PART IV

TRADE AND DEVELOPMENT

I. TEXT OF INTERPRETATIVE NOTE AD PART IV

Interpretative Note *Ad* Part IV from Annex I

The words "developed contracting parties" and the words "less-developed contracting parties" as used in Part IV are to be understood to refer to developed and less-developed countries which are parties to the General Agreement on Tariffs and Trade.

II. INTERPRETATION AND APPLICATION OF PART IV

A. GENERAL

The CONTRACTING PARTIES at their Twelfth Session decided to appoint a Panel of Experts to report on trends in international trade, "in particular the failure of the trade of less developed countries to develop as rapidly as that of industrialized countries, excessive short-term fluctuations in prices of primary products, and widespread resort to agricultural protection".[1] The Report on "Trends in International Trade" was submitted and discussed at the Thirteenth Session[2]; the CONTRACTING PARTIES then decided to initiate consideration of a plan of action and established three committees of which Committee III had the mandate "to consider and report to the CONTRACTING PARTIES regarding other measures for the expansion of trade, with particular reference to the importance of the maintenance and expansion of the export earnings of the less developed countries to the development and diversification of their economies".[3] A Declaration on "Promotion of the Trade of Less-Developed Countries" was adopted by Ministers on 30 November 1961 and by the CONTRACTING PARTIES on 7

[1]Decision of 29 November 1957, 6S/18.

[2]*Trends in International Trade*, October 1958, Sales No. GATT/1958-3. The report is also known as the "Haberler Report" after Gottfried Haberler, its chairman. The other Panel members were Roberto da Oliveira Campos, James Meade, and Jan Tinbergen.

[3]Decision of 17 November 1958, 7S/27-29. See also reports of Committee III: First report adopted 29 May 1959, COM.III/1, 8S/132; second report adopted 19 November 1959, L/1035, 8S/135; third report adopted 24 May 1960, L/1162, 9S/120; fourth report adopted 14 November 1960, L/1321, 9S/144; Report on Meeting of 21-28 March 1961, L/1435, 10S/167; fifth report adopted 15 November 1961. L/1554, 10S/175; special report listing principal findings and recommendations, adopted 15 November 1961, L/1557, 10S/185.

December 1961.[4] The Decision on "Implementation of Conclusions of Ministers" established a programme of further work in Committee III.[5]

The Conclusions and Resolutions adopted at the Ministerial meeting on 21 May 1963 initiated negotiations on an amendment of the General Agreement to introduce a Part IV. In discussing measures for the expansion of trade of developing countries as a means of furthering their economic development: "The Ministers recognized the need for an adequate legal and institutional framework to enable the CONTRACTING PARTIES to discharge their responsibilities in connection with the work of expanding the trade of the less-developed countries". A Committee on the Legal and Institutional Framework of GATT in Relation to Less-Developed Countries was established to undertake further work in this connection, under the oversight of the Action Committee.[6] The Committee on Legal and Institutional Framework drafted a new Chapter on Trade and Development for inclusion in the General Agreement.[7]

At the Second Special Session of the CONTRACTING PARTIES, on 8 February 1965, the Chairman, in presenting for approval the Protocol Introducing Part IV on Trade and Development, made the following statement:

> "This new Part showed clearly that the promotion of the trade of less-developed countries and the provision of increased access for their products in world markets, were among the primary objectives of the CONTRACTING PARTIES. These objectives were now set forth in a new Article XXXVI. Article XXXVII laid down the commitments in the field of commercial policy which contracting parties would accept in order to promote these objectives. Article XXXVIII provided for joint action by the contracting parties, both within the framework of the GATT and in collaboration with other intergovernmental bodies, to further the objectives."[8]

The Protocol Amending the General Agreement on Tariffs and Trade to Introduce a Part IV on Trade and Development, which was done on 8 February 1965, entered into force on 27 June 1966.[9] The time-limit for acceptance of the Protocol was extended annually by decisions of the CONTRACTING PARTIES until the close of their thirty-fifth session in 1979[10], when the Protocol had been accepted by all contracting parties. Acceptances by some contracting parties were accompanied by Declarations.[11]

In the Committee on Legal and Institutional Framework, one developing country proposed the inclusion of the following commitments by contracting parties:

> "in establishing their agricultural policies for the maintenance of agricultural income, to avoid restrictive measures that limit imports of raw or processed products of particular interest to less-developed countries and inhibit their consumption";
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> "to adjust and moderate agricultural protective measures, in order to facilitate exports of agricultural products by less-developed countries".

However, it was agreed that instead of including specific provisions in Part IV, a statement on this subject by the Chairman should be included in the record of the second special session of the CONTRACTING PARTIES at which agreement was finally reached on the text of Part IV.[12] This statement, after having noted that the importance of trade in agricultural products had been stressed in the Committee and a specific proposal had been discussed, observed that the CONTRACTING PARTIES had agreed to seek solutions to problems of agricultural trade in the course of the Kennedy Round and had agreed that in these trade negotiations every effort would be made to lower barriers to exports from developing countries. It concluded with the following paragraph:

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[4] 10S/28.

[5] Decision of 7 December 1961, 10S/32. See reports of Committee III: L/1732, adopted 16 November 1962, 11S/168; L/1768, adopted 16 November 1962, 11S/176; L/1989, report submitted to Ministerial Meeting May 1963, 12S/88; L/2080, report adopted 16 March 1964, 12S/110, L/2181 part B, report adopted 19 March 1964, 12S/131.

[6] 12S/36, para. 28, 12S/47.

[7] See 12S/87, para. 15.

[8] 2SS/SR.5.

[9] 13S/2.

[10] 14S/16, 15S/65, 16S/8, 17S/14, 18S/22, 19S/6, 20S/17, 21S/23, 22S/7, 23S/5, 24S/11, 25S/5.

[11] GATT - Status of Legal Instruments, 2-14.

[12] L/2314/Rev.1.

"Although a specific paragraph to cover all the specific concerns expressed by those less-developed contracting parties particularly interested in agricultural trade problems has not been included in Part IV, agricultural products are covered by the general provisions of Part IV. However, it is understood that at a later stage and in the light of the forthcoming trade negotiations, interested contracting parties will be entitled to revert to this matter in the Committee on Trade and Development."[13]

At the Fiftieth Session of the CONTRACTING PARTIES in December 1994, the Chairman of the Committee on Trade Development summed up the conclusions of a debate held at the Committee's session in November 1994, which had addressed the substantive issue of the participation of developing countries in the international trading system by focusing on whether developing countries had recently increased their share in world trade and whether international trade had contributed to their economic growth.

"Ten main conclusions emerged from the debate: (1) The developing countries' percentage share in world trade had been growing. (2) This growth had been uneven: the least-developed countries, and recently Africa, had seen a decrease in their share in trade, while other regions, such as South-East Asia, had significantly increased their share. (3) This had resulted as much from domestic policies as from the general international environment, since these different trends could not be attributed to the international environment alone. (4) The Uruguay Round had represented a significant opportunity for developing countries to increase their share in trade, because of the integration of sectors previously outside the GATT system (such as agriculture and textiles) into WTO rules, and because the Round had dealt with internal policies (and not just border measures) that restricted trade. (5) Therefore future participation of developing countries in world trade would be determined by the effectiveness with which the Uruguay Round agreements would be implemented. (6) Though participation in world trade of both developing and developed countries had increased in the past twenty years, the opposite had occurred for the former Socialist states, which seemed to indicate the importance of market forces, or a reduction of State intervention, for trade development. (7) Product composition of the trade of developing countries had been important, as the substantial rise in trade of manufactures had been the key to the increased participation of some of these countries. The growth of intra-regional trade had also been relevant. (8) It was important to make an examination of changes and to see whether higher or lower hindrances to trade in recent years could explain the developing countries' share in world trade. (9) In future, developing countries would make greater commitments in the WTO, and in this context all WTO members should note that developing countries accounted for 25 per cent of world trade. (10) Finally, it was necessary to integrate the autonomous liberalization measures taken by developing countries into the multilateral system aimed at facilitating, promoting and liberalizing trade."[14]

B. "DEVELOPED" AND "LESS-DEVELOPED" CONTRACTING PARTIES

The Interpretative Note *Ad* Part IV provides that these expressions refer to developed and less-developed countries which are parties to the General Agreement.

The Decision of 28 November 1979 on "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" notes: "The words 'developing countries' as used in this text are to be understood to refer also to developing territories".[15]

The 1964 Committee on Legal and Institutional Framework had discussed the problems concerned with identifying the less-developed contracting parties and defining the term "less-developed contracting party". Two main views emerged in the Committee:

"On the one hand, some members considered that it was not at this stage either necessary or feasible to attempt a definition of a less-developed contracting party and that if a problem as to identification arose such a problem could be dealt with at that time. On the other hand, some members felt that it was possible

[13] 2SS/SR.5.
[14] SR.50/1, p. 5.
[15] L/4903, Decision of 28 November 1979, 26S/203, footnote 1.

by a systematic identification of either less-developed contracting parties or developed contracting parties to resolve the matter at a later stage."[16]

The terms of reference of the Committee on Trade and Development include: "to consider any questions which may arise as to the eligibility of a contracting party to be considered as a less-developed contracting party in the sense of Part IV …".[17]

See also the Note *Ad* Article XVIII, material under Article XVIII:4, and material on the Enabling Clause in the chapter on Article I.

C. RELATIONSHIP BETWEEN PART IV AND OTHER GATT ARTICLES

1. General

The Panel Report of 1989 on "EEC - Restrictions on Imports of Dessert Apples - Complaint by Chile" concluded that the EEC import restrictions at issue were inconsistent with Articles XI and XIII. After finding that these restrictions were inconsistent with Article XI, the Panel examined Chile's claim under Part IV, noting generally as follows:

> "… the Panel noted that the commitments entered into by contracting parties under Article XXXVII were additional to their obligations under Parts I-III of the General Agreement, and that these commitments thus applied to measures which were permitted under Parts I-III. As the Panel had found the EEC's import restrictions to be inconsistent with specific obligations of the EEC under Part II of the General Agreement, it therefore did not consider it necessary to pursue the matter further under Article XXXVII."[18]

2. Articles I and XIII

When the text of Part IV was submitted to the CONTRACTING PARTIES for approval in November 1964, the Chairman said: "it was well known that many less-developed countries had hoped to have provisions relating to preferences in the new text. This had not been possible, but the CONTRACTING PARTIES had agreed to a working procedure for dealing with this important and controversial issue".[19]

A summary of the discussions during the drafting of Part IV as to the relation of Part IV to Article I appears under Article XXXVII *infra*. For the waivers granted in respect of the Generalized System of Preferences on 25 June 1971[20] and in respect of trade negotiations among developing countries on 26 November 1971[21], see under Article I. See also the material under Article I on the Decision on "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" of 28 November 1979 (the "Enabling Clause").[22]

In the Working Party on "United Kingdom Temporary Import Charges" in 1964-66, less-developed countries urged the United Kingdom to exempt from the charges products of which they were the principal suppliers and products which had social implications in their countries (e.g. hand-made products and products of cottage industries). They considered that such exemption would be "fully in accord with the spirit of the new Part IV". "Without prejudice to the principle of non-discrimination as embodied in the General Agreement", the Working Party felt that any such special treatment which the United Kingdom might feel able to give "should not be considered by other trading partners as creating a justification for them to press for special treatment for their own trade".[23] The United States dissented from this view. Further concerning the application of import surcharges to exports of developing countries, see also the material under Article XII in this Index on the relationship between Article XII and Articles I and XIII.

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[16] L/2195/Rev.1, para.7.
[17] 13S/76.
[18] L/6491, adopted on 22 June 1989, 36S/93, 134, para. 12.32.
[19] 2SS/SR.4, p. 26.
[20] 18S/24.
[21] 18S/26.
[22] 26S/203.
[23] L/2395 & Corr.1, paras. 16 and 17.

The Report of the Working Party on the "Trade Arrangement between India, the United Arab Republic and Yugoslavia" which examined the Trade Expansion and Economic Co-operation Agreement between India, United Arab Republic and Yugoslavia in 1968, recorded opposing views concerning the relationship between Part IV and Article I. Several representatives, while recognizing the importance of Part IV, considered that "it did not override the obligations of other parts of the General Agreement". In their view the Tripartite Agreement "was inconsistent with the basic most-favoured-nation provision of Article I". The representatives of the three participating countries considered that "the Agreement was in pursuance of their obligations under Part IV and consistent with the spirit of the General Agreement".[24] Similar differences of view are mentioned in the 1973 Report of the Working Party on "Trade Arrangements between India, the Arab Republic of Egypt and Yugoslavia".[25] Similar differences of view were expressed in the 1977 Report of the Working Party on the "First Agreement on Trade Negotiations Among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific - Bangkok Agreement".[26] See material on this agreement under Article I.

The 1973 Interim Panel Report on "United Kingdom - Dollar Area Quotas" sets out, among the "Considerations of the Panel":

> "The Panel noted the contention of the United States delegation that the restrictions were in contravention of Articles XI and XIII of the General Agreement and that delegation's request that the restrictions be eliminated. The Panel also noted that the United Kingdom had never denied that the Dollar Area Quotas were in formal contravention of the provisions of the General Agreement on quantitative restrictions, and for the time being reserved its findings on this question. The Panel noted as well the argument put forward by the Caribbean countries and territories that the restrictions must be viewed in the context of the General Agreement as a whole and with particular regard to Part IV of the Agreement. According to these delegations, the continued application of the quotas was justified in the light of Part IV which was designed to deal with the special circumstances of developing countries."[27]

The Panel Report on the same matter notes the withdrawal of the complaint and refrains from pronouncing on the interpretation of Part IV.[28]

The Report of the Committee on Trade and Development in 1976 notes the view of a developed contracting party that Part IV does not require the exempting of products originating in developing countries from temporary import restrictions administered on a most-favoured-nation basis in accordance with Article XIII.[29]

The 1980 Panel Report on "Norway - Restrictions on Imports of Certain Textile Products" concludes that Norway's import restrictions were inconsistent with Article XIII. The Panel also concludes: "In the case before the Panel, Norway had in early 1978 concluded long-term bilateral arrangements with six textile-supplying countries. ... for these arrangements no derogation or provision of Parts I-III of GATT had ever been invoked by Norway. While noting that provision for some developing exporting countries of assured increase in access to Norway's textile and clothing markets might be consistent for those countries with the spirit and objectives of Part IV of the GATT, this cannot be cited as justification for actions which would be inconsistent with a country's obligations under Part II of the GATT".[30]

The 1984 Panel Report on "United States - Imports of Sugar from Nicaragua" found the United States sugar quota to be inconsistent with Article XIII. The Panel Report notes that "having found the quota reduction to be inconsistent with a specific obligation of the United States under Part II of the General Agreement, the Panel saw no need to pursue the question whether the action was also contrary to the United States' more general commitments under Part IV".[31] In discussion on this panel report in the GATT Council, "several representatives

[24] L/3032, adopted on 14 November 1968, 16S/83, 87, paras. 12, 13.
[25] L/3950, adopted on 7 November 1973, 20S/224-229.
[26] L/4635, adopted on 14 March 1978, 25S/109, 110, 111, paras. 5, 7.
[27] L/3843, adopted on 30 July 1973, 20S/230, 235, para. 1.
[28] L/3891, adopted on 30 July 1973, 20S/236.
[29] L/4438, adopted on 22 November 1976, 23S/32, 34, para. 12.
[30] L/4959, adopted on 18 June 1980, 27S/119, 125-26, para. 15.
[31] L/5607, adopted on 13 March 1984, 31S/67, 74, para. 4.6.

of developing countries ... considered that the United States measure contravened Part IV of the General Agreement and the 1982 Ministerial Declaration."[32]

In this connection see also the unadopted panel reports of 1993 and 1994 respectively on "EEC - Member States' Import Regimes for Bananas"[33] and "EEC - Import Regime for Bananas".[34]

3. Article III

The 1970 Report of the Working Party on "Border Tax Adjustments" notes that

> "Some members pointed out that the question of forward shifting of internal taxes on domestic products did not arise in the case of products which were not domestically produced by developed countries. They therefore emphasized that the destination principle regarding tax adjustments was not relevant in the case of products of export interest to developing countries which were not produced in developed countries, and that in order to ensure trade neutrality as required under GATT rules no internal taxes should be levied by developed countries on such products.
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> "Members from developing countries drew attention to the Ministerial Conclusions of 1963 and Article XXVII of the GATT, which stressed that developed contracting parties should endeavour to suppress taxes on products imported essentially from developing countries. ...
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> "In referring to the proposal to suppress taxes on products not produced in developed countries, some countries considered that it was of great importance not to introduce into fiscal policies considerations and preoccupations relating to trade policy."[35]

The Report of the Working Party on the "Accession of Costa Rica" includes a discussion of Costa Rica's selective consumption levy. Some members of the Working Party stated that "neither Part IV nor Article XVIII of the General Agreement authorized the discriminatory application of levies contrary to Article III".[36]

4. Article XVI

The Report of the Working Party on a 1967 consultation under Article XXII:2 on the "United States Subsidy on Unmanufactured Tobacco" discusses the application of Part IV in relation to an export subsidy of a developed country competing with a developing country. See further under Article XXXVI:3 and Article XXVII:3. The Chairman of the CONTRACTING PARTIES noted "that the report of the Working Party contained no conclusive indication as regards damage to the trade interests of other tobacco producers arising from the existence of the United States subsidy. However, as it appeared that, to some extent, the provisions of Part IV were involved and as it was conceivable that the trade interests of other producers could be affected", he suggested, and it was so agreed, that CONTRACTING PARTIES urge the United States to give sympathetic and urgent consideration to the requests made by certain members of the Working Party.[37] These members had requested that the US remove the subsidy and consult before taking action to extend the existing subsidy.[38]

In the panel proceeding on "European Communities - Refunds on Exports of Sugar - Complaint by Brazil," Brazil argued, *inter alia*, that the Community system and its application were inconsistent with commitments under Part IV of the General Agreement, in particular Article XXXVI:2, 3, 4 and 9, and XXXVII:2(a) and (e).[39] The EC representative argued that "the provisions of Article XXXVI constituted principles and objectives and could not be understood to establish precise, specific obligations."[40] The conclusions provide:

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[32]C/M/176, p. 9.
[33]DS/32R, unadopted, dated 3 June 1993, paras. 369-372.
[34]DS38/R, unadopted, dated 11 February 1994, para. 162.
[35]L/3464, adopted on 2 December 1970, 18S/97, 105-106, paras. 28-29, 32.
[36]L/6589, adopted on 7 November 1989, 36S/26, 33, para. 32.
[37]SR.24/13, p. 166.
[38]15S/125, paras. 27, 28.
[39]L/5011, adopted on 10 November 1980, 27S/69, 79-80, para. 2.25.
[40]Ibid., para. 2.28.

"The Panel recognized the efforts made by the European Communities in complying with the provisions of Articles XXXVI and XXXVIII. It nevertheless felt that increased Community exports of sugar through the use of subsidies in the particular market situation in 1978 and 1979, and where developing contracting parties had taken steps within the framework of the [International Sugar Agreement] to improve the conditions in the world sugar market, inevitably reduced the effects of the efforts made by these countries. For this time-period and for this particular field, the European Communities had therefore not collaborated jointly with other contracting parties to further the principles and objectives set forth in Article XXXVI, in conformity with the guidelines given in Article XXXVIII."[41]

See further material from this Panel Report under Article XXXVI.

5. Article XVII

Article XXXVII:3(a) provides: "The developed contracting parties shall: (a) make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels".

6. Article XIX

The drafting history of Part IV of the General Agreement indicates that an escape clause action would fall within paragraph 1(b) of Article XXXVII.[42] In 1971-72, after the introduction of Part IV, the Committee on Trade and Development discussed whether it was necessary to re-examine Article XIX in this new context.[43] Some delegations from developing countries proposed that for equity reasons and in light of Part IV imports from developing countries should be exempted from the scope of action under Article XIX.[44] Representatives of several developed countries stated, *inter alia*, that to require the discriminatory use of this Article might in fact encourage the use of quantitative restrictions and limit the ability of contracting parties to accept commitments for trade liberalization. One of these representatives felt that "serious injury" would be among the "compelling reasons" mentioned in Article XXXVII and this would place Article XIX situations outside the scope of paragraph 1(b) of the Article. A 1976 Secretariat Note on the application of Part IV of the General Agreement mentions that "some developed countries stated that they could not accept that Part IV allowed a departure from the principle of non-discrimination with regard to Article XIX, which ought to be applied across the board on a most-favoured-nation basis".[45]

7. Article XXXV

At the Second Special Session of the CONTRACTING PARTIES in 1975, the representative of Japan informed the CONTRACTING PARTIES that his Government would not be in a position to assume legally any obligations arising from Part IV with respect to those contracting parties which, through the invocation of Article XXXV, were not applying the General Agreement to Japan.[46]

D. COMMITTEE ON TRADE AND DEVELOPMENT

At their meeting on 26 November 1964, the CONTRACTING PARTIES decided that the Committee on Trade and Development should be established with the following terms of reference:

"1. To keep under continuous review the application of the provisions of Part IV of the General Agreement.

"2. To carry out, or arrange for, any consultation which may be required in the application of the provisions of Part IV.

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[41]Ibid., pp. 97-98, para. (h).
[42]L/2195/Rev.1, L/4679, p. 8.
[43]L/3625, paras. 19-21; L/3760, paras. 43-46.
[44]L/4679, p. 9.
[45]COM.TD/W/239, p. 16, para. 39.
[46]2SS/SR.2, p.7.

"3. To formulate proposals for consideration by the CONTRACTING PARTIES in connection with any matter relating to the furtherance of the provisions of Part IV.

"4. To consider any questions which may arise as to the eligibility of a contracting party to be considered as a less-developed contracting party in the sense of Part IV and to report to the CONTRACTING PARTIES.

"5. To consider, on the basis of proposals referred to it by the CONTRACTING PARTIES for examination, whether modification of or additions to Part IV are required to further the work of the CONTRACTING PARTIES in the field of trade and development and to make appropriate recommendations.

"6. To carry out such additional functions as may be assigned to the Committee by the CONTRACTING PARTIES."[47]

The Committee also took over the functions of Committee III, of the Action Committee and its subsidiary bodies, and of the Working Party on Preferences.

The Committee was also given a mandate to deal with outstanding issues relating to the amendment of the General Agreement which had not been finished by the Committee on Legal and Institutional Framework, including: (a) a review of Article XVIII, taking into account an Australian proposal[48]; (b) a review of Article XXIII, in the light of experience of its operation and taking into consideration the proposal by Brazil and Uruguay; and other proposals put forward by contracting parties; and (c) a proposal relating to the imposition of import surcharges by less-developed contracting parties to safeguard their balance of payments.[49] The work on Article XXIII resulted in the Decision of 5 April 1966 on Procedures under Article XXIII, for disputes between less-developed and developed contracting parties. The text of these Procedures and material on their drafting and application appears under Article XXIII in this Index. The work on import surcharges did not have an immediate result; see the material on import surcharges under Articles XVIII and XII. Generally concerning this work, see the reports and documents of the Committee.[50]

For a survey of the various activities of the Committee on Trade and Development see the regular Committee reports published in the BISD series, as well as the Secretariat Note of December 1982 on Activities of the Committee on Trade and Development.[51]

The GATT Work Programme of 1979 provided:

"The rôle of the Committee on Trade and Development should be strengthened and should cover, inter alia,

"1. work on trade policy and development policies including trade liberalization in areas of special interest to developing countries;

"2. primary responsibility for supervision of the implementation of points 1 and 4 of the 'Framework' texts;

"3. examination of protective action by developed countries against imports from developing countries;

"4. work on structural adjustment and trade of developing countries; and

"5. special attention to the special problems of least developed countries."[52]

[47] 13S/75-76.
[48] See L/2165.
[49] L/2281, Annex II.
[50] See the 1966 Report of the Committee, L/2614, adopted on 5 April 1966, 14S/129, 139-141.
[51] TC(82)189, summarizing CTD activities 1965-1980.
[52] L/4884/Add.1/Annex VI, adopted on 29 November 1979, 26S/219, 221, para. 5.1.

In December 1994, the Preparatory Committee for the World Trade Organization agreed to new terms of reference, as follows, for the Committee on Trade and Development to be established under the Marrakesh Agreement Establishing the World Trade Organization:

"1. To serve as a focal point for consideration and coordination of work on development in the World Trade Organization (WTO) and its relationship to development-related activities in other multilateral agencies.[53]

"2. To keep under continuous review the participation of developing country Members in the multilateral trading system and to consider measures and initiatives to assist developing country Members, and in particular the least-developed country Members, in the expansion of their trade and investment opportunities, including support for their measures of trade liberalization.[54]

"3. To review periodically, in consultation as appropriate with the relevant bodies of the WTO, the application of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members, and in particular least-developed country Members, and report to the General Council for appropriate action.

"4. To consider any questions which may arise with regard to either the application or the use of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members and report to the General Council for appropriate action.

"5. To provide guidelines for, and to review periodically, the technical cooperation activities of the WTO[55] as they relate to developing country Members.

"6. The Committee will establish a programme of work which may be reviewed as necessary each year".[56]

A Decision adopted on 8 December 1994 by the CONTRACTING PARTIES and by the Preparatory Committee for the WTO, on "Transitional Arrangements - Avoidance of Procedural and Institutional Duplication" provides *inter alia* that

> "In the period between the date of entry into force of the WTO Agreement and the date of the termination of the legal instruments through which the contracting parties apply the GATT 1947 and of the Tokyo Round Agreements the following notification and coordination procedures shall apply under the GATT 1947, the Tokyo Round Agreements and the WTO Agreement:
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> ...
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> > "2. The coordination procedures set out in paragraphs 3 and 4 below shall apply in the relations between the bodies referred to in sub-paragraphs (a) to (d) below:
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> > ...
> >
> > "Committee on Trade and Development, ...
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> "3. The bodies established under the GATT 1947 or a Tokyo Round Agreement that are referred to in paragraph 2 above shall hold their meetings jointly or consecutively, as appropriate, with the corresponding WTO bodies. In meetings held jointly the rules of procedure to be applied by the WTO body shall be followed. The reports on joint meetings shall be submitted to the

[53]Note 1 to the terms of reference provides: "It is understood that matters relating to activities in other multilateral agencies will come under the guidance of the General Council".

[54]Note 2 to the terms of reference provides: "The Committee would give consideration, *inter alia*, to any report that the Committee on Agriculture may decide to refer to it following paragraph 6 of the 'Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries' and Article XVI of the Agreement on Agriculture".

[55]Note 3 to the terms of reference provides: "The technical cooperation activities referred to in this provision do not include technical assistance for accession negotiations".

[56]PC/IPL/4, dated 25 November 1994. See also PC/IPL/M/9.

competent bodies established under the GATT 1947, the Tokyo Round Agreements and the WTO Agreement.

"4. The coordination of activities in accordance with paragraph 3 above shall be conducted in a manner which ensures that the enjoyment of the rights and the performance of the obligations under the GATT 1947, the Tokyo Round Agreements and the WTO Agreement and the exercise of the competence of the CONTRACTING PARTIES to the GATT 1947, the Committees established under the Tokyo Round Agreements and the bodies of the WTO are unaffected."[57]

The WTO General Council at its first meeting on 31 January 1995 established the Committee on Trade and Development with the terms of reference decided by the Preparatory Committee.[58]

1. Review of implementation of Part IV and operation of the Enabling Clause

In order to enable the Committee on Trade and Development to keep under continuous review the application of the provisions of Part IV, the Committee agreed, in March 1965, on Reporting Procedures.[59] The Committee on Trade and Development also adopted Guidelines for the submission of notifications, the preparation of reports and the carrying out of reviews on the implementation of Part IV, which provide that notifications made by governments should be as exhaustive and comprehensive as possible and should relate both to measures specifically mentioned in paragraphs 1 and 3, or paragraph 4, as the case may be of Article XXXVII, as well as to all steps and measures of interest to the CONTRACTING PARTIES in relation to the objectives and provisions of Part IV.[60] Every year the Secretariat issues an airgram inviting contracting parties to make the relevant information available.

The reviews of the implementation of Part IV are a regular feature of the sessions of the Committee on Trade and Development. They take the form of reviews of and discussions on notifications submitted by governments on measures taken in the implementation of Part IV commitments, discussion of reports of the Sub-Committees of the Committee, and discussion of Secretariat reports on issues relevant to Part IV and the Enabling Clause.

The Committee on Trade and Development adopted Procedures for the elimination of import restrictions affecting the exports of developing countries, on 21 November 1967.[61]

Procedures for "Consultations Concerning the Implementation of Provisions of Part IV" were adopted by the Committee on Trade and Development on 23 March 1970 as well as by the CONTRACTING PARTIES at their Twenty-sixth Session in April 1971.[62] However, these consultation procedures have never been utilized.

In January 1971, the Committee on Trade and Development established a "Group of Three", which was requested to present proposals, *inter alia*, for the fuller implementation of the provisions of Part IV. The Group presented three reports[63]. With the recognition that the Tokyo Round multilateral trade negotiations were expected to deal, *inter alia*, with the trade problems of developing countries in accordance with the provisions of the Tokyo Declaration, the Committee on Trade and Development agreed at its meeting in October 1973, that the work of the Group could be suspended for the time being.[64]

The Decision of 28 November 1979 on "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries"[65] (widely referred to as the "Enabling Clause") provides in its paragraphs 1 and 4:

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[57]PC/11, L/7582, adopted 8 December 1994.
[58]WT/L/46.
[59]13S/79.
[60]COM.TD/24, paragraph 10.
[61]15S/144.
[62]18S/61.
[63]18S/70, 19S/31, 20S/73.
[64]18S/64.
[65]26S/203.

"1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties."

"4. Any contracting party taking action to introduce an arrangement pursuant to paragraphs 1, 2 and 3 above or subsequently taking action to introduce modification or withdrawal of the differential and more favourable treatment so provided shall:

"(a) notify the CONTRACTING PARTIES and furnish them with all the information they may deem appropriate relating to such action;

"(b) afford adequate opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise. The CONTRACTING PARTIES shall, if requested to do so by such contracting party, consult with all contracting parties concerned with respect to the matter with a view to reaching solutions satisfactory to all such contracting parties."[66]

As noted above, the Committee on Trade and Development was given primary responsibility for the supervision of these two paragraphs.

The GATT Ministerial Declaration adopted on 29 November 1982, includes a decision and annex on "GATT Rules and Activities Relating to Developing Countries"[67], in which the CONTRACTING PARTIES, *inter alia*

"1. Decide, in order to improve the review and surveillance procedures in regard to the implementation of Part IV, that:

"(a) the Committee on Trade and Development, bearing in mind particularly the special responsibility of the developed contracting parties in this regard, shall adopt a programme of consultations with contracting parties individually or collectively, as appropriate, to examine how individual contracting parties have responded to the requirements of Part IV;

"(b) each such consultation shall be based on information supplied by the contracting party or parties in question and additional factual material prepared by the secretariat;

"(c) the Committee on Trade and Development shall also examine other aspects of existing procedures for reviewing the implementation of Part IV and for dealing with problems relating to the application of its provisions, and prepare guidelines for their improvement.

"2. Invite the Committee on Trade and Development to review the operation of the Enabling Clause as provided for in its paragraph 9, with a view to its more effective implementation, *inter alia*, with respect to objectivity and transparency of modifications to GSP schemes and the operation of consultative provisions relating to differential and more favourable treatment for developing countries; ...".[68]

Information on these consultations is provided in the reports and proceedings of the Committee on Trade and Development.

See also Secretariat Notes of November 1994 on "Developing Countries and the Uruguay Round: An Overview", "Notes on the Participation of Developing Countries in the World Trading System", "A Description of Provisions Relating to Developing Countries in the Uruguay Round Agreements, Legal Instruments and Ministerial Decisions", and the minutes of discussions on this topic in the 1994 Report of the Committee on Trade and Development.[69]

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[66]26S/204, para. 4.

[67]29S/13 and Annex at 29S/22.

[68]Annex to Ministerial Decision, 29S/22, paras. 1-2.

[69]COM.TD/W/512, dated 10 November 1994; COM.TD/W/513, dated 11 November 1994; COM.TD/W/510, dated 2 November 1994; and L/7567, dated 7 December 1994.

2. Sub-Committee on Trade of Least-Developed Countries

In July 1980, the Committee on Trade and Development established the Sub-Committee on Trade of Least-Developed Countries with the following terms of reference:

> "In the light of paragraph 6 of the Tokyo Declaration, to give special attention to the particular situation and trade problems of the least-developed among the developing countries in GATT's work programme following the Tokyo Round, including that relating to the results of the Multilateral Trade Negotiations, and to keep under review the special treatment which could be accorded these countries in the context of any general or specific measures taken in favour of developing countries, ... [and to] ... report to the Committee on Trade and Development".[70]

Up to December 1994 the Sub-Committee had held fifteen meetings.[71]

See also the Secretariat Note of 3 November 1994 on the provisions concerning least-developed countries in the Uruguay Round agreements, legal instruments and Ministerial Decisions.[72]

3. Sub-Committee on Protective Measures

In the Decision on "Examination of Protective Measures Affecting Imports from Developing Countries" of 28 November 1979, the CONTRACTING PARTIES, *inter alia*,

> "Decide that the Committee on Trade and Development establish a Sub-Committee to examine any case of future protective action by developed countries against imports from developing countries in the light of relevant provisions of the GATT, particularly Part IV thereof.
>
> "This examination shall be without prejudice to the rights of contracting parties under the GATT or the competence of other GATT bodies.
>
> "The membership of the Sub-Committee shall be open to all contracting parties. Developing countries not contracting parties to GATT may, upon notification to the Director-General of GATT, participate in the proceedings of the Sub-Committee in an observer capacity.
>
> "The Sub-Committee will report on such examination to the Committee on Trade and Development and through it to the Council.
>
> "These arrangements will be reviewed and revised as appropriate".[73]

The Sub-Committee on Protective Measures which was established in accordance with the above Decision on "Protective Measures" in March 1980 held eight sessions up to the end of 1985.[74] In November 1986 the Committee on Trade and Development decided that with the start of the Uruguay Round the Sub-Committee should remain on call, to be activated as and when the Committee should deem it necessary.[75]

E. TECHNICAL COOPERATION AND TRAINING ACTIVITIES

The Committee on Trade and Development reviews periodically the technical cooperation programme of the Secretariat. For a review of recent technical assistance activities, see the Secretariat Note of November 1994 on "Technical Cooperation with Developing Countries", which refers to technical assistance to developing countries in preparation of market access offers in goods and services negotiations; provision of

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[70]COM.TD/105.

[71]See the reports of the Sub-Committee, COM.TD/LLDC/1-16.

[72]COM.TD/LLDC/W/54.

[73]L/4899, 26S/219. This Decision implemented paragraph B.8 of UNCTAD Resolution 131(V), which invited GATT to examine in an appropriate body any case of future protective action by developed countries against imports from developing countries. See discussion at C/M/135, C/M/137, and L/4884/Add.1.

[74]See the reports of the Sub-Committee, COM.TD/SCPM/1-8.

[75]L/6092, Report of the Committee on Trade and Development, adopted on 24 November 1986, 33S/116, 126, para. 32.

data on trade flows, tariffs and non-tariff measures; technical missions to present and explain the Uruguay Round results; technical missions and workshops to explain the Uruguay Round results; briefing sessions in Geneva for delegations and officials; technical assistance in preparation for reviews under the Trade Policy Review Mechanism (TPRM); and joint technical assistance with other international organizations.[76]

Paragraph H.2 of the 1989 Decision on Improvements to the GATT Dispute Settlement Rules and Procedures provides that "The Secretariat shall conduct special training courses for interested contracting parties concerning GATT dispute settlement procedures and practices so as to enable contracting parties' experts to be better informed in this regard."[77] The most recent such dispute settlement course took place in September 1994 for developing and developed contracting parties.

In addition, paragraph H.1 of the 1989 Decision provides that "the Secretariat shall make available a qualified legal expert within the Technical Cooperation Division to any developing contracting party which so requests". Such assistance has been provided on a number of occasions since 1989.

Since 1955, the Secretariat has organized training courses in Geneva for government officials from developing countries (both contracting parties and others) involved in the formulation and development of trade policy. The courses deal with the theory and practice of trade policy and negotiations, including simulation exercises in dispute settlement and trade negotiations. In recent years courses have also been organized for officials of economies in transition.[78]

III. RELEVANT DOCUMENTS

Background documents and negotiating history of Part IV:

Declaration on "Promotion of the Trade of Less-Developed Countries" adopted by Ministers on 30 November 1961: 10S/28.

Conclusions and Resolutions adopted by Ministers on 21 May 1963: 12S/45-46.

Interim Report of the Committee on the Legal and Institutional Framework of the GATT in Relation to Less-Developed Countries: L/2195/Rev.1.

Discussion of Interim Report by the CONTRACTING PARTIES: SR.21/11.

Report of the Committee on Legal and Institutional Framework: L/2281.

Discussion of the Report in the Council: C/M/23.

Report of the Legal Drafting Group: L/2297.

Final texts submitted for approval: L/2314/Rev.1.

Final discussion at the Second Special Session of the CONTRACTING PARTIES of the reports and draft texts to be adopted: 2SS/SR.2, 4, 5.

Final Act of the Second Special Session and Protocol Introducing Part IV: 13S/1-11.

[76]COM.TD/W/511, dated 16 November 1994.
[77]36S/61, 65.
[78]See L/7543, Note by the Director-General, "Training Activities: the GATT Trade Policy Courses", 28 October 1994.