECD.

On 12 October 1970, the Special Committee on Preferences adopted a text entitled “Agreed Conclusions” which defines the modalities of the system. In October 1970, the Trade and Development Board, in its Decision 75(S-IV), adopted the report of the Special Committee on Preferences, which is legally recognized as an informal international agreement. This decision of the Trade and Development Board is called the Generalized System of Preferences (GSP).

The GSP is essentially a tariff policy for developing countries. It was to be a system through which developed countries could give preferential tariff treatment to manufactured or semi-finished exports from developing countries for a minimum period of ten years. It was to be a generalized system of non-reciprocal and non-discriminatory preferences on manufactured goods in favour of the developing countries.

The developed countries, known as “donors” (members of the OECD and formerly of COMECON), may make arrangements for non-reciprocal and non-discriminatory preferences for manufactured and semi-finished exports from both the developing countries and the countries of Central and Eastern Europe, the “beneficiaries”. This may be by way of offers or individual schemes of preferences.

The individual national schemes of preferences resulting from the Generalized System of Preferences were extended beyond their initial period of ten years.

The GSP, as an exception to the MFN principle of the GATT [see 111.01], needed to be authorized by the CONTRACTING PARTIES. In 1971, the CONTRACTING PARTIES granted a waiver for a renewable period of ten years under GATT Article XXV-5 to countries covered by Part IV of the GATT. The limited procedure of a waiver was used in order to avoid Part IV being given a broader interpretation of including preferences. During the Tokyo Round the so-called enabling clause gave
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full and permanent legitimacy to this system of preferences.

While the GSP is preferential and non-reciprocal, it is not in fact general or non-discriminatory. The GSP, as well as the Enabling Clause, is essentially an authorization for developed countries to grant preferences to the developing countries of their choice. The granting state can select the receiving state and establish conditions. Developed countries have never agreed on a common and generalized policy through the GSP.

G.M.
111.07 - AGREEMENT ON TECHNICAL BARRIERS TO TRADE - GATT

Concluded: 12.04.1979, Geneva
In force: 01.01.1980
Parties: 35

The Standards Code expands the provisions of the GATT on product standards (GATT, Art. X). It seeks to ensure that unnecessary obstacles to international trade are not created by technical regulations and standards - including packaging, marketing and labelling requirements - nor by methods for certifying conformity with those regulations and standards (the Preamble and Art. 2-1). The national treatment obligation is reinforced. Signatories may adapt technical regulations and standards which are appropriate to their needs, provided these do not create unnecessary obstacles to trade. Signatories are also encouraged to use international standards as much as possible.

As well as these substantive rules, the Code outlines procedural rules on the development of product standards by signatories and on transparency in their application. It requires adequate notice and opportunity to comply with new standards prior to their implementation and, during the formulation stage, the rule-making process allows for input by signatories.

The Code does not apply to services, technical specifications included in government procurement contracts or standards established by companies for their own use. A Committee on Technical Barriers to Trade supervises the Agreement and deals with consultation and dispute settlement processes provided for under the Agreement.

Notwithstanding the introduction of this Agreement, signatories still face the problem of contracting parties' not recognizing product testing conducted in the exporting state prior to importation.

Gabrielle Marceau and Hugh J. Cheetham

Access: CON (Art. 15)
Reserves: CST (Art. 15)
Duration: USP
Deposit: GATT (Art. 15)
Language: Eng, Fre, Spa


111.08 - AGREEMENT ON GOVERNMENT PROCUREMENT - GATT

Concluded: 12.04.1979, Geneva
In force: 01.01.1981
Parties: 12

Article III-8 of the GATT sets out possibly the most important exception to the national treatment obligation: procurement by government agencies for government purposes. The problems associated with this exception became evident by the 1970s with the increased size and role of governments in national economies. Discrimination in favour of domestic producers was widespread as a result of this exception being used by governments as a means of stimulating national economic growth. This situation led to the negotiation of the present Agreement.

Scope: The Agreement provides that non-discriminatory national treatment rules are to apply to purchases of goods made by government bodies. It originally set out a
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threshold contract value of SDR 150,000. This threshold amount was recently reduced to SDR 130,000 (BISD 33 Supp. 19 [1987]). The scope of the Agreement is, however, limited to those agencies listed in Annex 1 of the Agreement. Certain sectors – for example, transport, farming, defence, postal services and others – are specifically excluded. The Agreement does not apply to contracts for services unless these are incidental to a sale of goods (e.g. financing and insurance).

Notwithstanding these significant restrictions which narrow the application of the Agreement, it does provide a first step and a basis for future negotiations to expand both the list of agencies subject to it and the scope of its application. The lowering of the threshold amount in 1987 is encouraging in this regard.

DETAILS OF THE AGREEMENT

The Agreement sets out a procedure for the bidding process and establishes rules for such matters as public announcements of tenders, qualification of bidders, time limits and tender documents, and so on. It also contains a dispute settlement procedure which is initiated through bilateral consultations between the governments of the supplier and buyer. If these consultations are not successful, the parties move to a multilateral conciliation procedure.

However, this obligation, as with any other obligation undertaken by contracting parties, binds only the federal jurisdiction of a federal state (such as the US or Australia), not the provinces or the states. Since state and provincial governments are often very important actors in the economic activities of any country, this Code has limited impact. Article XXIV-12, which will be maintained under the Uruguay Round proposals, fortunately has been interpreted as limiting the rights of federal states to be exempted from non-compliance for purchases made by regional and local governments and authorities within their territory. This remains an issue of some debate between the EC and the US.

G.M. and H.J.C.

Access : CON (Art. IX-1)
Reserves : PRO (Art. IX-2)
Duration : USP
Deposit : GATT (Art. IX-12)
Language : Eng, Fre, Spa

Modific. : Protocol 02.02.87 (14.02.88)
Reference : BISD 26, 33/19 S34/12 – Can TS 1981/39 – ILM 18:1052

111.09 – AGREEMENT ON INTERPRETATION AND APPLICATION OF ARTICLES VI, XVI AND XXIII (“SUBSIDIES CODE”) – GATT

Concluded: 12.04.1979, Geneva
In force : 01.01.1980
Parties : 28

The fundamental principle of the GATT is one of free competition for trade whereby the most efficient firm of any nationality should win the favours of customers world-wide. This trade race should therefore not be distorted by governmental intervention. Hence, Article VI provides that countervailing duties (taxes) may be

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imposed by a contracting party (CP) to offset trade-distorting government subsidies in aid of the production and exportation of goods elsewhere. In addition to this fundamental rule, the Agreement attempts to regulate subsidies through three other provisions: (i) a loose requirement to report and notify subsidies (Article XVI-1); (ii) the restraint of export subsidies (Article XVI-3 and 4); and (iii) the creation of rights in respect of new production subsidies (Art. XXIII).

The Subsidies Code attempts to step up the regulation of subsidies by first giving direction as to the manner in which subsidy complaint investigations are to be carried out by domestic agencies. In particular, these provisions of the Code increase the threshold for a finding of material injury. The Code also seeks to provide more guidance as to the meaning of a subsidy. This is done primarily through a list of illustrative examples set out in an Annex to the Code (the list is based on a list prepared by a 1960 Working Party). The list is not, however, definitive and this has been the principal reason for the Code’s failure to restrain the application of countervailing duties.

Subsidies are at the heart of conflicts in international trade. However, the identification and exact calculation of subsidies is a difficult issue. Direct and indirect taxation and other financial burdens have to be considered in addition to direct financial support. In the aerospace industry, for instance, Germany has argued that the real level of US government support for its civil aviation industry is far greater than in Europe. Some have also argued that the US has always strongly supported its military aviation and authorized the civil aviation industry to benefit from research and other developments brought about by military programmes.

G.M.

Access : CON (Art. 19-2)
Reserves : CST (Art. 19-3)
Duration : USP
Deposit : GATT (Art. 19-12)
Language : Eng, Fre, Spa


111.10 – AGREEMENT ON IMPORT LICENSING PROCEDURES – GATT

Concluded : 12.04.1979, Geneva
In force : 01.01.1980
Parties : 27

Quotas are one of the main barriers to trade. This form of discretionary protectionism is administered primarily through the use of import licensing. Under a licensing system, the importing country only allows imports to be brought in by a licensed importer and then only up to the volume or amount that the importer’s licence provides. Article XI-1 of the GATT addresses import licensing in its general prohibition against quotas but does not directly consider its use.

The Tokyo Round Agreement attempted to rectify this by focusing on the procedures used in administering the licensing process. The abuse of these procedures has been considered as a source of significant delay and corruption in the issuing of licences. The Agreement is designed to simplify procedures and ensure fairness in administration.

Articles II and III of the Agreement oblige signatories to avoid using licensing procedures in a manner which restricts trade. Thus, signatories are required to
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publish information about quotas, to provide that any restrictions apply equally to all applicants, and to ensure that licences remain in force for reasonable periods of time.

Notwithstanding these attempts to inject some transparency into the import-licence-issuing procedure, the Agreement has not attracted a large number of signatories, reflecting the desire of many countries to retain as much discretionary control as possible over the impact of trade policy on their economies.

Gabrielle Marceau and Hugh J. Cheetham

Access : CON (Art. 5-1)
Reserves : CST (Art. 5-2)
Duration : USP
Deposit : GATT (Art. 5-10)
Language : Eng, Fre, Spa

Reference : BISD 26 – Can TS 1980/40 – UST 32/2

111.11 – AGREEMENT ON IMPLEMENTATION OF ARTICLE VI ("ANTIDUMPING CODE") – GATT

Concluded : 12.04.1979, Geneva
In force : 01.01.1980
Parties : 25

For economists, dumping refers to the practice of selling goods in a foreign market at a lower price than the price of similar goods in the exporter’s home market. Article VI of the GATT was enacted in order to restrain actions of contracting parties against dumping by foreign firms. It authorizes member states to impose antidumping duties against dumped goods in their territory equal to the margin of dumping – that is, the difference in prices.

By the 1960s, antidumping actions had increased. An attempt to address this trend was made during the Kennedy Round (1963-1967) and resulted in the adoption of an Antidumping Code. This Code intended to clarify the broad definitions found in Article VI, to provide procedural requirements in antidumping investigations and to bring all signatories into conformity with the GATT.

Dissatisfaction with the 1967 Code (brought about primarily because the US did not ratify it) led to further negotiations on a revised Code during the Tokyo Round (1973-1979) in conformity with the Subsidies Code which had just been negotiated. The principal changes from the 1967 Code were the elimination of the requirement that dumping be the “principal” cause of injury, the inclusion of a procedure for accepting exporters’ undertakings, the prohibition on retroactive assessment, the limitation of provisional duties and new arrangements for the resolution of disputes.

An important element of the 1979 Antidumping Code was to sanction the US practice since 1974 of considering sales below full costs of production in the home market of the exporter outside the “ordinary course of trade” and therefore excluding them from the price comparison. This extension of the concept “in the ordinary course of trade” has legitimized a second definition of dumping: it is now accepted that national antidumping laws require that prices of imports cover their full cost of production.

One of the main problems of antidumping determination is that prices used for the comparison, as well as the costs of production, are often constructed unilaterally by national antidumping authorities according to the “best available information”. Determination of injury caused to the domestic industry has transformed
antidumping laws into very strategic trade instruments. Unfortunately the Uruguay Round proposals would not change in any important way the definition of dumping nor clarify the level of injury required for the imposition of antidumping duties.

G.M.

Access : CON (Art. 16-2)
Reserves : CST (Art. 16-3)
Duration : USP
Deposit : GATT (Art. 16-12)
Language : Eng, Fre, Spa


111.12 – ARRANGEMENT REGARDING BOVINE MEAT – GATT

Concluded : 12.04.1979, Geneva
In force : 01.01.1980
Parties : 26

Since its inception agricultural products have been de facto excluded from the discipline of the GATT. Although the Tokyo Round was not able to produce any comprehensive agreement on agriculture, it was able however to complete more narrow negotiations on two agricultural products: bovine meat and dairy products.

The bovine meat agreement covers live bovine animals, meat and edible offal of bovine animals, fresh, chilled, frozen, salted, in brine, dried or smoked as well as other prepared or preserved meat or offal of bovine animals. Any other product may be added by the International Meat Council (IMC).

The IMC is also the body designated to hear disputes between parties to the agreement and it may make recommendations on the dispute on a consensual basis.

G.M. and H.J.C.

Access : ALS (Art. VI-1-a)
Reserves : PAU (Art. VI-1 b)
Duration : REN 3 (Art. VI-4)
Deposit : GATT (Art. VI-1-c)
Language : Eng, Fre, Spa (Art. VI-1-c)

Reference : BISD 26 – Can TS 1980/38 – UST 32/2

111.13 – INTERNATIONAL DAIRY AGREEMENT – GATT

Concluded : 12.04.1979, Geneva
In force : 01.01.1980
Parties : 16

The International Dairy Agreement was adopted during the Tokyo Round and follows the same pattern as the Arrangement Regarding Bovine Meat. Dairy products covered under the dairy products agreement include milk and cream, concentrated or not, sweetened or not, butter, cheese and curd, and casein as well as any other product that the International Dairy Products Council (IDPC) may decide to add.

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This Agreement establishes specific committees to deal with certain milk powders, milk fat and certain cheeses and fixes minimum export prices for each of these products.

The Agreement includes a commitment to co-operate with the Food and Agricultural Organization (FAO) [see 131 A] in food aid. Disputes under the Agreement are heard by the IDPC on a consensual basis.

G.M. and H.J.C.

Access : ALS (Art. VIII-1-a)
Reserves : CST (Art. VIII-1-b)
Duration : REN 3 (Art. VIII-4)
Deposit. : GATT (Art. VIII-1-c)
Language : Eng, Fre, Spa (Art. VIII-1-c)

Reference : BISD 26 – UST 31/1

111.14 – AGREEMENT ON TRADE IN CIVIL AIRCRAFT – GATT

Concluded : 12.04.1979, Geneva
In force : 01.01.1980
Parties : 22

The security exception of Article XXI of the GATT has always allowed states to exclude military machinery from the scope of the General Agreement, including aircraft. This Agreement seeks to ensure that civil aircraft is covered under a separate agreement. It provides for the duty-free treatment of civil aircraft and engines and all their parts, components and sub-assemblies, as well as all ground flight simulators. The Agreement also calls for purchasers of civil aircraft to have the freedom to select suppliers and repair services on the basis of commercial and technological factors. Quotas and import-licensing requirements imposed in a manner inconsistent with the GATT are expressly prohibited. These provisions were designed to reduce pressure on government-owned airlines to buy domestically-produced aircraft.

Importantly, the Agreement imposes obligations relating to subsidies on signatories trading in civil aircraft, as provided in the Agreement on Interpretation and Application of Articles VI, XVI and XXIII [see 111.09] and in the Agreement on Technical Barriers to Trade [see 111.07]. Special procedures for surveillance, review, consultation and settlement of disputes are administered by the Committee on Trade in Civil Aircraft.

An annex contains a list of goods covered by the Agreement, and products are often added to this list at annual reviews. Military airplanes and related products are expressly excluded.

G.M. and H.J.C.

Access : CON (Art. 9-1)
Reserves : CST (Art. 9-2)
Duration : USP
Deposit. : GATT (Art. 9-10)
Language : Eng, Fre

Modific. : 17.01.83 (17.01.83); 27.01.84 (27.01.84); 01.01.85 (01.01.85); Protocol 02.12.86 (01.01.88)

Reference : BISD 26, S30/4, S31/4, S31/5, S34/24 – Can TS 1980/39 – UST 31/1

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111.15 - DIFFERENTIAL AND MORE FAVOURABLE TREATMENT, RECIPROCAL AND MORE COMPLETE PARTICIPATION OF DEVELOPING COUNTRIES ("ENABLELING CLAUSE") - GATT

Adopted: 28.11.1979, Dec.L-4903

This decision was made at the Tokyo Round in 1979. More commonly referred to as the "Enabling Clause", the decision provided for the extension of the General System of Preferences (GSP), originally established in 1971 [see 111.05]. It provides a permanent legal framework, within the multilateral system, for different and more favourable treatment of developing countries.

G.M. and H.J.C.

Reference: BISD 26

111.16 - TRADE MEASURES TAKEN FOR BALANCE OF PAYMENTS - GATT

Adopted: 28.11.1979, Dec.L-4907

This decision, also taken at the Tokyo Round, imposes additional conditions to those in the GATT regarding the use of restrictive import measures taken for balance of payment purposes. It provides a basis, primarily for developing countries, for the use of measures other than quotas (e.g. tariff surcharges) in the face of balance of payment difficulties. This view is reflected in the changes to Article XVIII incorporated in the decision.

G.M. and H.J.C.

Reference: BISD 26

111.17 - SAFEGUARD ACTION FOR DEVELOPMENT PURPOSES - GATT


This decision interprets Sections A and C of Article XVIII with less rigidity. It allows the use of balance of payment measures by developing countries in regard to the development, modification or extension of production structures (i.e. infant industries).

G.M. and H.J.C.

Reference: BISD 26

111.18 - UNDERSTANDING REGARDING NOTIFICATION, CONSULTATION, DISPUTE SETTLEMENT AND SURVEILLANCE - GATT

Adopted: 28.11.1979, Dec.L-4907

This Understanding reinforced the new rule-oriented approach to which the contracting parties had returned in the seventies. It codified the practice of creating "advisory" panels - although panels are not formally mentioned in Article XXIII-2.

Reference: BISD 26
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(GATT). An "Agreed description of the customary practice of the GATT in the field of dispute settlement", initially adopted in 1966, was attached to maintain past practice.

The Understanding set out the composition of panels and their terms of reference, to be determined within 30 days of a request for a panel. The task of panels was to "assist the Parties to deal with the matter", including an objective assessment of the facts of the case and the applicability of and conformity with the General Agreement. Their power of enquiry was clarified and provisional reports to the parties were institutionalized.

During the Tokyo Round (1973-1979), specific dispute procedures were adopted in most of the codes established during that Round. Generally, these codes have more stringent time limits and procedures, and sometimes provide for compulsory conciliation as, for example, in the Subsidies Code.

Subsequent Developments: On 12 April 1989, on a provisional basis, the GATT Council adopted the ministerial decision on dispute settlement of the Montreal mid-term review of the Uruguay Round. These new procedures are more specific and time limits have been tightened as follows: consultations (ten days to reply, 30 days to begin consultation or otherwise an automatic right to a panel), the establishment and composition of panels (60 days after the beginning of a panel), a panel's maximum duration (six months), and the possibility of voluntary expeditious arbitration.

The mid-term decision also institutionalized procedures for multiple complainants, for the intervention of third contracting parties, for emergency cases and for special advice for developing countries.

Delays for the adoption of panel reports are to be avoided and the total period from initiating consultations to decisions by the Council after a panel report cannot exceed 15 months. The implementation of the recommendations from such a report must be considered by the Council no longer than six months after its adoption.

G.M. and H.J.C.

Reference : BISD 26

111.19 – MINISTERIAL DECLARATION ON THE URUGUAY ROUND – GATT

Adopted : 20.09.1986, Punta del Este

The most recent round of multilateral negotiations began in September 1986 at Punta del Este, Uruguay. The Round, the most ambitious yet, is attempting both to move the GATT into new substantive areas of trade and to reform, in a comprehensive way, the existing areas of coverage. The negotiations have been divided into 15 negotiation groups, ranging from such traditional subjects as tariff reduction, textiles and clothing, and matters covered in the existing codes, as well as new subjects such as services, intellectual property and trade-related investment.

The contracting parties are currently reviewing a comprehensive text prepared by the Director-General, which represents the basis for a possible agreement for the Round. If adopted, the Dunkel Text, as it is known, will move the GATT and international trade into a new era.

This Text contains institutional provisions which provide for the establishment of a formal multilateral trade organization (MTO), thereby calling for the formalization of the GATT’s de facto position as an international organization. The MTO would

(1) The GATT Trade Negotiations Committee on 15 December 1993 adopted the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations. Just prior to publication, an additional commentary has been added to this section which covers the development [sec 111.21].
offer a continuous negotiating forum to develop further the interaction between trade and related matters like trade and competition issues.

The institutional provisions will also provide for reform of the dispute settlement mechanism, thereby continuing the trend towards a rule-oriented system. More specifically, these provisions include shorter periods for the various stages in the dispute settlement process and an appeal procedure of panel decisions. The traditional consensus rule of the Council would be abolished so that the states concerned in a dispute will not be able to block the adoption of a panel decision which disfavours them.

In addition, the Dunkel Text provides for the replacement of all the 1979 codes with new codes. These will update and improve the previous codes, and new ones will be added on matters such as safeguards, intellectual property, trade-related investment measures and agriculture.

G.M. and H.J.C.

Reference : GATT Press no. 1396

111.20 – AGREEMENT ON THE GLOBAL SYSTEM OF TRADE PREFERENCES (GSTP) AMONG DEVELOPING COUNTRIES – UNCTAD

Concluded: 13.04.1988, Belgrade
In force : 19.04.1989
Parties : 40

The initiative of a mini-GATT between developing countries began in 1971 with the 1971 Protocol Relating to Trade Negotiations among Developing Countries. The 1971 Protocol provided a legal framework for tariff concessions along the lines of the GATT. It never gained any impetus from the Enabling Clause of the Tokyo Round and never had more than 20 parties.

UNCTAD reacted more enthusiastically to the 1979 Enabling Clause [see 111.15] which made further collaboration and integration among developing countries legally possible. In 1982 the Ministers of the Group of 77 [see 233 A], meeting in New York, formally decided to open negotiations to conclude a Global System of Trade Preferences (GSTP). In 1987, the UNCTAD secretariat produced a draft for a GSTP which is an illustration of what national trade policies would look like if they respected the principles of the New International Economic Order.

At the 1989 UNCTAD session, the GSTP Charter was adopted. It expressly states that “economic co-operation among developing countries is a key element in the strategy of collective self-reliance and an essential instrument to promote structural changes” and that the “GSTP would constitute a major instrument for the promotion of trade among developing countries members of the group of 77”.

DETAILS OF THE AGREEMENT

The GSTP is exclusively for the participation of the members of the Group of 77. Contrary to the GSP, it is generalized, which means it covers all products, it is non-discriminatory and so benefits equally all participants, and it is mutual – that is, it prescribes a MFN treatment among members of the GSTP with, however, possible derogations.

The GSTP envisages the possibilities of safeguard measures and more preferential treatment for the less developed countries among them. Finally, the GSTP does not
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replace existing regional and sub-regional arrangements.

A committee of participants has been established with the main functions of reviewing the possibility of promoting further negotiations for the enlargement of the schedules of concessions and for enhancement of trade among participants through other measures. It may at any time initiate negotiations.

G.M.

Access : CDN (Art. 1-a, 25)
Reserves : PAU (Art. 31)
Duration : USP
Deposit : YU
Language : Ara, Eng, Fre, Spa

Reference : ILM 27:1208

111.21 - FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS - GATT

Adopted : 15.12.1993

On 15 December 1993, the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (the so-called “GATT 1994”) was agreed by the Trade Negotiations Committee representing the 114 contracting parties of the GATT. On the same day, GATT 1994 was notified to the US Congress. It constitutes the most comprehensive trade package since the Havana Charter but enjoys much more international support than the never-born post-war agreement.

The Final Act covers all of the negotiating areas set out in the Punta del Este Declaration (September 1986) with two exceptions. First, the results of the “market access negotiations”, in which individual countries have made binding commitments to reduce or eliminate specific tariffs and non-tariff barriers to merchandise trade, are subsequently to be recorded in national schedules which will form an integral part of the Final Act. Second, the “initial commitments” on the liberalization of trade in services are also subsequently to be recorded in national schedules.

The GATT 1994 generally follows the structure of the Draft Final Act introduced in December 1991 by the former Director-General, Mr Dunkel, to reinvigorate negotiations.

In addition to the texts of the agreements, the Final Act also contains text of Ministerial Decisions and Declarations, which further clarify certain provisions of agreements relating to the least-developed countries, the World Trade Organization, notification procedure, customs valuation, technical barriers to trade, net food-importing developing countries, trade in services, regional arrangements, government procurement, dispute settlement, dumping and subsidies.

One of the most important elements of the GATT 1994 is the establishment of a permanent international organization, the World Trade Organization (WTO), which will supervise and co-ordinate activities under GATT 1994 and integrate all agreements and arrangements concluded under the auspices of the GATT, including an integrated dispute settlement procedure.

New provisions on trade-related aspects of intellectual property, services, trade-related investment, preshipment inspection, sanitary and phytosanitary measures, and rules of origin have broadened the scope of multilateral disciplines and reduced the scope of unilateral trade actions. Existing codes on technical barriers to trade [see 111.07], customs valuation [see 112.22], dumping [see 111.11], and import licensing
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procedures [see 111.10] have been clarified and the disciplines resulting therefrom tightened.

A reinforced Agreement on Subsidies and Countervailing Measures contains a definition of subsidies and it distinguishes subsidies considered as prohibited, actionable and non-actionable. The Agreement also introduces the concept of a “specific” subsidy. Only specific subsidies are to be subject to the disciplines set out in the Agreement, while actionable subsidies are to be countervailable if they cause “serious prejudice”.

The Final Act includes the Agreement on Agriculture which provides a framework for the long-term reform of agricultural trade and domestic policies. The agricultural package provides for specific commitments in the area of market access, domestic support and export competition. Such commitments are to be reflected in the GATT schedules of legal commitments relating to each country member. Tariffs on agricultural products are to be reduced by an average 36 per cent in the case of developed countries, with a minimum reduction of 15 per cent per tariff line, and 24 per cent in the case of developing countries, over six and ten years respectively, while least-developed countries are not required to reduce their tariffs. Domestic support measures benefiting agricultural producers that have, at most, a minimal impact on trade distorting effects or effects on production are excluded from reduction commitments. Members are required to reduce the value of mainly direct export subsidies to a level 36 per cent below the 1986-90 base period level over the six-year implementation period, and the quantity of subsidized exports by 21 per cent over the same period. The package is conceived as part of a continuing process, with the long-term objective of securing substantial and progressive reductions in support and protection.

A new agreement on safeguard measures has introduced the requirement that “adjustment programmes” be put into place in the case of safeguard measures lasting more than one year. The Agreement also sets a “sunset clause”, i.e. safeguard measures can last for a maximum period of four to eight years. “Grey Measures”, such as voluntary export restraints and orderly marketing arrangements, are now prohibited and existing measures are to be phased out within 180 days from the entry into force of the WTO and, in all cases, before 31 December 1999.

The Agreement on Textiles and Clothing provides for the gradual integration of this sector into the GATT over the period ending 1 January 2005. It also contains a specific transitional safeguard mechanism.

The General Agreement on Services rests on three pillars. The first is a Framework Agreement containing basic obligations which apply to all member countries, including a relative MFN obligation, transparency requirements, the reasonable, objective and impartial administration of domestic regulation and the National Treatment. The second concerns national schedules of commitments containing specific further national commitments which will be subject to a continuing process of liberalization. The third is a number of annexes addressing the special situations of individual service sectors. There are general and security exceptions, institutional provisions including consultation, dispute settlement, and the establishment of a Council of Services.

In addition to the changes brought by the Mid-Term Review Ministerial Meeting [see 111.18], the Understanding on Rules and Procedures Governing the Settlement of Disputes will establish an integrated system permitting WTO members to base their claim on any of the multilateral trade agreements. For this purpose, a Dispute Settlement Body (DSB) will exercise the authority of the General Council, and that of the councils and committees of the relevant agreements.

Under the integrated dispute settlement procedure, panel reports are to be adopted within 60 days of their issuance, unless the DSB decides by consensus not to adopt the report, or one of the parties notifies the DSB of its intention to appeal on issues of law. Appellate proceedings are not to exceed 60 days from the date the
appeal is lodged. The outcome is to be adopted within 30 days following its issuance, unless the DSB decides by consensus against its adoption. An important feature of GATT 1994 is that parties to a panel review process will not have the right to veto such a report.

The Decision on Achieving Greater Coherence in Global Economic Policy-Making sets out concepts and proposals with respect to achieving greater coherence in global economic policy-making, including exchange rate. It recognizes that, while difficulties whose origins lie outside the trade field cannot be redressed through measures taken in the trade field alone, there are nevertheless interlinkages between the different aspects of economic policy. This decision brings closer together the IMF [see 211 A], the World Bank [see 221 A] and the WTO by reinvigorating the initial objectives of the Bretton Woods' fathers in 1945.

GATT 1994 is scheduled to be signed by the members in April 1994 and its provisions to enter into force on 1 January 1995 or after the date of the entry into force of the WTO. After all member states ratify the Final Act of the Uruguay Round, obligations under the old GATT will de facto be phased out. In the meantime, and in the eventuality that some contracting parties do not ratify the GATT 1994, obligations under the old GATT would still bind the contracting parties. This could lead to a complex situation with different treatments between trading partners depending on what agreements they have signed and is contrary to the main goal of the negotiations of the Uruguay Round. At the time of the publication of this book, analysts are, however, optimistic that all 114 states will fairly quickly ratify the Final Act.

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**1.1.2 Customs Co-operation**

This section describes the various international agreements and organizations which, through their promotion of simplified and harmonized customs regulations and procedures, have helped facilitate the movement of goods, services and people across national frontiers.

The key agreements in the customs co-operation field are introduced in the section describing the main organization in the area – the Customs Co-operation Council [see 112 A].

Agreements which are regional are outside the scope of this book (e.g. the Customs Convention concerning Spare Parts Used for Repairing Europ Wagons, to which only European countries are parties). Some agreements which have relevance to this section are presented elsewhere – for example in the sections on tourism [see 1.7.2] and transport [see 1.8].

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SELECTED BIBLIOGRAPHY


112 A – CUSTOMS CO-OPERATION COUNCIL (CCC)

The Customs Co-operation Council (CCC) was established on 15 December 1950 by 13 European countries [see 112.02]. The CCC was to administer the Nomenclature Convention [see 112.03] and the Convention on the Valuation of Goods for Customs Purposes [see 112.04], concluded at the same time. Its broader mandate was to secure the highest possible degree of harmony and uniformity in the customs systems of its member states and, in that context, to study the problems inherent in the development and improvement of customs technique and customs legislation [see 112.02, Preamble].

The activities of the CCC fall under five main headings:

- **Nomenclature and Classification**: The CCC administers and assures the continuing development of the Harmonized System of classification [see 112.24], now governing more than 90 per cent of world trade.

- **Customs Valuation**: The CCC administers the two international conventions which now apply in this area: the Convention on the Valuation of Goods for Customs Purposes [see 112.04], for which it has sole responsibility, and the GATT Customs Valuation Code [see 112.22] for which it has responsibility at the technical level.

- **Customs Procedures**: The CCC continues to initiate and administer a variety of international conventions concerning customs procedures, the most important of which are the Kyoto and Istanbul Conventions [see 112.19 and 112.25].

- **Customs Enforcement and Control**: The Nairobi Convention [see 112.21] is the key instrument in this area. As part of its effort to combat customs fraud, the CCC works closely with other international organizations, in particular INTERPOL (the International Criminal Police Organization) and those UN agencies involved in the suppression of drug trafficking.

- **Training and Technical Assistance**: The CCC's long-standing programme of training and technical assistance in favour of developing countries was extended in 1991 to the countries of Eastern Europe.

MEMBERSHIP AND FUNDING

The CCC has 126 members and two official languages, English and French. Its budget for 1991-92 was 406 million Belgian Francs.