96th Congress
1st Session

COMMITTEE PRINT

CP 96-27

MTN STUDIES

6

PART 4

Agreements Being Negotiated at the Multilateral Trade Negotiations in Geneva—U.S. International Trade Commission Investigation No. 332-101

Analysis of Nontariff Agreements
International Dairy Arrangement
Agreement on Trade in Civil Aircraft
Group "Framework"
Proof-Gallon Method of Tax and Duty Assessment

A Report Prepared at the Request of the
COMMITTEE ON FINANCE
UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*

SUBCOMMITTEE ON INTERNATIONAL TRADE
ABRAHAM RIBICOFF, *Chairman*

AUGUST 1979

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
80-139 O WASHINGTON : 1979

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

COMMITTEE ON FINANCE

RUSSELL B. LONG, Louisiana, *Chairman*

HERMAN E. TALMADGE, Georgia
ABRAHAM RIBICOFF, Connecticut
HARRY F. BYRD, Jr., Virginia
GAYLORD NELSON, Wisconsin
MIKE GRAVEL, Alaska
LLOYD BENTSEN, Texas
SPARK M. MATSUNAGA, Hawaii
DANIEL PATRICK MOYNIHAN, New York
MAX BAUCUS, Montana
DAVID L. BOREN, Oklahoma
BILL BRADLEY, New Jersey

ROBERT DOLE, Kansas
BOB PACKWOOD, Oregon
WILLIAM V. ROTH, Jr., Delaware
JOHN C. DANFORTH, Missouri
JOHN H. CHAFEE, Rhode Island
JOHN HEINZ, Pennsylvania
MALCOLM WALLOP, Wyoming
DAVID DURENBERGER, Minnesota

MICHAEL STERN, *Staff Director*
ROBERT E. LIGHTHIZER, *Chief Minority Counsel*

SUBCOMMITTEE ON INTERNATIONAL TRADE

ABRAHAM RIBICOFF, Connecticut, *Chairman*

HERMAN E. TALMADGE, Georgia
HARRY F. BYRD, Jr., Virginia
MIKE GRAVEL, Alaska
DANIEL PATRICK MOYNIHAN, New York
MAX BAUCUS, Montana
BILL BRADLEY, New Jersey

WILLIAM V. ROTH, Jr., Delaware
JOHN C. DANFORTH, Missouri
JOHN HEINZ, Pennsylvania
ROBERT DOLE, Kansas
JOHN H. CHAFEE, Rhode Island

Contents

	Page
Introduction	1
Part I. International Dairy Arrangement	1
Summary of the Arrangement	1
Preamble	1
Objectives of the Arrangement	1
Product Coverage	1
Creation of Administrative Mechanism	2
Obligations of Participants	2
Information	2
Minimum Price Agreements	2
Protocol Regarding Certain Milk Powders	2
Protocol Regarding Milk Fat	3
Protocol Regarding Certain Cheeses	3
Food Aid and Transactions Other Than Normal Commercial Transactions	4
Final Provisions	4
Status of the Arrangement	4
Part II. Effect of Adoption of International Dairy Arrangement	5
Domestic Programs	5
Federal Milk Marketing Orders	5
The Federal Dairy Price-Support Program	5
U.S. Section 22 Import Control	6
The P.L. 480 Program	7
Federal Dairy Product Standards	7
Economic Impact	7
Annex - International Dairy Arrangement	

Report on International Dairy Arrangement

INTRODUCTION

In response to requests of the Finance Committee of the Senate, and the Ways and Means Committee of the House of Representatives, the United States International Trade Commission on September 1, 1978, instituted an investigation, under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 332(b)), for the purpose of submitting a series of reports analyzing the effects on U.S. industrial and agricultural sectors of nontariff measure agreements and tariff reductions negotiated at the Multilateral Trade Negotiations (MTN) in Geneva.

This report analyses a draft international commodity arrangement on certain dairy products. The report is based upon the text of the International Dairy Arrangement (MTN/DP/8) resulting from negotiations concluded in April 1979. 1/ The report is divided into 2 parts which deal with the various aspects of the proposed arrangement and its impact on U.S. programs. Part I of the report provides a brief description of the arrangement. Part II describes existing laws regulating milk and milk products in the United States, and the economic impact of the International Dairy Arrangement. U.S. adherence to the Arrangement would require no changes in U.S. statutes and only minor possible changes in U.S. Department of Agriculture regulations, as described in the section of part II dealing with the economic impact of U.S. adoption of the Arrangement.

1/ Certain bilateral arrangements being implemented with regard to cheese, which are not a part of the International Dairy Arrangement are not discussed in this report. These bilateral arrangements are discussed in the part of the Commission's Industry/Agriculture Sector Analysis dealing with dairy products.

PART I. INTERNATIONAL DAIRY ARRANGEMENT

Summary of the Arrangement

The arrangement, as it results from negotiations concluded in April 1979, contains a preamble, four parts and three major protocols incorporated as annexes to the arrangement, concerning certain milk powders, milk fat and certain cheeses. The arrangement is briefly described in the following paragraphs. 1/

Preamble: The Preamble recognizes the importance of milk and dairy products, the need to avoid surpluses and shortages and the need to maintain prices at an equitable level. The Preamble notes the wide price fluctuations in the dairy products market and the proliferation of export and import measures and recognizes that improved cooperation in the dairy sector contributes to the attainment of the objectives of expansion and liberalization of world trade and the implementation of the objectives of the Tokyo Declaration of 1973.

Objectives of the Arrangement: Article I of Part 1 of the General Provisions of the Arrangement establishes the following objectives:

- to achieve the expansion and even greater liberalization of world trade in dairy products under market conditions as stable as possible, on the basis of material benefit to exporting and importing countries, and

- to further the economic and social development of developing countries.

Product coverage (Article II): The products covered by the arrangement are:

1. Milk and cream, fresh, not concentrated or sweetened

2. Milk and cream, preserved, concentrated or sweetened

3. Butter

4. Cheese and curd

5. Casein, and

6. Any other product the International Dairy Products Council (established under the arrangement) deems necessary for the implementation of the arrangement's objectives and provisions.

1/ The full text of the arrangement appears in the Annex.

Creation of Administrative Mechanism: Part 3 of the arrangement establishes mechanisms under the Gatt to carry out necessary implementation functions. Article VIII establishes an International Dairy Products Council comprised of representatives of all the participants to the arrangement. In addition, special committees are established to carry out each of the major protocols to the arrangement comprised of representatives of the signatories to the relevant protocol. For both the Council and the Committees, decisions must be reached by concensus, so that, in effect, each participant may effectively exercise a veto power.

Article IV establishes that the functions of the Council are to evaluate the situation in an outlook for the world market for dairy products, to review the operation of the arrangement, and to recommend short, medium or long-term measures to improve the overall situation of the world market if it finds that a serious market disequilibrium, or threat of such disequilibrium, which affects or may affect international trade, is developing for one or more dairy products. In considering possible solutions, the council is to take due account of special and more favorable treatment to be provided the developing countries, where feasible and appropriate.

The Committees established under Article VII are to keep under constant review the situation in an evolution of the international market for each respective Protocol.

Obligations of Participants:

Information: The participants would agree, under Article III, to provide relevant trade information regularly and promptly to the Council as required to monitor and assess the overall world market situation for the products covered by the arrangement. Such information would include data on past performance and current outlook regarding production, consumption, prices, inventories, and trade. Information would also be furnished on domestic policies and trade measures imposed by the participants and on international commitments in the dairy sector, as well as any changes in such policies and measures. The information obligation does not, however, require the submission of confidential information which would be contrary to public interest, impede law enforcement, or prejudice legitimate commercial interests.

Minimum Price Agreements: Three major annexes to the arrangement provide for Protocols which would establish minimum prices for certain milk powders, milk fat (including butter) and certain cheese.

Protocol Regarding Certain Milk Powders: This Protocol covers skimmed, whole, and buttermilk powders. Minimum prices of $425, $725, and $425 per metric ton are set for each of the three categories of milk powders, respectively. These prices refer to three "pilot products" with specific milk fat and water content, with specific packaging characteristics, and specific F.O.B. positions. Adjustments can be made in these minimum prices to reflect variances in milk fat content, differences in packaging costs, and modified terms of sale from those specified for the pilot products. Participants undertake

not to export to commercial markets below these minimum prices with adjustments as outlined above. In addition, under article 3 of the Protocol the minimum price levels will be reviewed annually by the Committee for the Protocol and may be modified.

In its review the Committee is required to take account, to the extent relevant and necessary, producer costs, other relevant economic factors of the world market, the need to maintain a long-term minimum return to the most economic producers, the need to maintain stability of supply and ensure acceptable consumer prices and the current market situation. Finally, the Committee shall have regard to the desirability of improving the relationship between the minimum price levels established by the Protocol and the dairy support levels in the major producing participant countries (including the European Community).

Trade in skimmed milk and buttermilk powder below the minimum prices is allowed, provided the milk powder is for use exclusively in animal feed. Other derogations for commercial sales below the minimum prices can be granted by the Committee. Non-commercial sales of milk powder, such as those for food aid and relief purposes, will be exempt from the minimum price provisions.

Protocol Regarding Milk Fat: This Protocol covers anhydrous milk fat and butter. Its provisions parallel almost identically those in the Protocol on milk powders. It includes minimum prices of $1,100 per metric ton for anhydrous milk fat and $925 per metric ton for butter. Under provisions similar to those in the Protocol on milk fat, these prices refer to "pilot products" with specific characteristics and can be adjusted to reflect variances from the characteristics of the "pilot products". Participants undertake not to export to commercial markets below the minimum prices with adjustments as provided for in the Protocol. In addition, the minimum prices will be reviewed annually by the Committee established for the Protocol and may be modified to reflect changes in economic factors including the world butter situation.

The derogation provisions for sales below the minimum prices to commercial and non-commercial markets parallel those in the Protocol on milk fat, with the exception of sales for animal feed. No exemption for such sales is included in this Protocol.

Protocol Regarding Certain Cheeses: This Protocol covers cheeses having a fat content in dry matter, by weight, equal to or more than 45 percent and a dry matter content, by weight, equal to or more than 50 percent. Its provisions parallel those of the other two Protocols.

A minimum price of $800 per metric ton is set for a "pilot product" of cheese with specific packaging characteristics in an F.O.B. or free-at frontier position. Adjustments can be made in this minimum price to reflect variances in the packaging and terms of sale characteristics from those specified for the "pilot product".

Sales below the minimum prices can be made to non-commercial or commercial markets under derogations granted by the Committee for the Protocol. In addition, the minimum prices would not apply to exports, in exceptional circumstances, of small quantities of natural unprocessed cheese which is below normal quality for export due to deterioration or production failure. Exporters must notify the GATT Secretariat of their intentions in advance of making such sales.

Food Aid and Transactions Other Than Normal Commercial Transactions: Article V of the arrangement provides that dairy products shall be furnished to the developing countries by way of food aid and the participants will consult on arrangements for the supply of such aid.

Final Provisions (Part IV): The arrangement provides for entry into force on January 1, 1980, will remain in force for three years, and can be extended for further three year periods unless the Council decides otherwise.

With respect to withdrawal, the arrangement provides for withdrawal upon the expiration of 60 days after notice but provides for withdrawal from the Protocols subject to such conditions as may be agreed upon by the participants.

Status of the Arrangement

Unlike previous drafts, the Arrangement under consideration purports to be complete with no reservations being indicated by footnote or otherwise and no textual matter placed in brackets.

It is noted that in earlier drafts, brackets had been placed around provisions concerning safeguards, subsidies, health and veterinary measures, standards, rules on packaging and labeling and designation of origin. Such provisions do not appear in the final draft and would be covered in other separate non-tariff measure agreements.

PART II: EFFECT OF ADOPTION OF INTERNATIONAL DAIRY ARRANGEMENT

Domestic Programs

The marketing of milk and milk products in the United States is, as in most other countries, highly regulated. Generally U.S. laws affect dairy products in several ways: (1) the marketing of milk is controlled through Federal Milk Marketing Orders and through the Dairy Price Support Program; (2) imports of dairy products are controlled by the imposition of quotas under section 22 of the Agricultural Adjustment Act; (3) surplus agricultural goods (including dairy products) are disposed of by shipment to developing countries through the P.L. 480 program. These programs are discussed in further detail below.

Federal Milk Marketing Orders

Federal Milk Marketing Orders, authorized by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608(c)), establish minimum prices to farmers for milk based on end use. The milk marketing orders program is a classified pricing program which prices milk used for fluid uses distinctly from that used for further processing into dairy products. That milk used for fluid purposes is priced at varying differentials above the price of that milk which is further processed for manufacturing purposes. Grade A milk that is eligible for fluid consumption but not so used, is used to produce manufactured dairy products. All U.S. dairy farmers that produce Grade A milk received at plants regulated under the orders program share in the proceeds from the higher valued fluid sales. The returns from fluid milk sales are pooled with lower returns from milk of Grade A which is processed into dairy products. Grade A farmers then receive a blend price based on the relative quantities used in each class.

The Federal marketing orders programs also provide for: impartial audits of dairy plants to insure fair and accurate producer payments; verification of weights and tests of producer milk; collection and distribution of market data; and, procedures, including the public hearing process, to review conflicting points of view and resolve them in the public interest.

The Federal Dairy Price-Support Program

Federal price supports have been in existence for certain agricultural commodities since 1933. The 1949 Agricultural Act, as amended (7 USC 1446), directs the Secretary of Agriculture to support manufacturing milk prices by governmental purchases of unlimited quantities of dairy products. The U.S. Department of Agriculture (USDA) announces the prices at which it will purchase Cheddar cheese, butter, and nonfat dry milk which meet USDA grading and packaging specifications. The USDA announces the specific price support for manufacturing milk on October 1 of each year. The price

support system is designed to stabilize milk prices by producing a floor under prices, at prices which are expected to support the annual average price which plants pay to farmers for manufacturing milk equal to the announced support price. The USDA's Commodity Credit Corporation offers to to purchase carlots of butter, Cheddar cheese, and nonfat dry milk at the announced prices in carrying out the price-support program. Most of the nonfat dry milk purchased by the USDA has been donated abroad as part of the so-called "P.L. 480" program, whereas most of the butter and cheese purchased has been disposed of through school lunch and welfare programs within the United States. Purchases of dairy products are also allowed under section 709 of the Food and Agricultural Act of 1965, (7 USC 1446(a)) and section 4a of the Agriculture and Consumer Protection Act of 1973.

U.S. Section 22 Import Control

Under this program, which was established by the addition of section 22 to the Agricultural Adjustment Act of 1933 (7 U.S.C. 624), in an amendment to that Act in 1937 (49 Stat. 1152), imports of certain agricultural commodities are restricted by quotas established to prevent interference by imports with the federal price support programs of the USDA discussed above. Presently, nearly all dairy products made from cow's milk and entering international trade are subject to section 22 quotas.

A 1951 amendment to section 22 (64 Stat. 261) specified that no trade agreement or other international agreement before or afterwards entered into by the United States could be applied in a manner inconsistent with the application of section 22 quotas. Since the amendment was after the effective date of the General Agreement on Tariffs and Trade (GATT), the U.S. sought, in 1955, and obtained, a waiver from Articles II and XI of the GATT. Article XI allows agricultural quotas when they are necessary for the enforcement of governmental measures to restrict production of like domestic products. It should be noted, however, that the U.S. price support program does not attempt to restrict production. Annual reviews of the operation of the section 22 waiver are required by terms of the waiver.

In the operation of the section 22 quota system, the Secretary of Agriculture advises the President whenever he has reason to believe that dairy products are being imported into the United States under such conditions and in such quantities as to render or tend to render the federal dairy price support program ineffective or materially interfere with it. If the President agrees that the situation described by the Secretary of Agriculture exists, he then directs the U.S. International Trade Commission to conduct an investigation and hold public hearings, and to forward to him a report of its findings and recommendations. The President may then, based on the Commission's findings, impose such fees or quotas (in addition to the basic duty) as he determines necessary. However, when the Secretary of Agriculture reports to the President that a condition which requires emergency action exists, the President may take action without waiting for the Commission's report. The action continues in effect pending the Commission's report and any subsequent action taken by the President.

The P.L. 480 Program

The P.L. 480 program (7 U.S.C. 1697-1736d) provides for the shipment of surplus U.S. agricultural products (including dairy products) to developing countries under credit sales agreements and as donations for famine relief. These donations are usually viewed as a form of U.S. foreign aid. The Commodity Creidt Corporation uses the products it has purchased under the federal dairy support program for the program.

Federal Dairy Product Standards

Principal inspection of U.S. dairy manufacturing plants and the grading of manufactured products is performed by the USDA. If products are to carry USDA grades, plant inspections are required. Most states have requirements for dairy farmers, and all states have basic food laws covering food in intrastate commerce. In interstate commerce, all manufactured dairy products are subject to the Pure Food and Drug Act (21 U.S.C. 301), under which plant inspection, in the case of questionable wholesomeness, is administered by the Food and Drug Administration (FDA). Imported dairy products must meet FDA requirements upon entry into the United States (21 U.S.C. 143).

Economic Impact

In terms of milk equivalent, U.S. imports of dairy products have amounted to about 1.7 percent of consumption in recent years. Most of the imports have consisted of cheese. Exports, mostly nonfat dry milk, have absorbed some 0.4 percent of production. U.S. imports of dairy products are limited by quotas imposed under section 22 of the Agricultural Adjustment Act, as amended. Because of price and size, the United States market is the preferred market for U.S.-produced dairy products. Also, the small quantities of U.S.-produced dairy products that are exported face subsidized competition from many foreign countries. (U.S. imports of cheese from most foreign countries also benefit from export subsidies.) Largely because of the aforementioned conditions, U.S. international trade in dairy products has been small.

The only economic provisions of significance appearing in the arrangement involve the establishment of minimum prices for certain milk powders, milk fat, and certain cheeses. Inasmuch as the minimum prices are about 60 percent to 75 percent below the U.S. support prices for the respective products, it does not appear that the minimum price level would have any foreseeable effect on U.S. commercial exports or imports of dairy products, or on those domestic price support programs. The minimal exports under the P.L. 480 Program of the U.S. Department of Agriculture (USDA) mostly involve food aid and, therefore, would not be affected by the arrangement. However, adherence to the arrangement might require some changes in the USDA regulations concerning the small quantities of concessional sales that are infrequently made under the program at prices that might be below the minimum prices.

Annex

INTERNATIONAL DAIRY ARRANGEMENT

TABLE OF CONTENTS

		Page
Preamble		3
Part One - General provisions		4
Article I	- Objectives	4
Article II	- Product coverage	4
Article III	- Information	4
Article IV	- Functions of the International Dairy Products Council and co-operation between the participants to this Arrangement	5
Article V	- Food aid and transactions other than normal commercial transactions	6
Part Two - Specific provisions		8
Article VI	- Protocols	8
Part Three		9
Article VII	- Administration of the Arrangement	9
1.	International Dairy Products Council	9
2.	Committees	10
Part Four		12
Article VIII	- Final provisions	12
1.	Acceptance	12
2.	Provisional application	13
3.	Entry into force	13
4.	Validity	13
5.	Amendment	13
6.	Relationship between the Arrangement and the Annexes	13
7.	Relationship between the Arrangement and the General Agreement on Tariffs and Trade	14
8.	Withdrawal	14
Annex I	- Protocol Regarding Certain Milk Powders	15
Annex Ia	- List of reference points	24/25
Annex Ib	- Schedule of price differentials according to milk fat content	26/27
Annex Ic	- Register of processes and control measures	28/29
Annex II	- Protocol Regarding Milk Fat	64/65
Annex IIa	- List of reference points	72/73
Annex IIb	- Schedule of price differentials according to milk fat content	74/75
Annex III	- Protocol Regarding Certain Cheeses	76/77
Annex IIIa	- List of reference points	83

PREAMBLE

Recognizing the importance of milk and dairy products to the economy of many countries[1] in terms of production, trade and consumption;

Recognizing the need, in the mutual interests of producers and consumers, and of exporters and importers, to avoid surpluses and shortages, and to maintain prices at an equitable level;

Noting the diversity and interdependence of dairy products;

Noting the situation in the dairy products market, which is characterized by very wide fluctuations and the proliferation of export and import measures;

Considering that improved co-operation in the dairy products sector contributes to the attainment of the objectives of expansion and liberalization of world trade, and the implementation of the principles and objectives concerning developing countries agreed upon in the Tokyo Declaration of Ministers dated 14 September 1973 concerning the Multilateral Trade Negotiations;

Determined to respect the principles and objectives of the General Agreement on Tariffs and Trade[2] and, in carrying out the aims of this Agreement, effectively to implement the principles and objectives agreed upon in the said Tokyo Declaration;

The participants to the present Arrangement have, through their representatives, agreed as follows:

---

[1] In this Arrangement and in the Protocols annexed thereto, the term 'country' is deemed to include the European Economic Community.

[2] This preambular provision applies only among participants that are contracting parties to the General Agreement on Tariffs and Trade.

50-139 O - 79 - 2

PART ONE

GENERAL PROVISIONS

Article I - Objectives

The objectives of this Arrangement shall be, in accordance with the principles and objectives agreed upon in the Tokyo Declaration of Ministers dated 14 September 1973 concerning the Multilateral Trade Negotiations,

- to achieve the expansion and ever greater liberalization of world trade in dairy products under market conditions as stable as possible, on the basis of mutual benefit to exporting and importing countries;

- to further the economic and social development of developing countries.

Article II - Product Coverage

1. This Arrangement applies to the dairy products sector. For the purpose of this Arrangement, the term "dairy products" is deemed to include the following products, as defined in the Customs Co-operation Council Nomenclature:

		CCCN
(a)	Milk and cream, fresh, not concentrated or sweetened	04.01
(b)	Milk and cream, preserved, concentrated or sweetened	04.02
(c)	Butter	04.03
(d)	Cheese and curd	04.04
(e)	Casein	ex 35.01

2. The International Dairy Products Council established in terms of Article VII:1(a) of this Arrangement (hereinafter referred to as the Council) may decide that the Arrangement is to apply to other products in which dairy products referred to in paragraph 1 of this Article have been incorporated if it deems their inclusion necessary for the implementation of the objectives and provisions of this Arrangement.

Article III - Information

1. The participants agree to provide regularly and promptly to the Council the information required to permit it to monitor and assess the overall situation of the world market for dairy products and the world market situation for each individual dairy product.

2. Participating developing countries shall furnish the information available to them. In order that these participants may improve their data collection mechanisms, developed participants, and any developing participants able to do so, shall consider sympathetically any request to them for technical assistance.

3. The information that the participants undertake to provide pursuant to paragraph 1 of this Article, according to the modalities that the Council shall establish, shall include data on past performance, current situation and outlook regarding production, consumption, prices, stocks and trade, including transactions other than normal commercial transactions, in respect of the products referred to in Article II of this Arrangement, and any other information deemed necessary by the Council. Participants shall also provide information on their domestic policies and trade measures, and on their bilateral, plurilateral or multilateral commitments, in the dairy sector and shall make known, as early as possible, any changes in such policies and measures that are likely to affect international trade in dairy products. The provisions of this paragraph shall not require any participant to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Note: It is understood that under the provisions of this Article, the Council instructs the secretariat to draw up, and keep up to date, an inventory of all measures affecting trade in dairy products, including commitments resulting from bilateral, plurilateral and multilateral negotiations.

Article IV - Functions of the International Dairy Products Council and Co-operation between the Participants to this Arrangement

1. The Council shall meet in order to:

(a) make an evaluation of the situation in and outlook for the world market for dairy products, on the basis of a status report prepared by the secretariat with the documentation furnished by participants in accordance with Article III of this Arrangement, information arising from the operation of the Protocols covered by Article VI of this Arrangement, and any other information available to it;

(b) review the functioning of this Arrangement.

2. If after an evaluation of the world market situation and outlook, referred to in paragraph 1(a) of this Article, the Council finds that a serious market disequilibrium, or threat of such a disequilibrium, which affects or may affect international trade, is developing for dairy products in general or for one or more products, the Council will proceed to identify, taking particular account of the situation of developing countries, possible solutions for consideration by governments.

3. Depending on whether the Council considers that the situation defined in paragraph 2 of this Article is temporary or more durable, the measures referred to in paragraph 2 of this Article could include short-, medium- or long-term measures to contribute to improve the overall situation of the world market.

4. When considering measures that could be taken pursuant to paragraphs 2 and 3 of this Article, due account shall be taken of the special and more favourable treatment, to be provided for developing countries, where this is feasible and appropriate.

5. Any participant may raise before the Council any matter[1] affecting this Arrangement. Each participant shall promptly afford adequate opportunity for consultation regarding such matter[1] affecting this Arrangement.

6. If the matter affects the application of the specific provisions of the Protocols annexed to this Arrangement, any participant which considers that its trade interests are being seriously threatened and which is unable to reach a mutually satisfactory solution with the other participant or participants concerned, may request the Chairman of the Committee for the relevant Protocol established under Article VII:2(a) of this Arrangement, to convene a special meeting of the Committee on an urgent basis so as to determine as rapidly as possible, and within four working days if requested, any measures which may be required to meet the situation. If a satisfactory solution cannot be reached, the Council shall, at the request of the Chairman of the Committee for the relevant Protocol, meet within a period of not more than fifteen days to consider the matter with a view to facilitating a satisfactory solution.

Article V - Food Aid and Transactions other than Normal Commercial Transactions

1. The participants agree:

(a) In co-operation with FAO and other interested organizations, to foster recognition of the value of dairy products in improving nutritional levels and of ways and means through which they may be made available for the benefit of developing countries.

(b) In accordance with the objectives of this Arrangement, to furnish, within the limits of their possibilities, dairy products to developing countries by way of food aid. Participants should notify the Council in advance each year, as far as practicable, of the scale, quantities and destinations of their proposed contributions of such food aid. Participants

---

[1] It is confirmed that the term 'matter' in this paragraph includes any matter which is covered by multilateral agreements negotiated and agreed upon within the framework of the Multilateral Trade Negotiations, in particular those bearing on export and import measures. It is further confirmed that the provisions of Article IV:5 and this footnote are without prejudice to the rights and obligations of the parties to such agreements.

should also give, if possible, prior notification to the Council of any proposed amendments to the notified programme. It would be understood that contributions could be made bilaterally or through joint projects or through multilateral programmes, particularly the World Food Programme.

(c) Recognizing the desirability of harmonising their efforts in this field, as well as the need to avoid harmful interference with normal patterns of production, consumption and international trade, to exchange views in the Council on their arrangements for the supply and requirements of dairy products as food aid or on concessional terms.

2. Donated exports to developing countries, exports destined for relief purposes or welfare purposes in developing countries, and other transactions which are not normal commercial transactions shall be effected in accordance with the FAO "Principles of Surplus Disposal and Consultative Obligations". Consequently, the Council shall co-operate closely with the Consultative Sub-Committee on Surplus Disposal.

3. The Council shall, in accordance with conditions and modalities that it will establish, upon request, discuss, and consult on, all transactions other than normal commercial transactions and other than those covered by the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

PART TWO

SPECIFIC PROVISIONS

Article VI - Protocols

1. Without prejudice to the provisions of Articles I to V of this Arrangement, the products listed below shall be subject to the provisions of the Protocols annexed to this Arrangement:

Annex I - Protocol Regarding Certain Milk Powders
Milk powder and cream powder, excluding whey powder

Annex II - Protocol Regarding Milk Fat
Milk fat

Annex III - Protocol Regarding Certain Cheeses
Certain cheeses

PART THREE

Article VII - Administration of the Arrangement

1. International Dairy Products Council

(a) An International Dairy Products Council shall be established within the framework of the General Agreement on Tariffs and Trade. The Council shall comprise representatives of all participants to the Arrangement and shall carry out all the functions which are necessary to implement the provisions of the Arrangement. The Council shall be serviced by the GATT secretariat. The Council shall establish its own rules of procedure.

(b) Regular and special meetings

The Council shall normally meet at least twice each year. However, the Chairman may call a special meeting of the Council either on his own initiative, at the request of the Committees established under paragraph 2(a) of this Article, or at the request of a participant to this Arrangement.

(c) Decisions

The Council shall reach its decisions by consensus. The Council shall be deemed to have decided on a matter submitted for its consideration if no member of the Council formally objects to the acceptance of a proposal.

(d) Co-operation with other organizations

The Council shall make whatever arrangements are appropriate for consultation or co-operation with intergovernmental and non-governmental organizations.

(e) Admission of observers

(i) The Council may invite any non-participating country to be represented at any meeting as an observer.

(ii) The Council may also invite any of the organizations referred to in paragraph 1(d) of this Article to attend any meeting as an observer.

2. Committees

(a) The Council shall establish a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol Regarding Certain Milk Powders, a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol Regarding Milk Fat and a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol Regarding Certain Cheeses. Each of these Committees shall comprise representatives of all participants to the relevant Protocol. The Committees shall be serviced by the GATT secretariat. They shall report to the Council on the exercise of their functions.

(b) Examination of the market situation

The Council shall make the necessary arrangements, determining the modalities for the information to be furnished under Article III of this Arrangement, so that

- the Committee of the Protocol Regarding Certain Milk Powders may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol;

- the Committee of the Protocol Regarding Milk Fat may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol;

- the Committee of the Protocol Regarding Certain Cheeses may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol.

(c) Regular and special meetings

Each Committee shall normally meet at least once each quarter. However, the Chairman of each Committee may call a special meeting of the Committee on his own initiative or at the request of any participant.

(d) Decisions

Each Committee shall reach its decisions by consensus. A Committee shall be deemed to have decided on a matter submitted for its consideration if no member of the Committee formally objects to the acceptance of a proposal.

PART FOUR

Article VIII - Final Provisions

1. Acceptance[1]

(a) This Arrangement is open for acceptance, by signature or otherwise, by governments members of the United Nations, or of one of its specialized agencies and by the European Economic Community.

(b) Any government[2] accepting this Arrangement may at the time of acceptance make a reservation with regard to its acceptance of any of the Protocols annexed to the Arrangement. This reservation is subject to the approval of the participants.

(c) This Arrangement shall be deposited with the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof to each participant. The texts of this Arrangement in the English, French and Spanish languages shall all be equally authentic.

(d) Acceptance of this Arrangement shall carry denunciation of the Arrangement Concerning Certain Dairy Products, done at Geneva on 12 January 1970 which entered into force on 14 May 1970, for participants having accepted that Arrangement and denunciation of the Protocol Relating to Milk Fat, done at Geneva on 2 April 1973 which entered into force on 14 May 1973, for participants having accepted that Protocol. Such denunciation shall take effect on the date of entry into force of this Arrangement.

---

[1] The terms "acceptance" or "accepted" as used in this Article include the completion of any domestic procedures necessary to implement the provisions of this Arrangement.

[2] For the purpose of this Arrangement, the term "government" is deemed to include the competent authorities of the European Economic Community.

2. Provisional application

Any government may deposit with the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade a declaration of provisional application of this Arrangement. Any government depositing such a declaration shall provisionally apply this Arrangement and be provisionally regarded as participating in this Arrangement.

3. Entry into force

(a) This Arrangement shall enter into force, for those participants having accepted it, on 1 January 1980 . For participants accepting this Arrangement after that date, it shall be effective from the date of their acceptance.

(b) The validity of contracts entered into before the date of entry into force of this Arrangement is not affected by this Arrangement.

4. Validity

This Arrangement shall remain in force for three years. The duration of this Arrangement shall be extended for further periods of three years at a time, unless the Council, at least eighty days prior to each date of expiry, decides otherwise.

5. Amendment

Except where provision for modification is made elsewhere in this Arrangement the Council may recommend an amendment to the provisions of this Arrangement. The proposed amendment shall enter into force upon acceptance by the governments of all participants.

6. Relationship between the Arrangement and the Annexes

The following shall be deemed to be an integral part of this Arrangement, subject to the provisions of paragraph 1(b) of this Article:

- the Protocols mentioned in Article VI of this Arrangement and contained in its Annexes I, II and III;

- the lists of reference points mentioned in Article 2:1 of the Protocol Regarding Certain Milk Powders, Article 2:1 of the Protocol Regarding Milk Fat, and Article 2:1 of the Protocol Regarding Certain Cheeses, contained in Annexes Ia, IIa and IIIa respectively;

- the schedules of price differentials according to milk fat content mentioned in Article 3:4, note 2 of the Protocol Regarding Certain Milk Powders and Article 3:4, note 1 of the Protocol Regarding Milk Fat, contained in Annexes Ib and IIb respectively;

- the register of processes and control measures referred to in Article 3:5 of the Protocol Regarding Certain Milk Powders, contained in Annex Ic.

7. Relationship between the Arrangement and the General Agreement on Tariffs and Trade

Nothing in this Arrangement shall affect the rights and obligations of participants under the General Agreement on Tariffs and Trade.[1]

8. Withdrawal

(a) Any participant may withdraw from this Arrangement. Such withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade.

(b) Subject to such conditions as may be agreed upon by the participants, any participant may withdraw from any of the Protocols annexed to this Arrangement. Such withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade.

[1] This provision applies only among participants that are contracting parties to the General Agreement on Tariffs and Trade.

ANNEX I

Protocol Regarding Certain Milk Powders

15

PROTOCOL REGARDING CERTAIN MILK POWDERS

PART ONE

Article 1 - Product Coverage

1. This Protocol applies to milk powder and cream powder falling under CCCN heading No. 04.02, excluding whey powder.

PART TWO

Article 2 - Pilot Products

1. For the purpose of this Protocol, minimum export prices shall be established for the pilot products of the following descriptions:

(a)	Designation:	Skimmed milk powder
	Milk fat content:	Less than or equal to 1.5 per cent by weight
	Water content:	Less than or equal to 5 per cent by weight
(b)	Designation:	Whole milk powder
	Milk fat content:	26 per cent by weight
	Water content:	Less than or equal to 5 per cent by weight
(c)	Designation:	Buttermilk powder[1]
	Milk fat content:	Less than or equal to 11 per cent by weight
	Water content:	Less than or equal to 5 per cent by weight
Packaging:		In packages normally used in the trade, of a net content by weight of not less than 25 kgs., or 50 lbs., as appropriate
Terms of sale:		F.o.b. ocean-going vessels from the exporting country or free-at-frontier exporting country.
		By derogation from this provision, reference points are designated for the countries listed in Annex Ia. The Committee established in pursuance of Article VII:2(a) of the Arrangement (hereinafter referred to as the Committee) may amend the contents of that Annex.
		Prompt payment against documents.

[1] Derived from the manufacture of butter and anhydrous milk fat.

PART TWO (cont'd)

Article 3 - Minimum Prices

Level and observance of minimum prices

1. Participants undertake to take the steps necessary to ensure that the export prices of the products defined in Article 2 of this Protocol shall not be less than the minimum prices applicable under the present Protocol. If the products are exported in the form of goods in which they have been incorporated, participants shall take the steps necessary to avoid the circumvention of the price provisions of this Protocol.

2. (a) The minimum price levels set out in the present Article take account, in particular, of the current market situation, dairy prices in producing participants, the need to ensure an appropriate relationship between the minimum prices established in the Protocols to the present Arrangement, the need to ensure equitable prices to consumers, and the desirability of maintaining a minimum return to the most efficient producers in order to ensure stability of supply over the longer term.

(b) The minimum prices provided for in paragraph 1 of the present Article applicable at the date of entry into force of this Protocol are fixed at:

(i) US$425 per metric ton for the skimmed milk powder defined in Article 2 of this Protocol.

(ii) US$725 per metric ton for the whole milk powder defined in Article 2 of this Protocol.

(iii) US$425 per metric ton for the buttermilk powder defined in Article 2 of this Protocol.

3. (a) The levels of the minimum prices specified in the present Article can be modified by the Committee, taking into account, on the one hand, the results of the operation of the Protocol and, on the other hand, the evolution of the situation of the international market.

(b) The levels of the minimum prices specified in the present Article shall be subject to review at least once a year by the Committee. The Committee shall meet in September of each year for this purpose. In undertaking this review the Committee shall take account in particular, to the extent relevant and necessary, of costs faced by producers, other relevant economic factors of the world market, the need to maintain a long-term minimum return to the most economic producers, the need to maintain

PART TWO (cont'd)

Article 3 (cont'd)

stability of supply and to ensure acceptable prices to consumers, and the current market situation and shall have regard to the desirability of improving the relationship between the levels of the minimum prices set out in paragraph 2(b) of the present Article and the dairy support levels in the major producing participants.

Adjustment of minimum prices

4. If the products actually exported differ from the pilot products in respect of the fat content, packaging or terms of sale, the minimum prices shall be adjusted so as to protect the minimum prices established in this Protocol for the products specified in Article 2 of this Protocol according to the following provisions:

Milk fat content: If the milk fat content of the milk powders described in Article 1:1 of the present Protocol excluding buttermilk powder[1] differs from the milk fat content of the pilot products as defined in Article 2:1(a) and (b) of the present Protocol, then for each full percentage point of milk fat as from 2 per cent, there shall be an upward adjustment of the minimum price in proportion to the difference between the minimum prices established for the pilot products defined in Article 2:1(a) and (b) of the present Protocol.[2]

Packaging: If the products are offered otherwise than in packages normally used in the trade, of a net content by weight of not less than 25 kgs. or 50 lbs., as appropriate, the minimum prices shall be adjusted so as to reflect the difference in the cost of packaging from the type of package specified above.

---

[1] As defined in Article 2:1(c) of this Protocol.

[2] See Annex I(b), "Schedule of price differentials according to milk fat content".

50-139 O - 79 - 3

PART TWO (cont'd)

Article 3 (cont'd)

Terms of sale: If sold on terms other than f.o.b. from the exporting country or free-at-frontier exporting country[1], the minimum prices shall be calculated on the basis of the minimum f.o.b. prices specified in paragraph 2(b) of this Article, plus the real and justified costs of the services provided; if the terms of the sale include credit, this shall be charged for at the prevailing commercial rates in the country concerned.

Exports and imports of skimmed milk powder and buttermilk powder for purposes of animal feed

5. By derogation from the provisions of paragraphs 1 to 4 of this Article participants may, under the conditions defined below, export or import, as the case may be, skimmed milk powder and buttermilk powder for purposes of animal feed at prices below the minimum prices provided for in this Protocol for these products. Participants may make use of this possibility only to the extent that they subject the products exported or imported to the processes and control measures which will be applied in the country of export or destination so as to ensure that the skimmed milk powder and buttermilk powder thus exported or imported are used exclusively for animal feed. These processes and control measures shall have been approved by the Committee and recorded in a register established by it.[2] Participants wishing to make use of the provisions of this paragraph shall give advance notification of their intention to do so to the Committee which shall meet.

---

[1] See Article 2:1.

[2] See Annex I(c), "Register of Processes and Control Measures". It is understood that exporters would be permitted to ship skimmed milk powder and buttermilk powder for animal feed purposes in an unaltered state to importers which have had their processes and control measures inserted in the Register. In this case, exporters would inform the Committee of their intention to ship unaltered skimmed milk powder and/or buttermilk powder for animal feed purposes to those importers which have their processes and control measures registered.

PART TWO (cont'd)

Article 3 (cont'd)

at the request of a participant, to examine the market situation. The participants shall furnish the necessary information concerning their transactions in respect of skimmed milk powder and buttermilk powder for purposes of animal feed, so that the Committee may follow developments in this sector and periodically make forecasts concerning the evolution of this trade.

Special conditions of sales

6. Participants undertake within the limit of their institutional possibilities to ensure that practices such as those referred to in Article 4:1 of this Protocol do not have the effect of directly or indirectly bringing the export prices of the products subject to the minimum price provisions below the agreed minimum prices.

Field of application

7. For each participant, this Protocol is applicable to exports of the products specified in Article 1 of this Protocol manufactured or repacked inside its own customs territory.

Transactions other than normal commercial transactions

8. The provisions of paragraphs 1 to 7 of this Article shall not be regarded as applying to donated exports to developing countries or to exports destined for relief purposes or food-related development purposes or welfare purposes in developing countries.

Article 4 - Provision of Information

1. In cases where prices in international trade of the products covered by Article 1 of this Protocol are approaching the minimum prices mentioned in Article 3:2(b) of this Protocol, and without prejudice to the provisions of Article III of the Arrangement, participants shall notify to the Committee all the relevant elements for evaluating their own market situation and,

PART TWO (cont'd)

Article 4 (cont'd)

in particular, credit or loan practices, twinning with other products, barter or three-sided transactions, refunds or rebates, exclusivity contracts, packaging costs and details of the packaging, so that the Committee can make a verification.

Article 5 - Obligations of Exporting Participants

1. Exporting participants agree to use their best endeavours, in accordance with their institutional possibilities, to supply on a priority basis the normal commercial requirements of developing importing participants, especially those used for food-related development purposes and welfare purposes.

Article 6 - Co-operation of Importing Participants

1. Participants which import products covered by Article 1 of this Protocol undertake in particular:

(a) to co-operate in implementing the minimum prices objective of this Protocol and to ensure, as far as possible, that the products covered by Article 1 of this Protocol are not imported at less than the appropriate customs valuation equivalent to the prescribed minimum prices;

(b) without prejudice to the provisions of Article III of the Arrangement and Article 4 of this Protocol, to supply information concerning imports of products covered by Article 1 of this Protocol from non-participants;

(c) to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum prices threaten the operation of this Protocol.

2. Paragraph 1 of this Article shall not apply to imports of skimmed milk powder and buttermilk powder for purposes of animal feed, provided that such imports are subject to the measures and procedures provided for in Article 3:5 of this Protocol.

PART THREE

Article 7 - Derogations

1. Upon request by a participant, the Committee shall have the authority to grant derogations from the provisions of Article 3, paragraphs 1 to 5 of this Protocol in order to remedy difficulties which observance of minimum prices could cause certain participants. The Committee shall pronounce on such a request within three months from the date of the request.

Article 8 - Emergency Action

1. Any participant, which considers that its interests are seriously endangered by a country not bound by this Protocol, can request the Chairman of the Committee to convene an emergency meeting of the Committee within two working days to determine and decide whether measures would be required to meet the situation. If such a meeting cannot be arranged within the two working days and the commercial interests of the participant concerned are likely to be materially prejudiced, that participant may take unilateral action to safeguard its position, on the condition that any other participants likely to be affected are immediately notified. The Chairman of the Committee shall also be formally advised immediately of the full circumstances of the case and shall be requested to call a special meeting of the Committee at the earliest possible moment.

ANNEX I a

Protocol Regarding Certain Milk Powders

List of Reference Points

In accordance with the provisions of Article 2:1 of this Protocol, the following reference points are designated for the countries listed below:

Austria. Antwerp, Hamburg, Rotterdam

Finland: Antwerp, Hamburg, Rotterdam

Norway: Antwerp, Hamburg, Rotterdam

Sweden: Antwerp, Hamburg, Rotterdam

Poland: Antwerp, Hamburg, Rotterdam

ANNEX I b

Protocol Regarding Certain Milk Powders

Schedule of Price Differentials According to Milk Fat Content

Milk fat content %					Minimum price US$/metric ton
Less than 2					425
Equal to or more than 2, less than 3					437
"	"	3	"	4	449
"	"	4	"	5	461
"	"	5	"	6	473
"	"	6	"	7	485
"	"	7	"	8	497
"	"	8	"	9	509
"	"	9	"	10	521
"	"	10	"	11	533
"	"	11	"	12	545
"	"	12	"	13	557
"	"	13	"	14	569
"	"	14	"	15	581
"	"	15	"	16	593
"	"	16	"	17	605
"	"	17	"	18	617
"	"	18	"	19	629
"	"	19	"	20	641
"	"	20	"	21	653
"	"	21	"	22	665
"	"	22	"	23	677
"	"	23	"	24	689
"	"	24	"	25	701
"	"	25	"	26	713
"	"	26	"	27	725
"	"	27	"	28	737
"	"	..	"	..	..

ANNEX I c

Protocol Regarding Certain Milk Powders

Register of Processes and Control Measures

In accordance with the provisions of Article 3:5 of this Protocol, the following processes and control measures are approved for the participants listed below:

	Page
Australia	30/31
Austria	34/35
Canada	38/39
European Economic Community	42/43
Finland	45
Japan	48/49
New Zealand	50/51
Norway	53
Spain	56/57
Switzerland	61

AUSTRALIA

Skimmed milk powder[1] may be exported from the customs territory of Australia to third countries:

A. Either, after the competent Australian authorities have ensured that the skimmed milk powder has been denatured according to any one of the following processes:

1. By the addition, per 100 kgs. of skimmed milk powder, of 2.5 kgs. of lucerne meal or grass meal, containing not less than 70 per cent of particles not exceeding 300 microns, uniformly distributed throughout the mixture.

2. By the addition of finely milled alfalfa flour (98 per cent to pass mesh 60, equivalent to 50 United States standard), in a proportion of 2 to 4 parts per 100 and of phenolphthalein in a proportion of 1:20,000 (1 gr. per 20 kgs. of milk).

3. By the addition, in the proportion of 20 per 100 by weight of the product treated (80 per 100 by weight of milk powder and 20 per cent of the denaturing agent) of a mixture composed of 80 per cent bran and 20 per cent potato flour, rice flour or other common starch (at least 10 per cent to pass mesh 60, equivalent to 50 United States standard), with phenolphthalein in the proportion of 1:20,000.

4. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 35 kgs. of undeodorised fish meal and 200 grs. of carbonate of iron or sulphate of iron and

   (a) 1.5 kgs. of activated carbon;

   (b) or 100 grs. of mixture composed of four fifths of yellow tartrazine (E 102) and one fifth of patent blue V (E 131);

---

[1] These processes and control measures apply to buttermilk powder as well as to skimmed milk powder intended for animal feed.

(c) or 20 grs. of cochineal red A (E 124);

(d) or 40 grs. of patent blue V (E 131).

5. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 40 kgs. of undeodorized fish meal and 300 grs. of carbonate of iron or sulphate of iron.

6. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 4.5 kgs. of fish oil or fish liver oil and 300 grs. of carbonate of iron or sulphate of iron.

The fish meal noted in processes 4 and 5 must contain at least 25 per cent of particles with dimension below 80 microns. In processes 4, 5 and 6, the iron salts have to contain at least 30 per cent of particles of a size lower than 80 microns. The colouring matters have to contain the following percentages of the pure product:

- at least 30 per cent for cochineal red A (E 124);

- at least 25 per cent for the other colouring matters: colouring matters have to contain at least 30 per cent of particles having a size lower than 80 microns; the acidity of fish oil calculated in oleic acid has to be equal to at least 10 per cent.

The products added to skimmed milk powder, according to processes 4, 5 and 6 have to be uniformly distributed as regards in particular the activated carbon, the iron salts and the colouring matters; two samples of 50 grs. each, taken at random in a lot of 25 kgs., must give by chemical determination the same results within the limits of errors admitted by the analysis method used.

7. Dye to be added to liquid skimmed milk before drying at the rate of 2 to 3 ozs. per 100 gallons of milk (12.5 to 18.7 grs. per hectolitre). The dye to be one of the following colours:

	English Standard Index Nos.
Lissamine green	44.090, 42.095, 44.025
Tartrazine	19.140
Combined with	
(a) Brilliant blue F.C.F.	42.090
or	
(b) Green B.S.	44.090
Cochineal	77.289
Brilliant blue/F.C.F.	42.090

8. By the addition of meat and bone meal in a proportion of 2 to 4 parts of skimmed milk powder.

The bags or containers in which the denatured powder is packed will be labelled "For Animal Feed Only".

B. Or, after its incorporation in compound or mixed stockfoods of a kind falling within item 23.07 of the Customs Co-operation Council Nomenclature.

AUSTRIA

Skimmed milk powder[1] may be exported from the customs territory of Austria to third countries:

A. Either, after the competent Austrian authorities have ensured that the skimmed milk powder has been denatured according to any one of the following processes:

1. By the addition, per 100 kgs. of skimmed milk powder, of 2.5 kgs. of lucerne meal or grass meal, containing not less than 70 per cent of particles not exceeding 300 microns, uniformly distributed throughout the mixture.

2. By the addition of finely milled alfalfa flour (98 per cent to pass mesh 60, equivalent to 50 United States standard), in a proportion of 2 to 4 parts per 100 and of phenolphtalein in a proportion of 1:20,000 (1 gr. per 20 kgs. of milk).

3. By the addition, in the proportion of 20 per 100 by weight of the product treated (80 per 100 by weight of milk powder and 20 per cent of the denaturing agent) of a mixture composed of 80 per cent bran and 20 per cent potato flour, rice flour or other common starch (at least 10 per cent to pass mesh 60, equivalent to 50 United States standard), with phenolphthalein in the proportion of 1:20,000.

4. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 35 kgs. of undeodorized fish meal and 200 grs. of carbonate of iron or sulphate of iron and:

   (a) 1.5 kgs. of activated carbon;

   (b) or 100 grs. of mixture composed of four fifths of yellow tartrazine (E 102) and one fifth of patent blue V (E 131);

---

[1] These processes and control measures apply to buttermilk powder as well as to skimmed milk powder intended for animal feed.

(c) or 20 grs. of cochineal red A (E 124);

(d) or 40 grs. of patent blue V (E 131).

5. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 40 kgs. of undeodorized fish meal and 300 grs. of carbonate of iron or sulphate of iron.

6. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 4.5 kgs. of fish oil or fish liver oil and 300 grs. of carbonate of iron or sulphate of iron.

The fish meal noted in processes 4 and 5 must contain at least 25 per cent of particles with dimension below eighty microns. In processes 4, 5 and 6, the iron salts have to contain at least 30 per cent of particles of a size lower than eighty microns. The colouring matters have to contain the following percentages of the pure product:

- at least 30 per cent for cochineal red A (E 124);

- at least 25 per cent for the other colouring matters: colouring matters have to contain at least 30 per cent of particles having a size lower than eighty microns; the acidity of fish oil calculated in oleic acid has to be equal to at least 10 per cent.

The products added to skimmed milk powder, according to processes 4, 5 and 6 have to be uniformly distributed as regards in particular the activated carbon, the iron salts and the colouring matters; two samples of 50 grs. each, taken at random in a lot of 25 kgs., must give by chemical determination the same results within the limits of errors admitted by the analysis method used.

7. Dye to be added to liquid skimmed milk before drying at the rate of 2 to 3 ozs. per 100 gls. of milk (12.5 to 18.7 grs. per hectolitre). The dye to be one of the following colours:

	English Standard Index Nos.
Lissamine green	44.090, 42.095, 44.025
Tartrazine	19.140
Combined with:	
(a) Brilliant blue F.C.F.	42.090
or	
(b) Green B.S.	44.090
Cochineal	77.289
Brilliant blue/F.C.F.	42.090

8. By the addition of meat and bone meal in a proportion of 2 to 4 parts of skimmed milk powder.

The bags or containers in which the denatured powder is packed will be labelled "For Animal Feed Only".

B. Or, after its incorporation in compound or mixed stockfoods of a kind falling within item 23 07 of the Customs Co-operation Council Nomenclature.

CANADA

1. By the addition of finely milled alfalfa flour (98 per cent to pass mesh 60, equivalent to 50 United States standard), in a proportion of 2 to 4 parts per 100 and of phenolphthalein in a proportion of 1:20,000 (1 gramme per 20 kgs. of milk).

2. By the addition, in the proportion of 20 per 100 by weight of the product treated (80 per 100 by weight of milk powder and 20 per 100 of the denaturing agent) of a mixture composed of 80 per cent bran and 20 per cent potato flour, rice flour or other common starch (at least 10 per cent to pass mesh 60, equivalent to 50 United States standard) with phenolphthalein in the proportion of 1:20,000.

3. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 35 kgs. of undeodorized fish meal and 200 grammes of carbonate of iron or sulphate of iron and

(a) 1.5 kgs. of activated carbon;

(b) or 100 grammes of mixture composed of four fifths of yellow tartrazine (E 102) and one fifth of patent blue V (E 131);

(c) or 20 grammes of cochineal red A (E 124);

(d) or 40 grammes of patent blue V (E 131).

4. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 40 kgs. of undeodorized fish meal and 300 grammes of carbonate of iron or sulphate of iron.

5. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 4.5 kgs. of fish oil or fish liver oil and 300 grammes of carbonate of iron or sulphate of iron.

The fish meal noted in processes 3 and 4 must contain at least 25 per cent of particles with dimension below 80 microns. In processes 3, 4 and 5, the iron salts have to contain at least 30 per cent of particles of a size lower than 80 microns. The colouring matters have to contain the following percentages of the pure product:

- at least 30 per cent for cochineal red A (E 124);

- at least 25 per cent for the other colouring matters: colouring matters have to contain at least 30 per cent of particles having a size lower than 80 microns; the acidity of fish oil calculated in oleic acid has to be equal to at least 10 per cent.

The products added to skimmed milk powder, according to processes 3, 4 and 5, have to be uniformly distributed as regards in particular the activated carbon, the iron salts and the colouring matters; two samples of 50 grs. each, taken at random in a lot of 25 kgs., must give by chemical determination the same results within the limits of errors admitted by the analysis method used.

6. By the addition of dye to liquid skimmed milk before drying at the rate of 2 to 3 ounces per 100 gallons of milk (12.5 to 18.7 grs. per hectolitre).

Dye to be one of the following colours:

	English Standard Index Nos.
Lissamine green	44.090, 42.095, 44.025
Tartrazine	19.140
combined with:	
(i) Brilliant blue F.C.F.	42.090
or	
(ii) Green B.S.	44.090
Cochineal	77.289
Brilliant blue/F.C.F.	42.090

7. By the addition of meat and bone meal in a proportion of 2:4 parts of skimmed milk powder.

8. By the addition, per 100 kgs. of skimmed milk powder, of 2.5 kgs. of lucerne meal or grass meal, containing not less than 70 per cent of particles not exceeding 300 microns, uniformly distributed throughout the mixture.

The bags or containers in which the denatured powder is packed will be labelled "For Animal Feed Only".

9. Incorporation of skimmed milk powder in compound or mixed stockfoods of a kind falling within item 23.07 of the Customs Co-operation Council Nomenclature.

50-139 O - 79 - 4

EUROPEAN ECONOMIC COMMUNITY

Skimmed milk powder[1] for use as animal feed may be exported to third countries:

(a) either after being denatured in the customs territory of the Community in accordance with Article 2 of Regulation (EEC) No. 990/72[2], as last amended by Regulation (EEC) No. 804/76[3]

> "Skimmed milk powder shall be denatured by the addition, per 100 kgs. of skimmed milk powder, of 2.5 kgs. of lucerne meal or grass meal, containing not less than 70 per cent of particles not exceeding 300 microns, uniformly distributed throughout the mixture."

This product falls within sub-heading 04.02 A II (b) 1 of the common customs tariff;

(b) or after being incorporated in "sweetened forage; other preparations of a kind used for animal feeding", falling within sub-heading ex 23.07 B of the common customs tariff, containing skimmed milk powder;

(c) or after being dyed by the following dyeing process:

The dyeing is to be by means of the colouring matters identified by the Colour Index numbers - most recent edition - and the designations indicated hereunder.

---

[1] These processes and control measures apply to buttermilk powder as well as to skimmed milk powder intended for animal feed.' (See Regulation (EEC) No. 804/68, Article 10:1.)

[2] O.J. No. L 115 of 17 May 1972, page 1.

[3] O.J. No. L 93 of 8 April 1976, page 22.

These colouring matters

- are to be used alone or in combination, in the form of very fine impalpable powder

and

- are to be uniformly distributed in the skimmed milk powder

- in minimum quantities of 200 grs./100 kgs.

Designation of colouring matters:

C.I. No.	Designation
19140	Tartrazine[1]
42090	Brilliant blue F.C.F.
42095	Lissamine green
44090	Green B.S., Lissamine green
74260	Pigment green 7
77239	Cochineal

(d) or after denaturing in accordance with Annex III to Regulation (EEC) No. 2054/76,[2] as last amended by Regulation (EEC) No. 2823/76:[3]

1. Homogeneous addition to the products to be denatured of 1 per cent blood meal and 1 per cent non-deodorized fish-meal; the two substances must be finely ground and 80 per cent of both must be able to pass through the mesh of a No. 60 sieve of the Tyler fine series (0.246 mm. mesh) or equivalent thereof.

The blood meal must be of a type regarded in the trade as soluble and must satisfy the following conditions: when the meal is diluted in water to 10 per cent strength and the solution has been stirred for fifteen minutes and then centrifuged for another fifteen minutes at 2,000 revolutions per minute it must not deposit more than 5 per cent sediment.

2. Homogeneous addition to the products to be denatured of 1 per cent blood meal and 1 per cent non-deodorized fish solubles.

The blood meal must present the same characteristics as required in the first procedure and the fish solubles must be as fine as required in the above procedure for blood meal and fish meal.

---

[1] This colouring matter to be used only in combination with one or more of the others included in the above list.

[2] O.J. No. L 228 of 20 August 1978, page 17.

[3] O.J. No. L 334 of 1 December 1978, page 84.

FINLAND

Skimmed milk powder[1] may be exported from the customs territory of Finland to third countries:

A. Either, after the competent Finnish authorities have ensured that the skimmed milk powder has been denatured according to any one of the following processes:

1. By the addition, per 100 kgs. of skimmed milk powder, of 2.5 kgs. of lucerne meal or grass meal, containing not less than 70 per cent of particles not exceeding 300 microns, uniformly distributed throughout the mixture.

2. By the addition of finely milled alfalfa flour (98 per cent to pass mesh 60, equivalent to 50 United States standard), in a proportion of 2 to 4 parts per 100 and of phenolphtalein in a proportion of 1:20,000 (1 gr. per 20 kgs. of milk).

3. By the addition, in the proportion of 20 per 100 by weight of the product treated (80 per 100 by weight of milk powder and 20 per cent of the denaturing agent) of a mixture composed of 80 per cent bran and 20 per cent potato flour, rice flour or other common starch (at least 10 per cent to pass mesh 60, equivalent to 50 United States standard), with phenolphthalein in the proportion of 1:20,000.

4. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 35 kgs. of undeodorized fish meal and 200 grs. of carbonate of iron or sulphate of iron and:

   (a) 1.5 kgs. of activated carbon;

   (b) or 100 grs. of mixture composed of four fifths of yellow tartrazine (E 102) and one fifth of patent blue V (E 131);

---

[1] These processes and control measures apply to buttermilk powder as well as to skimmed milk powder intended for animal feed.

(c) or 20 grs. of cochineal red A (E 124);

(d) or 40 grs. of patent blue V (E 131).

5. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 40 kgs. of undeodorized fish meal and 300 grs. of carbonate of iron or sulphate of iron.

6. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 4.5 kgs. of fish oil or fish liver oil and 300 grs. of carbonate of iron or sulphate of iron.

The fish meal noted in processes 4 and 5 must contain at least 25 per cent of particles with dimension below eighty microns. In processes 4, 5 and 6, the iron salts have to contain at least 30 per cent of particles of a size lower than eighty microns. The colouring matters have to contain the following percentages of the pure product:

- at least 30 per cent for cochineal red A (E 124);

- at least 25 per cent for the other colouring matters: colouring matters have to contain at least 30 per cent of particles having a size lower than eighty microns; the acidity of fish oil calculated in oleic acid has to be equal to at least 10 per cent.

The products added to skimmed milk powder, according to processes 4, 5 and 6 have to be uniformly distributed as regards in particular the activated carbon, the iron salts and the colouring matters; two samples of 50 grs. each, taken at random in a lot of 25 kgs., must give by chemical determination the same results within the limits of errors admitted by the analysis method used.

7. Dye to be added to liquid skimmed milk before drying at the rate of 2 to 3 ozs. per 100 gls. of milk (12.5 to 18.7 grs. per hectolitre). The dye to be one of the following colours:

	English Standard Index Nos.
Lissamine green	44.090, 42.095, 44.025
Tartrazine	19.140
Combined with:	
(a) Brilliant blue F.C.F.	42.090
or	
(b) Green B.S.	44.090
Cochineal	77.289
Brilliant blue/F.C.F.	42.090

8. By the addition of meat and bone meal in a proportion of 2 to 4 parts of skimmed milk powder.

The bags or containers in which the denatured powder is packed will be labelled "For Animal Feed Only".

B. Or, after its incorporation in compound or mixed stockfoods of a kind falling within item 23.07 of the Customs Co-operation Council Nomenclature.

JAPAN

Based on the provisions of Article 13 of the Customs Tariff Law, he who wants to import, with customs duty exempted, skimmed milk powder so as to produce animal feed through mixing the powder concerned with other materials shall take the following steps so that the powder concerned will not be diverted to uses other than animal feed:

1. He shall in advance make an application to the Director of Customs Office so that his factory be authorized to produce mixed feed with the duty-exempted skimmed milk powder.

2. When he (himself or through his agent) imports skimmed milk powder for purposes of animal feed, he shall go through necessary importation formalities and customs officers at a port of entry shall keep a record on the quantity of the skimmed milk powder thus imported.

3. He shall deliver the skimmed milk powder to his factory authorized under paragraph 1 above and mix it with fish meal, chrysalis meal or fish soluble.

4. After producing mixed feed, he shall submit, for inspection by the Customs Office, a report which contains, among others, information on the quantities of the skimmed milk powder used in the production and of other materials mixed therewith. The customs officers shall check how much of the quantity recorded at the time of entry has been used in the production and inspect the product concerned before its delivery from the factory.

In cases where he violates the control measures mentioned above, the authorization under paragraph 1 above shall be cancelled and the exempted customs duty shall be collected according to the provisions of the Customs Tariff Law. In addition to the above, he shall be fined or imprisoned, as the case may be, on the ground of the evasion of customs duty as provided for by the Customs Law.

NEW ZEALAND

1. By the addition of finely milled alfalfa flour (98 per cent to pass mesh 60, equivalent to 50 United States standard), in a proportion of 2 to 4 parts per 100 and of phenolphthalein in a proportion of 1:20,000 (1 gr. per 20 kgs. of milk).

2. By the addition, in the proportion of 20 per 100 by weight of the product treated (80 per 100 by weight of milk powder and 20 per 100 of the denaturing agent) of a mixture composed of 80 per cent bran and 20 per cent potato flour, rice flour or other common starch (at least 10 per cent to pass mesh 60, equivalent to 50 United States standard), with phenolphthalein in the proportion of 1:20,000.

3. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 35 kgs. of undeodorized fish meal and 200 grs. of carbonate of iron or sulphate of iron and

(a) 1.5 kgs. of activated carbon;

(b) or 100 grs. of mixture composed of four fifths of yellow tartrazine (E 102) and one fifth of patent blue V (E 131);

(c) or 20 grs. of cochineal red A (E 124);

(d) or 40 grs. of patent blue V (E 131);

(e) or 20 grs. of edicol lime.

4. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 40 kgs. of undeodorized fish meal and 300 grs. of carbonate of iron or sulphate of iron.

5. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 4.5 kgs. of fish oil or fish liver oil and 300 grs. of carbonate of iron or sulphate of iron.

The fish meal noted in processes 3 and 4 must contain at least 25 per cent of particles with dimension below 80 microns. In processes 3, 4 and 5, the iron salts have to contain at least 30 per cent of particles of a size lower than 80 microns. The colouring matters have to contain the following percentages of the pure product:

- at least 30 per cent for cochineal red A (E 124);

- at least 25 per cent for the other colouring matters: colouring matters have to contain at least 30 per cent of particles having a size lower than 80 microns; the acidity of fish oil calculated in oleic acid has to be equal to at least 10 per cent.

The products added to skimmed milk powder, according to processes 3, 4 and 5, have to be uniformly distributed as regards in particular the activated carbon, the iron salts and the colouring matters; two samples of 50 grs. each, taken at random in a lot of 25 kgs., must give by chemical determination the same results within the limits of errors admitted by the analysis method used.

6. By the addition of dye to liquid skimmed milk before drying at the rate of 2 to 3 ounces per 100 gallons of milk (12.5 to 18.7 grs. per hectolitre).

Dye to be one of the following colours:

	English Standard Index Nos.
Lissamine green	44.090, 42.095, 44.025
Tartrazine	19.140
Combined with	
(i) Brilliant blue F.C.F.	42.090
or	
(ii) Green B.S.	44.090
Cochineal	77.289
Brilliant blue/F.C.F.	42.090

7. By the addition of meat and bone meal in a proportion of 2:4 parts of skimmed milk powder.

8. By the addition, per 100 kgs. of skimmed milk powder, of 2.5 kgs. of lucerne meal or grass meal, containing not less than 22 per cent of particles not exceeding 300 microns uniformly distributed throughout the mixture.

The bags or containers in which the denatured powder is packed will be labelled "For Animal Feed Only".

9. Incorporation of skimmed milk powder in compound or mixed stockfoods of a kind falling within item 23.07 of the Customs Co-operation Council Nomenclature.

NORWAY

Skimmed milk powder[1] may be exported from the customs territory of Norway to third countries:

A. Either, after the competent Norwegian authorities have ensured that the skimmed milk powder has been denatured according to any one of the following processes:

1. By the addition, per 100 kgs. of skimmed milk powder, of 2.5 kgs. of lucerne meal or grass meal, containing not less than 70 per cent of particles not exceeding 300 microns, uniformly distributed throughout the mixture.

2. By the addition of finely milled alfalfa flour (98 per cent to pass mesh 60, equivalent to 50 United States standard), in a proportion of 2 to 4 parts per 100 and of phenolphtalein in a proportion of 1:20,000 (1 gr. per 20 kgs. of milk).

3. By the addition, in the proportion of 20 per 100 by weight of the product treated (80 per 100 by weight of milk powder and 20 per cent of the denaturing agent) of a mixture composed of 80 per cent bran and 20 per cent potato flour, rice flour or other common starch (at least 10 per cent to pass mesh 60, equivalent to 50 United States standard), with phenolphthalein in the proportion of 1:20,000.

4. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 35 kgs. of undeodorized fish meal and 200 grs. of carbonate of iron or sulphate of iron and:

   (a) 1.5 kgs. of activated carbon;

   (b) or 100 grs. of mixture composed of four fifths of yellow tartrazine (E 102) and one fifth of patent blue V (E 131);

[1] These processes and control measures apply to buttermilk powder as well as to skimmed milk powder intended for animal feed.

(c) or 20 grs. of cochineal red A (E 124);

(d) or 40 grs. of patent blue V (E 131).

5. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 40 kgs. of undeodorized fish meal and 300 grs. of carbonate of iron or sulphate of iron.

6. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 4.5 kgs. of fish oil or fish liver oil and 300 grs. of carbonate of iron or sulphate of iron.

The fish meal noted in processes 4 and 5 must contain at least 25 per cent of particles with dimension below eighty microns. In processes 4, 5 and 6, the iron salts have to contain at least 30 per cent of particles of a size lower than eighty microns. The colouring matters have to contain the following percentages of the pure product:

- at least 30 per cent for cochineal red A (E 124);

- at least 25 per cent for the other colouring matters: colouring matters have to contain at least 30 per cent of particles having a size lower than eighty microns; the acidity of fish oil calculated in oleic acid has to be equal to at least 10 per cent.

The products added to skimmed milk powder, according to processes 4, 5 and 6 have to be uniformly distributed as regards in particular the activated carbon, the iron salts and the colouring matters; two samples of 50 grs. each, taken at random in a lot of 25 kgs., must give by chemical determination the same results within the limits of errors admitted by the analysis method used.

7. Dye to be added to liquid skimmed milk before drying at the rate of 2 to 3 ozs. per 100 gls. of milk (12.5 to 18.7 grs. per hectolitre). The dye to be one of the following colours:

	English Standard Index Nos.
Lissamine green	44.090, 42.095, 44.025
Tartrazine	19.140
Combined with:	
(a) Brilliant blue F.C.F.	42.090
or	
(b) Green B.S.	44.090
Cochineal	77.289
Brilliant blue/F.C.F.	42.090

8. By the addition of meat and bone meal in a proportion of 2 to 4 parts of skimmed milk powder.

The bags or containers in which the denatured powder is packed will be labelled "For Animal Feed Only".

B. Or, after its incorporation in compound or mixed stockfoods of a kind falling within item 23.07 of the Customs Co-operation Council Nomenclature.

SPAIN

The control systems applied by Spain to imports of skimmed milk powder intended for animal feed are set forth in the following texts annexed hereto:

1. Circular No. 789 of the General Directorate of Customs, establishing rules for the denaturing of milk powder (Annex 1);

2. Order of Ministry of Agriculture of 30 October 1976 establishing control and surveillance of denatured milk powder and whey powder for use in animal feed (Annex 2).

In addition, other supplementary provisions are in existence such as the Ministry of Finance Order dated 22 September 1969, determining the responsibilities of the customs authorities with respect to chemical analysis, and Customs Circular No. 626 (Official Gazette of 17 October 1969) prescribing the modalities for chemical analysis, rules for the taking of samples and the responsibility of the various laboratories.

ANNEX 1

General Directorate of Customs

Circular No. 789 (Official Gazette of 12 October 1977) Establishing Rules for the Denaturing of Milk Powder

The denaturing of skimmed milk powder is to be effected by either of the following two processes:

1. Homogeneous addition to the products to be denatured of 1 per cent of blood flour and 1 per cent of fish flour[1]; both substances must be finely ground, and each must pass through a No. 60 screen of the Tyler fine series (0.246 millimetre mesh) or its standard equivalents, in a proportion of not less than 80 per cent.

The blood flour shall be of a type regarded as soluble in the trade and must meet the requirement that when diluted in water in a 10 per cent solution and when the solution is shaken for fifteen minutes and centrifuged for an additional fifteen minutes at 2,000 revolutions per minute, the sediment shall not exceed 5 per cent.

2. Homogeneous addition to the products to be denatured of 1 per cent of blood flour and 1 per cent of non-deodorized fish solubles.

The blood flour shall have the characteristics required in the previous process and the fish solubles shall also have, so far as degree of fineness is concerned, the same characteristics as those indicated in the previous process for blood flour and fish flour.

[1] It is the understanding of the Spanish authorities that the fish flour must be non-deodorized.

ANNEX 2

Ministry of Agriculture

Order of 30 October 1976 establishing control and surveillance of denatured milk powder and whey powder for use in animal feed

The import of denatured milk powder or whey powder under the Liberalized-Trade Régime exclusively for purposes of animal feed requires regulation of the control and surveillance of use, with the twofold objective of guaranteeing the quality of both the basic product and the denaturing agents employed and of preventing unlawful competition with domestic dairy products.

Quality standards and requirements for substances and products used in animal feed having been approved by Decree 851/1975 of 20 March and Ministerial Order of the Minister of Agriculture of 23 June 1976, it is necessary to make an order regarding procedures for testing and demanding the necessary quality in those products.

In pursuance of the instructions contained in Article 21 of the said Decree regarding the control and surveillance to be exercised by the Ministry of Agriculture over the handling, transport and storage of products for use in animal feed and by virtue of the authority vested in this Department by final provision 4 of the said Decree, I have deemed it fitting to provide as follows:

Article 1. The denatured milk powder and whey powder to be imported must meet the quality requirements laid down for those products in the Ministerial Order of 23 June 1976, taking into account any modifications in those characteristics which may result from the denaturing agent used. The products used as denaturing agents may be those approved by Circular No. 543 of the General Directorate of Customs (Boletín Oficial del Estado of 28 July 1966) or such other products as may subsequently be approved for the purpose.

The foregoing shall be tested by means of analyses performed by laboratories belonging to this Department on samples taken, prior to customs clearance, by the appropriate inspection services from the lots being imported.

Article 2. In order to ensure adequate preservation of the quality of these products, they may only be imported in sacks. Each of the sacks shall bear an appropriate label giving particulars concerning the type of product and the denaturing agent or agents used. Each sack shall be conspicuously marked with the words: "Products for use only in animal feed".

Article 3. The Customs Veterinary Inspection Services of this Department shall take the necessary samples and shall arrange for their despatch to the appropriate laboratory for analysis.

Before issuing the Certificate of Inspection, they shall verify the health documents accompanying the lot to be imported and shall obtain from the importer complete information concerning the destination of the product in question so as to supplement the particulars on the Import and Destination Form that is to accompany the goods (Annex 1). This form shall be signed by the importer or by a person duly authorized by him.

If the imported lot has different destinations, the importer or his representative shall make a declaration for each sub-lot.

Article 4. For purposes of subsequent control of these products, the Customs Veterinary Inspection Services shall send a copy of the Import and Destination Form to the appropriate provincial branch-office for agriculture so that the necessary verifications and procedures may be carried out by the Service for Fraud Prevention and Agricultural Testing and Analysis.

Article 5. Imported denatured dairy products shall be used exclusively in animal feed and accordingly, after clearance by Customs, they shall be consigned exclusively to fodder or additive plants, wholesale warehouses or stock-farmers, all of whom shall preserve the documentation accompanying the goods since its entry in Customs. The subsequent movement of these products shall be restricted to authorized industrial and warehousing enterprises, which must ensure that the goods are always accompanied by documents or invoices certifying the origin thereof. The consignee of the goods shall hold the original of these documents at the disposal of the inspection services for one year, and the consignor shall hold the copy or counterfoil for the same period of time and for the same purpose.

Article 6. The removal or total or partial elimination of the denaturing substances incorporated in the dairy products referred to in this Order, and likewise any other practice that would annul effects indicative of the presence of such substances, shall be prohibited.

Article 7. The inspection services of the Department shall ensure strictest compliance with the provisions of this Order, and any movement or possession of the said products in circumstances other than those authorized by this Order shall be deemed clandestine.

Article 8. Infringements of the provisions laid down in this Order shall be punished in accordance with the provisions of Decree 2177/1973, of 12 July, governing penalties for fraud in respect of agricultural products.

Article 9. The General Directorate of Agrarian Industries and the General Directorate of Agrarian Production are hereby empowered to establish additional rules for the implementation of the present Order.

Communicated for your information and action.

Madrid, 30 October 1976.

SWITZERLAND

Skimmed milk powder may be exported from the customs territory of Switzerland to third countries:

A. Either, after the competent Swiss authorities have ensured that the skimmed milk powder has been denatured according to any one of the following processes:

1. By the addition, per 100 kgs. of skimmed milk powder, of 2.5 kgs. of lucerne meal or grass meal, containing not less than 70 per cent of particles not exceeding 300 microns, uniformly distributed throughout the mixture.

2. By the addition of finely milled alfalfa flour (98 per cent to pass mesh 60, equivalent to 50 United States standard), in a proportion of 2 to 4 parts per 100 and of phenolphthalein in a proportion of 1:20,000 (1 gr. per 20 kgs. of milk).

3. By the addition, in the proportion of 20 per 100 by weight of the product treated (80 per 100 by weight of milk powder and 20 per cent of the denaturing agent) of a mixture composed of 80 per cent bran and 20 per cent potato flour, rice flour or other common starch (at least 10 per cent to pass mesh 60, equivalent to 50 United States standard), with phenolphthalein in the proportion of 1:20,000.

4. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 35 kgs. of undeodorized fish meal and 200 grs. of carbonate of iron or sulphate or iron and:

   (a) 1.5 kgs. of activated carbon;

   (b) or 100 grs. of mixture composed of four fifths of yellow tartrazine (E 102) and one fifth of patent blue V (E 131);

50-139 O - 79 - 5

(c) or 20 grs. of cochineal red A (E 124);

(d) or 40 grs. of patent blue V (E 131).

5. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 40 kgs. of undeodorized fish meal and 300 grs. of carbonate of iron or sulphate of iron.

6. By the addition of, for each 100 kgs. of skimmed milk powder, a minimum of 4.5 kgs. of fish oil or fish liver oil and 300 grs. of carbonate of iron or sulphate of iron.

The fish meal noted in processes 4 and 5 must contain at least 25 per cent of particles with dimension below eighty microns. In processes 4, 5 and 6, the iron salts have to contain at least 30 per cent of particles of a size lower than eighty microns. The colouring matters have to contain the following percentages of the pure product:

- at least 30 per cent for cochineal red A (E 124);

- at least 25 per cent for the other colouring matters: colouring matters have to contain at least 30 per cent of particles having a size lower than eighty microns; the acidity of fish oil calculated in oleic acid has to be equal to at least 10 per cent.

The products added to skimmed milk powder, according to processes 4, 5 and 6 have to be uniformly distributed as regards in particular the activated carbon, the iron salts and the colouring matters; two samples of 50 grs. each, taken at random in a lot of 25 kgs., must give by chemical determination the same results within the limits of errors admitted by the analysis method used.

7. Dye to be added to liquid skimmed milk before drying at the rate of 2 to 3 ozs. per 100 gls. of milk (12.5 to 18.7 grs. per hectolitre). The dye to be one of the following colours:

	English Standard Index Nos.
Lissamine green	44.090, 42.095, 44.025
Tartrazine	19.140
Combined with	
(a) Brilliant blue F.C.F.	42.090
or	
(b) Green B.S.	44.090
Cochineal	77.289
Brilliant blue/F.C.F.	42.090

8. By the addition of meat and bone meal in a proportion of 2 to 4 parts of skimmed milk powder.

The bags or containers in which the denatured powder is packed will be labelled "For Animal Feed Only".

B. Or, after its incorporation in compound or mixed stockfoods of a kind falling within item 23.07 of the Customs Co-operation Council Nomenclature.

ANNEX II

Protocol Regarding Milk Fat

64/65

PROTOCOL REGARDING MILK FAT

PART ONE

Article 1 - Product Coverage

1. This Protocol applies to milk fat falling under CCCN heading No. 04.03, having a milk fat content equal to or greater than 50 per cent by weight.

PART TWO

Article 2 - Pilot Products

1. For the purpose of this Protocol, minimum export prices shall be established for the pilot products of the following descriptions:

(a)	Designation:	Anhydrous milk fat
	Milk fat content:	99.5 per cent by weight
(b)	Designation:	Butter
	Milk fat content:	80 per cent by weight
Packaging:		In packages normally used in the trade, of a net content by weight of not less than 25 kgs. or 50 lbs. as appropriate.
Terms of sale:		F.o.b. from the exporting country or free-at-frontier exporting country.
		By derogation from this provision reference points are designated for the countries listed in Annex II a. The Committee established in pursuance of Article VII:2(a) of the Arrangement (hereinafter referred to as the Committee) may amend the contents of that Annex.
		Prompt payment against documents.

PART TWO (cont'd)

Article 3 - Minimum Prices

Level and observance of minimum prices

1. Participants undertake to take the steps necessary to ensure that the export prices of the products defined in Article 2 of this Protocol shall not be less than the minimum prices applicable under the present Protocol. If the products are exported in the form of goods in which they have been incorporated, participants shall take the steps necessary to avoid the circumvention of the price provisions of this Protocol.

2. (a) The minimum price levels set out in the present Article take account, in particular, of the current market situation, dairy prices in producing participants, the need to ensure an appropriate relationship between the minimum prices established in the Protocols to the present Arrangement, the need to ensure equitable prices to consumers, and the desirability of maintaining a minimum return to the most efficient producers in order to ensure stability of supply over the longer term.

(b) The minimum prices provided for in paragraph 1 of the present Article applicable at the date of entry into force of this Protocol are fixed at:

(i) US$1,300 per metric ton for the anhydrous milk fat defined in Article 2 of this Protocol.

(ii) US$985 per metric ton for the butter defined in Article 2 of this Protocol.

3. (a) The levels of the minimum prices specified in the present Article can be modified by the Committee, taking into account, on the one hand, the results of the operation of the Protocol and, on the other hand, the evolution of the situation of the international market.

PART TWO (cont'd)

Article 3 (cont'd)

(b) The levels of the minimum prices specified in the present Article shall be subject to review at least once a year by the Committee. The Committee shall meet in September of each year for this purpose. In undertaking this review the Committee shall take account in particular, to the extent relevant and necessary, of costs faced by producers, other relevant economic factors of the world market, the need to maintain a long-term minimum return to the most economic producers, the need to maintain stability of supply and to ensure acceptable prices to consumers, and the current market situation and shall have regard to the desirability of improving the relationship between the levels of the minimum prices set out in paragraph 2(b) of the present Article and the dairy support levels in the major producing participants.

Adjustment of minimum prices

4. If the products actually exported differ from the pilot products in respect of the fat content, packaging or terms of sale, the minimum prices shall be adjusted so as to protect the minimum prices established in this Protocol for the products specified in Article 2 of this Protocol according to the following provisions:

Milk fat content: If the milk fat content of the product defined in Article 1:1 of the present Protocol differs from the milk fat content of the pilot products as defined in Article 2 of the present Protocol then, if the milk fat content is equal to or greater than 82 per cent or less than 80 per cent, the minimum price of this product shall be, for each full percentage point by which the milk fat content is more than or less than 80 per cent, increased or reduced in proportion to the difference between the minimum prices established for the pilot products defined in Article 2 of the present Protocol.[1]

[1] See Annex II b, "Schedule of price differentials according to milk fat content".

PART TWO (cont'd)

Article 3 (cont'd)

Packaging: If the products are offered otherwise than in packages normally used in the trade, of a net content by weight of not less than 25 kgs. or 50 lbs., as appropriate, the minimum prices shall be adjusted so as to reflect the difference in the cost of packaging from the type of package specified above.

Terms of sale: If sold on terms other than f.o.b. from the exporting country or free-at-frontier exporting country[1], the minimum prices shall be calculated on the basis of the minimum f.o.b. prices specified in paragraph 2(b) of this Article, plus the real and justified costs of the services provided; if the terms of the sale include credit, this shall be charged for at the prevailing commercial rates in the country concerned.

Special conditions of sales

5. Participants undertake within the limit of their institutional possibilities to ensure that practices such as those referred to in Article 4:1 of this Protocol do not have the effect of directly or indirectly bringing the export prices of the products subject to the minimum price provisions below the agreed minimum prices.

Field of application

6. For each participant, this Protocol is applicable to exports of the products specified in Article 1 of this Protocol manufactured or repacked inside its own customs territory.

Transactions other than normal commercial transactions

7. The provisions of paragraphs 1 to 6 of this Article shall not be regarded as applying to donated exports to developing countries or to exports destined for relief purposes or food-related development purposes or welfare purposes in developing countries.

[1] See Article 2:1

PART TWO (cont'd)

Article 4 - Provision of Information

1. In cases where prices in international trade of the products covered by Article 1 of this Protocol are approaching the minimum prices mentioned in Article 3:2(b) of this Protocol, and without prejudice to the provisions of Article III of the Arrangement, participants shall notify to the Committee all the relevant elements for evaluating their own market-situation and, in particular, credit or loan practices, twinning with other products, barter or three-sided transactions, refunds or rebates, exclusivity contracts, packaging costs and details of the packaging, so that the Committee can make a verification.

Article 5 - Obligations of Exporting Participants

1. Exporting participants agree to use their best endeavours, in accordance with their institutional possibilities, to supply on a priority basis the normal commercial requirements of developing importing participants, especially those used for food-related development purposes and welfare purposes.

Article 6 - Co-operation of Importing Participants

1. Participants which import products covered by Article 1 of this Protocol undertake in particular:

(a) to co-operate in implementing the minimum prices objective of this Protocol and to ensure, as far as possible, that the products covered by Article 1 of this Protocol are not imported at less than the appropriate customs valuation equivalent to the prescribed minimum prices;

(b) without prejudice to the provisions of Article III of the Arrangement and Article 4 of this Protocol, to supply information concerning imports of products covered by Article 1 of this Protocol from non-participants;

(c) to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum prices threaten the operation of this Protocol.

PART THREE

Article 7 - Derogations

1. Upon request by a participant, the Committee shall have the authority to grant derogations from the provisions of Article 3, paragraphs 1 to 4 of this Protocol in order to remedy difficulties which observance of minimum prices could cause certain participants. The Committee shall pronounce on such a request within three months from the date of the request.

Article 8 - Emergency Action

1. Any participant, which considers that its interests are seriously endangered by a country not bound by this Protocol, can request the Chairman of the Committee to convene an emergency meeting of the Committee within two working days to determine and decide whether measures would be required to meet the situation. If such a meeting cannot be arranged within the two working days and the commercial interests of the participan concerned are likely to be materially prejudiced, that participant may take unilateral action to safeguard its position, on the condition that an other participants likely to be affected are immediately notified. The Chairman of the Committee shall also be formally advised immediately of th full circumstances of the case and shall be requested to call a special meeting of the Committee at the earliest possible moment.

ANNEX II a

Protocol Regarding Milk Fat

List of Reference Points

In accordance with the provisions of Article 2:1 of this Protocol, the following reference points are designated for the countries listed below:

Austria: Antwerp, Hamburg, Rotterdam

Finland: Antwerp, Hamburg, Rotterdam.
Basle: for butter exports to Switzerland

Norway: Antwerp, Hamburg, Rotterdam

Sweden: Antwerp, Hamburg, Rotterdam.
Basle: for butter exports to Switzerland

ANNEX II b

Protocol Regarding Milk Fat

Schedule of Price Differentials According to Milk Fat Content

Milk fat content %				Minimum price US$/metric ton
Equal to or more than ..,	less than ..			..
"	..	"	..	..
"	79	"	80	916.25
"	80	"	82	925
"	82	"	83	942.50
"	83	"	84	951.25
"	84	"	85	960
"	85	"	86	968.75
"	86	"	87	977.50
"	87	"	88	986.25
"	88	"	89	995
"	89	"	90	1,003.75
"	90	"	91	1,012.50
"	91	"	92	1,021.25
"	92	"	93	1,030
"	93	"	94	1,038.75
"	94	"	95	1,047.50
"	95	"	96	1,056.25
"	96	"	97	1,065
"	97	"	98	1,073.75
"	98	"	99	1,082.50
"	99	"	99.5	1,091.25
"	99.5			1,100

ANNEX III

Protocol Regarding Certain Cheeses

76/77

PROTOCOL REGARDING CERTAIN CHEESES

PART ONE

Article 1 - Product Coverage

1. This Protocol applies to cheeses falling under CCCN heading No. 04.04, having a fat content in dry matter, by weight, equal to or more than 45 per cent and a dry matter content, by weight, equal to or more than 50 per cent.

PART TWO

Article 2 - Pilot Product

1. For the purpose of this Protocol, a minimum export price shall be established for the pilot product of the following description:

Designation:	Cheese
Packaging:	In packages normally used in the trade of a net content by weight of not less than 20 kgs. or 40 lbs., as appropriate.
Terms of sale:	F.o.b. from the exporting country or free-at-frontier exporting country. By derogation from this provision, reference points are designated for the countries listed in Annex IIIa. The Committee established in pursuance of Article VII:2(a) of the Arrangement (hereinafter referred to as the Committee) may amend the contents of that Annex. Prompt payment against documents.

PART TWO (cont'd)

Article 3 - Minimum Price

Level and observance of minimum price

1. Participants undertake to take the steps necessary to ensure that the export prices of the products defined in Articles 1 and 2 of this Protocol shall not be less than the minimum price applicable under the present Protocol. If the products are exported in the form of goods in which they have been incorporated, participants shall take the steps necessary to avoid the circumvention of the price provisions of this Protocol.

2. (a) The minimum price level set out in the present Article takes account, in particular, of the current market situation, dairy prices in producing participants, the need to ensure an appropriate relationship between the minimum prices established in the Protocols to the present Arrangement, the need to ensure equitable prices to consumers, and the desirability of maintaining a minimum return to the most efficient producers in order to ensure stability of supply over the longer term.

(b) The minimum price provided for in paragraph 1 of the present Article applicable at the date of entry into force of this Protocol is fixed at US$600 per metric ton.

3. (a) The level of the minimum price specified in the present Article can be modified by the Committee, taking into account, on the one hand, the results of the operation of the Protocol and, on the other hand, the evolution of the situation of the international market.

(b) The level of the minimum price specified in the present Article shall be subject to review at least once a year by the Committee. The Committee shall meet in September of each year for this purpose. In undertaking this review the Committee shall take account in particular, to the extent relevant and necessary, of costs faced by producers, other relevant economic factors of the world market, the need to maintain a long-term minimum return to the most economic producers, the need to maintain stability of supply and to ensure acceptable prices to consumers, and the current market situation and shall have regard to the desirability of improving the relationship between the level of the minimum price set out in paragraph 2(b) of the present Article and the dairy support levels in the major producing participants.

50-139 O - 79 - 6

PART TWO (cont'd)

Article 3 (cont'd)

Adjustment of minimum price

4. If the products actually exported differ from the pilot product in respect of the packaging or terms of sale, the minimum price shall be adjusted so as to protect the minimum price established in this Protocol, according to the following provisions:

Packaging:	If the products are offered otherwise than in packages as specified in Article 2:1, the minimum price shall be adjusted so as to reflect the difference in the cost of packaging from the type of package specified above.
Terms of sale:	If sold on terms other than f.o.b. from the exporting country[1] or free-at-frontier exporting country[1], the minimum price shall be calculated on the basis of the minimum f.o.b. price specified in paragraph 2(b) of this Article, plus the real and justified costs of the services provided; if the terms of the sale include credit, this shall be charged for at the prevailing commercial rates in the country concerned.

Special conditions of sale

5. Participants undertake within the limit of their institutional possibilities to ensure that practices such as those referred to in Article 4:1 of this Protocol do not have the effect of directly or indirectly bringing the export prices of the products subject to the minimum price provisions below the agreed minimum price.

Field of application

6. For each participant, this Protocol is applicable to exports of the products specified in Article 1 of this Protocol manufactured or repacked inside its own customs territory.

---

[1] See Article 2:1.

PART TWO (cont'd)

Article 3 (cont'd)

Transactions other than normal commercial transactions

7. The provisions of paragraphs 1 to 6 of this Article shall not be regarded as applying to donated exports to developing countries or to exports destined for relief purposes or food-related development purposes or welfare purposes in developing countries.

Article 4 - Provision of Information

1. In cases where prices in international trade of the products covered by Article 1 of this Protocol are approaching the minimum price mentioned in Article 3:2(b) of this Protocol and without prejudice to the provisions of Article III of the Arrangement, participants shall notify to the Committee all the relevant elements for evaluating their own market situation and, in particular, credit or loan practices, twinning with other products, barter or three-sided transactions, refunds or rebates, exclusivity contracts, packaging costs and details of the packaging, so that the Committee can make a verification.

Article 5 - Obligations of Exporting Participants

1. Exporting participants agree to use their best endeavours, in accordance with their institutional possibilities, to supply on a priority basis the normal commercial requirements of developing importing participants, especially those used for food-related development purposes and welfare purposes.

Article 6 - Co-operation of Importing Participants

1. Participants which import products covered by Article 1 of this Protocol undertake in particular:

(a) to co-operate in implementing the minimum price objective of this Protocol and to ensure, as far as possible, that the products covered by Article 1 of this Protocol are not imported at less than the appropriate customs valuation equivalent to the prescribed minimum price;

(b) without prejudice to the provisions of Article III of the Arrangement and Article 4 of this Protocol, to supply information concerning imports of products covered by Article 1 of this Protocol from non-participants;

PART TWO (cont'd)

Article 6 (cont'd)

(c) to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum price threaten the operation of this Protocol.

PART THREE

Article 7 - Derogations

1. Upon request by a participant, the Committee shall have the authority to grant derogations from the provisions of Article 3, paragraphs 1 to 4 of this Protocol in order to remedy difficulties which observance of minimum prices could cause certain participants. The Committee shall pronounce on such a request within thirty days from the date of the request.

2. The provisions of Article 3:1 to 4 shall not apply to exports, in exceptional circumstances, of small quantities of natural unprocessed cheese which would be below normal export quality as a result of deterioration or production faults. Participants exporting such cheese shall notify the GATT secretariat in advance of their intention to do so. Participants shall also notify the Committee quarterly of all sales of cheese effected under the provisions of this paragraph, specifying in respect of each transaction, the quantities, prices and destinations involved.

Article 8 - Emergency Action

1. Any participant, which considers that its interests are seriously endangered by a country not bound by this Protocol, can request the Chairman of the Committee to convene an emergency meeting of the Committee within two working days to determine and decide whether measures would be required to meet the situation. If such a meeting cannot be arranged within the two working days and the commercial interests of the participant concerned are likely to be materially prejudiced, that participant may take unilateral action to safeguard its position, on the condition that any other participants likely to be affected are immediately notified. The Chairman of the Committee shall also be formally advised immediately of the full circumstances of the case and shall be requested to call a special meeting of the Committee at the earliest possible moment.

ANNEX III a

Protocol Regarding Certain Cheeses

List of Reference Points

In accordance with the provisions of Article 2:1 of this Protocol, the following reference points are designated for the countries listed below:

Austria:	Antwerp, Hamburg, Rotterdam
Finland:	Antwerp, Hamburg, Rotterdam
Norway:	Antwerp, Hamburg, Rotterdam
Sweden:	Antwerp, Hamburg, Rotterdam
Poland:	Antwerp, Hamburg, Rotterdam

ANNEX B

The United States undertakes to implement the economic provisions of this Arrangement fully within the limit of its institutional possibilities.

Japan undertakes to implement the provisions of this Arrangement fully within the limit of its institutional possibilities.

Japan has accepted Article 3:5 of the Protocol Regarding Certain Milk Powders on the understanding that advance notification of its intention to make use of the provisions of that paragraph may be made globally for a given period and not separately for each transaction.

The Nordic countries have accepted Article V:3 of the Arrangement with the understanding that it does not in any way prejudge their position with regard to the definition of (other than) normal commercial transactions.

Switzerland has indicated that it is reserving the right to request at a later date the designation of two or three European ports as reference points under Article 2 of the Protocol Regarding Certain Milk Powders in the event that its exports made this necessary.

New Zealand has indicated that the annual quantities of its exports under Article 7:2 of the Protocol Regarding Certain Cheeses should normally be of the order of 1,000 metric tons and could, in exceptional circumstances, amount to some 2,000 metric tons.

Contents

	Page
Introduction	1
Summary	ii
Background and origin of agreement	1
Description and analysis of the agreement	1
Preamble	1
Product coverage	2
Customs duties and other charges	2
Technical barriers to trade	3
Government-directed procurement, mandatory sub-contracts and inducements	3
Trade restrictions	4
Government support, export credits, and aircraft marketing	5
Regional and local governments	5
Surveillance, review, consultation and dispute settlement	6
Final provisions	7
Profile of U.S. civil aircraft industry	8
U.S. producers' shipments	9
U.S. exports	10
U.S. imports	11
U.S. apparent consumption	12
Overall probable effect of the agreement	13
Probable effect on domestic industry	13
Potential loss of customs revenues	14
U.S. Implementation of the agreement	14
Appendix A - Agreement on trade in civil aircraft	A-1
Appendix B - Current U.S. tariff treatment of articles included on provisional U.S. list for duty-free coverage	B-1
Appendix C - Statistical tables	C-1

Introduction

In response to requests by the Senate Finance Committee and the House Ways and Means Committee, the United States International Trade Commission on September 1, 1978, instituted an investigation, under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), for the purpose of submitting a series of reports analyzing the effects on U.S. industrial and agricultural sectors of nontariff measure agreements and tariff reductions recently negotiated at the Multilateral Trade Negotiations (MTN) in Geneva.

This report analyzes the effects on U.S. industrial sectors of the agreement on Trade in Civil Aircraft (which will be referred to as "the agreement").

This report provides a brief discussion of the background and origin of the agreement, a descripton and analysis of the agreement's provisions, a profile of the U.S. civil aircraft industry, including data on U.S. producers' shipments, exports, imports and apparent consumption, an assessment of the overall probable effect on the domestic industry and on customs revenues of U.S. adoption of the agreement and a brief discussion of the legislative requirements for implementing the agreement.

Summary

The agreement, which was recently initialed in Geneva by the United States, the European Community (EC), Canada, Japan and Sweden, provides for the elimination of customs duties on civil aircraft and most parts and equipment of such aircraft (as enumerated in the annex to the agreement) and for the reduction or elimination of a number of nontariff measures, such as governmental subsidies, government-directed procurement, technical barriers (standards) and import and export licensing requirements, which have the effect of distorting or restricting trade in civil aircraft. Many of the agreement's non-tariff provisions are analogous to those of other agreements which have been negotiated at the MTN. For example, the agreement notes that the Agreement on Technical Barriers to Trade (standards) and the Agreement on Subsidies/Countervailing Measures apply to trade in civil aircraft. The application of both agreements are modified somewhat with respect to trade in civil aircraft, however, by extending the coverage of the standards agreement to cover certification requirements and specifications on operating and maintenance procedures and by potentially limiting the application of the subsidies/countervailing measures agreement by taking into account certain "special factors" which apply in the aircraft sector. The agreement establishes a "Committee on Trade in Civil Aircraft" to oversee the operation of the agreement and to settle disputes between signatories. The dispute settlement mechanism of the agreement, however, is without prejudice to the rights of signatories under the GATT or under instruments multilaterally negotiated under the auspices of the GATT, as they affect trade in civil aircraft.

Certain of the agreement's provisions are either ambiguous or lack sufficient specificity to ensure international compliance with the provision. For example, article 2 of the agreement is somewhat ambiguous in that it requires signatories to eliminate "all customs duties and similar charges levied on, or in connexion with the importation of products." This phrase may be construed to encompass antidumping and countervailing duty charges, as well. Similar language in the Florence Agreement was so interpreted by the Treasury Department in terminating a previous antidumping investigation. Such an interpretation with respect to the aircraft agreement could result in foreign suppliers dumping or selling subsidized products covered by the agreement into the United States without recourse by domestic firms.

As another example, article 4 provides that signatories should not discriminate against suppliers from any other signatory by requiring civil aircraft purchasing entities to procure civil aircraft from any particular source or by exerting "unreasonable pressure" on them to this end. This provision will be difficult to enforce since it would seem to allow governments to exert "reasonable pressure" on purchasing entities to procure civil aircraft from particular sources and would require injured parties to establish the unreasonableness of governmental pressure in particular instances.

On the whole, however, the U.S. civil aircraft industry is likely to reap important benefits from U.S. adoption of the agreement, resulting primarily from the agreement's provisions dealing with nontariff measures, since foreign tariffs on U.S. exports of commercial aircraft are usually waived. Besides increasing the immediate potential for expanded U.S. exports, the agreement should help to ensure that market forces and technology, rather than political considerations, remain predominant in commercial aircraft markets. Although the impact of the agreement on the U.S. industry cannot easily be measured, the overall effects are likely to be positive with a potential long-term rise in U.S. exports (with only a minimal increase in U.S. imports) likely to lead to an expansion in the current work force.

It is estimated that the elimination of customs duties provided for in the agreement will result in an estimated annual loss of customs revenues of approximately $51.4 million.

Because the elimination of customs duties, without staging, on all civil aircraft and parts thereof exceeds the President's negotiating authority under the Trade Act of 1974, legislation would be required to implement the tariff aspects of the agreement. It does not appear that legislation would be required to implement the nontariff aspects of the agreement, however.

Background and Origin of Agreement

Discussions with respect to a proposed agreement on trade in civil aircraft began relatively late at the MTN. On October 21, 1978, the United States circulated to our major trading partners at the MTN a "U.S. Discussion Draft of 'Agreement on Government Policy Regarding the Production and Trade of Civil Aircraft'." Although the document was circulated for discussion purposes only and was not intended to be a formal proposal, it formed the foundation for serious negotiations which ultimately led to the document which was recently initialed by Canada, the EC, Japan, Sweden and the United States as a formal expression of intent to accede to the agreement. 1/

It is our understanding that the U.S. aircraft industry was one of the principal forces behind the move for a separate MTN agreement on trade in civil aircraft. Representatives of the domestic industry actively participated in drafting the initial U.S. discussion draft and kept in close contact with the U.S. negotiating team, offering advice and assistance throughout the negotiations.

The agreement was designed to accomplish the objectives established in the summit level framework of understanding of July 13, 1978, among our major trading partners, to negotiate--

> maximum freedom of world trade in commercial aircraft, parts and related equipment, including elimination of duties and to the fullest extent possible, the reduction or elimination of trade restricting or distorting effects of other measures.

Description and Analysis of the Agreement

The agreement is unique in that it contains in a single document provisions dealing with both tariffs and non-tariff measures as they relate to trade in civil aircraft and related equipment.

The agreement consists of nine articles, a preamble, and an annex which is an integral part of the agreement and lists the articles, by respective tariff headings, which are covered by the Agreement.

Preamble

The preamble briefly sets out some of the objectives and principles of the agreement, such as--

i) to achieve maximum freedom of world trade in civil aircraft, parts and related equipment by eliminating duties and reducing or eliminating trade restricting or distorting effects;

ii) to provide fair and equal competitive opportunities;

1/ This agreement is set out in Appendix A.

iii) to eliminate adverse effects on trade in civil aircraft resulting from governmental support in civil aircraft development, production, and marketing;

iv) to allow civil aircraft activities to operate on a commercially competitive basis; and

v) to establish an international framework governing conduct of trade in civil aircraft.

Product coverage

The agreement would apply to all civil (non-military) aircraft, and all parts, components and subassemblies (including engines and parts thereof) used in the manufacture, repair, rebuilding, maintenance, modification, or conversion of such aircraft and to flight ground simulators and parts thereof.

Customs duties and other charges

Signatories to the agreement must eliminate by January 1, 1980, "all customs duties and similar charges levied on, or in connexion with the importation of products . . . " listed by tariff headings in the annex to the agreement, if such products are for use in a civil aircraft; and all duties and similar charges levied on repairs of civil aircraft. The annex to the agreement contains three separate lists of tariff headings--one by Customs Cooperation Council Nomenclature (CCCN) number (applicable to imports into the EC, Japan, Sweden, and any other signatory using the CCCN), one by Tariff Schedules of the United States Annotated (TSUSA) number (applicable to U.S.imports) and one by Canadian tariff number (for Canadian imports)--which provide substantially equivalent product coverage among all signatories.

Appendix B to this report sets out each of the TSUSA item numbers which are included in the provisional U.S. list for duty-free coverage, a short description of the affected articles and the current U.S. tariff treatment for each such article. The list includes a wide variety of provisions scattered throughout the TSUSA which do not make reference to the ultimate use of the subject article as part of an aircraft. Many of the provisions have a column 1 (trade agreement) duty rate in excess of the 5 percent ad valorem maximum for which the President is authorized under the Trade Act of 1974 to eliminate duties.

Although the purpose of this part of the agreement seems to be limited to the removal of the tariffs for each of the items listed in the respective tariff headings in the annex to the agreement, the use of the phrase "all customs duties and similar charges of any kind levied on, or in connexion with the importation of products" may be construed to encompass dumping and countervailing duty charges, as well. Similar language in the Florence

Agreement 1/ was so interpreted by the Treasury Department in terminating a dumping investigation concerning Automotive and Motorcycle Repair Manuals from United Kingdom. 2/ Such an interpretation with respect to the aircraft agreement could result in foreign suppliers taking advantage of this provision to dump or sell subsidized products covered by the agreement into the United States without recourse by domestic firms. This result would not be consistent with the purposes of the agreement as stated in the preamble (e.g., to provide fair and equal opportunities for civil aircraft activities) or with other provisions of the agreement such as article 6 which specifically contemplates that countervailing duties may be levied in accordance with the Agreement on Subsidies/Countervailing Measures. It is suggested that this potential ambiguity be eliminated in the implementing legislation.

Technical barriers to trade

Article 3 of the agreement "notes" that the provisions of the Agreement on Technical Barriers to Trade, the so-called standards agreement, applies to trade in civil aircraft 3/ and expands the coverage of the standards agreement with respect to such trade between signatories of the aircraft agreement to include aircraft certification requirements and specifications on operating and maintenance procedures. The standards agreement covers all industrial products and, therefore, is applicable on its own to the products covered in the aircraft agreement.

The standards agreement, which is analyzed in detail in volume 6 of this study, discourages discriminatory manipulations of product standards, product testing and product certification systems and requires countries to use fair and open procedures when they adopt product standards and related practices that affect international trade. Since each of the countries which have initialed the aircraft agreement have also initialed the standards agreement, the principal effect of article 3 of this agreement is the expansion of the coverage of the standards agreement discussed above.

Government-directed procurement, mandatory sub-contracts and inducements

Article 4 of the agreement establishes the basic principle that purchasers of civil aircraft should be free to select suppliers on the basis

---

1/ T.I.A.S. No. 6129, 17 U.S.T. 1835 (June 24, 1959).

2/ 43 Fed. Reg. 45932 (Oct. 4, 1978).

3/ Arguably, the provisions of the standards agreement would only be applicable to those countries which sign both the standards agreement and the aircraft agreement since the aircraft agreement merely "notes" that the standards agreement applies to trade in civil aircraft. The use of the word "notes" as opposed to a word such as "agree", which is used in the second sentence of Article 3, would not seem to impose a legal obligation on non-signatories to the standards agreement.

of commercial and technological factors. It provides that signatories should not discriminate against suppliers from any other signatory by requiring civil aircraft purchasing entities to procure civil aircraft from any particular source, or by exerting "unreasonable pressure" on them to this end. It is somewhat questionable what effect this provision will have in practice, however, since, by negative inference, it would allow governments to exert "reasonable pressure" on purchasing entities to procure civil aircraft from particular sources. Disputes are likely to arise as to the "reasonableness" of governmental involvement in purchasing decisions with the burden being on the injured party to establish both the presence of governmental pressure and that such pressure was "unreasonable".

Article 4.3 of the agreement addresses the problem of mandatory subcontracts, frequently referred to as "offsets", whereby governments contract for the purchase of civil aircraft on the condition that a certain volume of subcontracts (such as for components of the aircraft) be entered into by the seller of the aircraft with firms of the purchasing country. It provides that the purchase of products covered by the agreement should be made "only on a competitive price, quality and delivery basis", which would seem to preclude a signatory from requiring mandatory subcontracts. Article 4.3 further provides that a signatory may "require that its qualified firms be be provided with access to business opportunities on a competitive basis and on terms no less favourable than those available to the qualified firms of other Signatories". The thrust of the provisions seems to be that qualified domestic firms of the purchasing country must be given equal opportunity to compete with firms in the selling country for subcontracts, but that the seller may not be required to use such firms.

Finally, article 4.4 provides that signatories should avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source, which would create discrimination against suppliers from any signatory.

Although several of the provisions in article 4 of this agreement are analogous to provisions in the Agreement on Government Procurement, which is analyzed in volume 7 of this study, purchases by nationally-owned airlines and aircraft manufacturing companies are not covered by that agreement and, therefore, only the provisions of the aircraft agreement would apply to such purchases. However, some governmental entities do purchase civil aircraft and such purchases would be covered by the government procurement agreement.

Trade restrictions

Article 5 of the agreement states that signatories shall not apply quantitative restrictions (quotas) or licensing requirements to restrict imports or exports to other signatories of civil aircraft in a manner inconsistent with applicable provisions of the GATT. Import monitoring or licensing systems which are consistent with the GATT and export licensing procedures for reasons of national security would not be precluded.

Government support, export credits, and aircraft marketing

Article 6.1 of the agreement opens by stating that the provisions of the subsidies/countervailing measures agreement 1/ apply to trade in civil aircraft and that signatories, in their support of, or participation in, civil aircraft programs, shall "seek to avoid" adverse effects (within the meaning of the subsidies/countervailing measures agreement) on trade in civil aircraft. 2/ Since the subsidies/countervailing measures agreement would apply to trade in civil aircraft, even in the absence of an aircraft agreement, this should have little or no effect on the signatories to the aircraft agreement which are also signatories to the subsidies/countervailing measures agreement. 3/

However, article 6.1 goes on to say that signatories--

> also shall take into account the special factors which apply in the aircraft sector, in particular the widespread governmental support in this area, their international economic interests, and the desire of producers of all Signatories to participate in the expansion of the world civil aircraft market.

This language appears to lessen the impact of the subsidies/countervailing measures agreement with respect to trade in civil aircraft by providing a potential justification (i.e., the "special factors" which apply in the aircraft sector) for offering governmental subsidies in contravention of the subsidies/countervailing measures agreement.

In order to lessen the adverse trade effects of governmental subsidies and to achieve one of the objectives of the agreement, as stated in the preamble, to have civil aircraft activities "operate on a commercially competitive basis", article 6.2 provides that pricing of civil aircraft "should be based on a reasonable expectation of recoupment of all costs". This provision is not as strong as it could be, however, since there is no commitment for repayment of subsidies.

Regional and local governments

Article 7.1 provides that signatories should not require or encourage regional and local governments or non-governmental bodies to take action inconsistent with provisions of the agreement. This language does not require the U.S. Government to take any remedial action with regard to activities of

---

1/ This agreement is analyzed in volume 2 of this study.

2/ The language "seek to avoid" creates a potential problem of interpretation. Does a signatory agree to an obligation not to cause injury, serious prejudice, or nullification or impairment? Or does a signatory merely agree to try to avoid causing the unpleasant effects?

3/ At this time, only Canada, the EC, Japan, Sweden and the United States have initialed the aircraft agreement and each has also initialed the subsidies/countervailing measures agreement.

50-139 0 - 79 - 7

the various state or local governments which contravene the agreement. It simply directs that the Federal government not require or encourage such activities. However, since article 3 of the agreement notes that the standards agreement applies to trade in civil aircraft and since, under that agreement, signatories must "take such reasonable measures as may be available to it to ensure . . ." that its local governments comply with the standards agreement, signatories to the aircraft agreement would arguably have a greater burden with respect to matters which are also covered by the standards agreement.

Surveillence, review, consultation and dispute settlement

Article 8 creates a review, consultation, and dispute settlement mechanism. It establishes a Committee on Trade in Civil Aircraft ("the committee"), composed of all signatories, which is to meet, at least once a year, to consult on matters relating to the operation of the agreement and to keep under regular review the application of the agreement to ensure a continuing balance of mutual advantages.

The agreement encourages the initiation of prompt consultations between signatories to seek mutually acceptable solutions to problems or disputes which arise with respect to the agreement. Article 8.5 recommends the initiation of consultations prior to the initiation of an investigation to determine the existence, degree, and effect of any alleged subsidy. In those instances where domestic procedures are initiated without consultation, signatories should notify the committee immediately and enter into simultaneous consultations to seek a mutually agreed solution that would obviate the need for countervailing measures.

If a signatory's trade interests in civil aircraft are adversely affected by any action of another signatory, it may request the committee to review the matter. Within 30 days thereafter, the committee must convene and attempt to resolve the issues by issuing appropriate rulings and recommendations "as promptly as possible, and in particular prior to final resolution of these issues elsewhere". Such review by the committee, however, is without prejudice to the rights of signatories under the GATT or under instruments multilaterally negotiated under the auspices of the GATT, as they affect trade in civil aircraft. Thus, an aggrieved signatory, which does not get satisfactory results from the committee, could pursue remedies provided in the GATT or in other related agreements to which both parties are signatories, such as the standards agreement or the subsidies/countervailing measures agreement. Although such actions would seem to be discouraged, the aircraft agreement does not preclude the initiation of the dispute settlement mechanisms of these other agreements, prior to initiating the mechanism provided in the aircraft agreement.

With respect to disputes related to matters covered by the aircraft agreement, but not covered by other agreements, the provisions of articles XXII and XXIII of the General Agreement and the provisions of the Understanding Related to Notification, Consultation, Dispute Settlement and Surveillance, commonly

known as the frameworks agreement, shall be applied to resolve such disputes. These procedures may also be applied to resolve disputes involving matters covered by more than one agreement, if the parties to the dispute so agree.

Final provisions

Article 9 of the agreement contains the so-called final provisions dealing with matters such as --

i) acceptance and accession;

ii) reservations (they may not be entered without the consent of the other signatories);

iii) date agreement will enter into force (January 1, 1980, for governments which have accepted by then);

iv) conformity of national legislation;

v) amendments (requires unanimous consent of all signatories);

vi) withdrawal (any signatory may withdraw, effective 12 months after notification);

vii) non-application of agreement between particular signatories (if either signatory, at the time of acceptance, does not consent to such application); and

viii) servicing of the agreement (by the GATT secretariat).

Profile of U.S. Civil Aircraft Industry

Production of commercial aircraft 1/ in the United States and, in fact, in the free world, is dominated by three firms--Boeing, McDonnell-Douglas, and Lockheed. However, the recently introduced European Airbus has successfully penetrated the U.S. and foreign markets for commercial aircraft. Of the U.S. firms, Boeing is vastly more committed to the production of commercial, especially passenger, aircraft than either of the other two, both of which are more heavily involved with military aircraft and spacecraft.

It is estimated that the cost to design and tool-up for an all-new passenger airliner approaches $2 billion; the cost of planning and producing an aircraft which is a modification of an existing aircraft may be as much as $1 billion. Few privately-owned concerns can afford this magnitude of investment on a product that has yet to be sold. Once committed, an aircraft manufacturer must produce and sell as many as 400 units just to recover the investment on design, development, and initial productive capability.

In order to minimize the large financial risk involved, producers of large aircraft, both in the United States and elsewhere, enter into "risk-sharing" or similar agreements with aircraft or component producers in other countries. The participants in such agreements assist at their own expense in the design and eventual production of certain components. Since many of the foreign aircraft producers are government owned or financed, the respective governments become interested in the success of a particular new generation of aircraft and the resulting benefits to the native participants in risk-sharing agreements. This tends to insure sales of the new airplanes to foreign countries, particularly for nationally-owned airlines.

Aeritalia of Italy has for many years been producing components of the Boeing 727, and the Boeing 747. A new risk-sharing agreement with Aeritalia provides for eventual Italian contribution to the new Boeing 767 to reach $2 billion. The Italian firm now expects a subsidy from its government to assist in gearing up for production of wing control surfaces, trailing edge flaps, wing tips, elevators, and rudders for the Boeing 767. Japanese firms currently produce rudders, wing flaps, and body sections of certain of Boeing's 747's. It was recently reported that Japanese firms will also be involved to the extent of 15 percent in Boeing's 767 and 777 programs. Boeing's international agreements are not unique. Canada and Italy supply major components for the Douglas DC-9 and DC-10; Japan produces parts for the Lockheed L1011 and the United Kingdom provides engines (Rolls Royce) for the same aircraft.

1/ The term commercial aircraft, as used in this report, refers to aircraft principally used for transporting a large number of passengers and/or a significant quantity of freight.

This type of trade is not a one-way street. The European Airbus, produced by a French-German-English consortium (all government financed), is said to contain components (including engines) built in the United States that account for 30 percent or more of the value of the airplane. Foreign-made aircraft used by U.S. airlines in the past--the Viscount (United Kingdom) and the Caravelle (France) for example--are believed also to have had significant U.S. contributions.

In addition to the large U.S. producers of commercial aircraft, there are several well-known producers of aircraft for corporate and private use such as Beech Aircraft Corporation, Cessna Aircraft Company, and Piper Aircraft Corporation. While these firms import parts for their planes, they are not as contractually or financially involved with their foreign suppliers as are the commercial aircraft producers. The three named firms account for about two thirds of the annual value of U.S shipments of the smaller capacity aircraft, frequently refered to as "general aviation" aircraft.

The three largest producers of helicopters--Hughes Aircraft Company, Bell Helicopter Company, and Enstrom Helicopter Corporation--account for about 90 percent of the annual shipments of domestically-produced helicopters for other than military applications.

The four major producers of aircraft engines--General Electric Company, Pratt and Whitney Aircraft Division of United Technologies, Inc., The Garrett Corporation and Lycoming-Stratford, Division of AVCO Corporation--provide over 90 percent of the annual U.S. shipments of such engines.

In the aggregate, there are thousands of manufacturing establishments in the United States that produce one or more of the parts, components, or systems for civil aircraft. Employment contributing to the production of complete aircraft is estimated to have been 294,000 in 1978, which represents an 11 percent increase from 1977, when about 265,000 persons were employed.

In addition to their domestic facilities, many U.S. producers of civil aircraft and parts have wholly or partially owned foreign subsidiaries that produce complete aircraft, major components and parts of aircraft. Boeing and McDonnell-Douglas each have a subsidiary located in Canada that produces major components for some of their models of commercial aircraft. Cessna, with subsidiaries located in France and Argentina, and Piper, with facilities in Switzerland and Brazil, produce or assemble complete aircraft at these facilities. Other companies such as Conrac Corp. (avionics), Ex-Cell-O Corp. (aircraft parts), Garrett Corp.(aircraft engine parts), Litton Industries (avionics) and United Technologies Corp. (aircraft engines) have subsidiaries located in one or more of the following countries; the United Kingdom, West Germany, Canada, Japan, Brazil, and Italy.

U.S. producers' shipments

The total value of U.S. producers' shipments of civil aircraft and parts declined from $9.7 billion in 1974 to $8.8 billion in 1976 and then increased

dramatically to $12.8 billion in 1978 (table 1, Appendix C). Complete aircraft, as well as components, shared in the improvement of sales in 1978. The value of annual shipments of complete aircraft declined from approximately $5.1 billion during the period 1974-75 to approximately $4.7 billion during 1976-77 and then increased to $6.5 billion in 1978. The decline of shipments during 1976-77 was due entirely to a decline in shipments of commercial aircraft; sales of helicopters and general aviation aircraft increased each year during 1974-78. Due to the lead time involved, the decline in shipments of commercial aircraft during 1976-77 reflects in part the low levels of orders for such aircraft experienced earlier in the 1970's. A strike in the industry during the last quarter of 1977 also contributed to the decline in shipments. U.S. shipments of complete aircraft by the number of units are shown below.

Complete civil aircraft: U.S. shipments, by kinds, 1974-78

(In number of units)

Year	Commercial	Helicopters	General aviation	Total
1974	332	828	14,165	15,325
1975	315	864	14,057	15,236
1976	238	775	15,447	16,460
1977	185	884	16,920	17,989
1978	244	935	17,187	18,366

Sources: Aerospace Facts and Figures, 1978-79; Aerospace Industries Association; and General Aviation Manufacturers Association.

Aircraft manufacturing activity is expected to generally increase during the next several years because of the deregulation of U.S. airlines, the improving financial situation of both domestic and foreign airlines, and the growing need to replace older equipment, the replacement of which has tended to be postponed.

U.S. exports

In view of the investment required to introduce a new generation of aircraft and the relatively limited (yet substantial) home requirement for such aircraft, a large export market is absolutely essential. The products of the U.S. producers have accounted for over 80 percent of recent sales of commercial airliners in the free world; of the 244 commercial aircraft delivered by U.S. producers in 1978, 111 were destined for foreign customers.

The success of the U.S. aircraft producers in foreign markets has resulted in a very significant export trade balance in civil aircraft for many years (see table 6 in Appendix C for a comparison of exports and imports).

Annual U.S. exports of civil aircraft and parts increased from $5.1 billion in 1974 to $5.5 billion in 1976 and then declined to $4.9 billion in 1977. U.S. exports in 1978 increased to $6.0 billion (Table 2 in Appendix C). Exports of complete aircraft accounted for from 57 to 66 percent of the total value of annual exports during 1974-78; they declined from $3.4 billion in 1974 to $2.7 billion in 1977 and then increased to $3.6 billion in 1978.

Aircraft parts (other than engines and parts thereof) accounted for 20 to 29 percent of total exports during 1974-78, and engines and parts thereof accounted for most of the remainder.

U.S.-made commercial aircraft are evident in virtually all free-world countries. Although export markets vary from year to year, Iran, the United Kingdom, West Germany, France, Japan, and Israel have been the largest foreign markets for U.S. commercial aircraft in recent years.

Part of the value of exports, particularly exports of aircraft parts other than engines, consists of parts or components exported for further processing or assembly for eventual return to the United States under the provisions of TSUSA items 806.30 and 807.00. 1/

U.S. imports

While annual U.S. imports are only a fraction of annual exports, ranging from 10 percent to 17 percent of the value of exports during 1974-78, they are significant. Annual imports of articles currently identifiable in the TSUSA as aircraft and parts declined from $706 million in 1974 to $556 million in 1976, and then increased to approximately $1 billion in 1978 (table 3 in Appendix C). In contrast to exports, imports consist largely of aircraft parts including engines rather than complete aircraft; aggregate imports of these products accounted for 70 percent or more of the annual value of imports of civil aircraft and aircraft parts in 4 of the last 5 years. Imports reflect, in large part, the requirements of U.S. aircraft producers for original equipment parts and, to a lesser extent, U.S. producers' requirements for replacement parts for U.S.-made aircraft in domestic service. Replacement parts are also imported for foreign-made aircraft in domestic service.

Much of the value of annual imports of complete civil aircraft--66 percent in 1978--represents the total value of entries of articles containing U.S.-made products that were processed or assembled in foreign countries and

1/ Item 806.30 provides that any article of base metal that is manufactured or processed in the United States, exported for further processing, and subsequently returned to the United States for further processing is, upon its return to the United States, subject to duty only on the basis of the value added outside the United States. Item 807.00, on the other hand, provides that imports of articles assembled abroad in whole or in part from components produced in the United States will be subject to duty on the full value of the article as imported, less the value of U.S.-made components.

imported under the provisions of TSUSA items 806.30 or 807.00. U.S. imports of aircraft parts including engines (for civil and military use) entering duty-free under items 806.30 or 807.00 in 1978 represented 30 percent of the total import value of such articles. Canada, Europe (particularly France, the United Kingdom, and Italy), and Mexico account for the bulk of imports of aircraft and parts entering under items 806.30 or 807.00. Table 4 in Appendix C presents total U.S. imports and imports entering under items 806.30 or 807.00 for aircraft and parts in 1978.

As previously discussed, numerous articles intended for use in aircraft are classified under a wide variety of provisions of the TSUSA which do not identify such articles as aircraft components. Official statistics, therefore, do not segregate imports of such articles intended for use in aircraft from similar articles intended for other applications. It is estimated that the annual aggregate value of such unidentifiable imports does not exceed 9 percent of the total value of imports known to be aircraft or parts of aircraft in 1978. Table 5 in Appendix C presents the estimated 1978 imports of each of the articles included on the provisional U.S. list for duty-free coverage provided in the annex of the aircraft agreement.

U.S. apparent consumption

Because of the very substantial export market enjoyed by U.S. producers of civil aircraft, the aggregate value of annual U.S. consumption of civil aircraft and parts is very much less than annual production--usually 40 to 50 percent less. The value of consumption declined from $5.3 billion in 1974 to $3.9 billion in 1976 and then increased to $7.8 billion in 1978 (table 6, Appendix C).

Possibly a more useful measure of the annual level of consumption, however, is the consumption of complete aircraft. Since most parts are consumed in the production of complete aircraft, data with respect to the consumption of complete aircraft avoids the problem of double counting. The value of U.S. apparent consumption of such articles increased from $1.8 billion in 1974 to $2.0 billion in 1975 and then declined to $1.6 billion in 1976. However, in 1977 and 1978 apparent consumption climbed to $2.3 billion and $3.2 billion respectively.

The ratio of imports to consumption of complete aircraft fluctuated during the last five years between 4.1 percent (1975) and 11.5 percent (1977). The trend in the share of imports of aircraft engines and parts to U.S. consumption has declined during 1974-78. The import-to-consumption ratio of engines and parts during the last five years has ranged from 20.2 percent (1977) to 24.6 percent in 1975. Imports of aircraft tires accounted for less than 10 percent of annual consumption during the period 1974-78. Imports of parts for civil aircraft other than engines and tires provided from 12.1 percent (1978) to 19.9 percent (1976) of the value of annual consumption during the year 1974-78.

Overall Probable Effect of the Agreement

Probable effect on domestic industry

The U.S. civil aircraft industry is likely to reap important benefits from the agreement recently initialed by the United States, Canada, the EC, Sweden and Japan. Commercial aircraft manufacturers could gain increased access to new markets as a result of the provisions of the agreement dealing with non-tariff measures. At the same time, general aviation manufacturers should enjoy immediate benefits from the removal of tariffs and could eventually gain from the removal of non-tariff barriers. Overall, the potential increase in exports arising from the agreement should more than offset the increase in imports, with a resultant net gain in industry output and employment.

Since tariffs are usually waived for U.S. exports of commercial aircraft to signatory countries, the formal elimination of these tariffs would have little, if any, impact on U.S. exports. However, the domestic industry should experience significant gains from the removal of certain non-tariff barriers, both in the short term and over the long run. Under the terms of the agreement, signatories may no longer require their nationally-owned airlines to procure nationally-manufactured aircraft and parts. In addition, the agreement seeks to eliminate technical standards aimed at restricting imports and to discourage export subsidies which adversely affect trade in civil aircraft. Besides increasing the immediate potential for expanded U.S. exports, the agreement should help to ensure that market forces and technology, rather than political considerations, remain predominant in commercial aircraft markets. Since the rapidly developing European commercial aircraft industries are all government owned, or government financed, the agreement should help the U.S. commercial aircraft industry maintain its strong export performance in the long run. Some industry analysts believe that there is considerable potential for a large expansion in U.S. general aviation exports. If so, the removal of tariffs, which are currently 12 percent, both in Japan and the EC on most general aviation products could result in a significant export boost for the U.S. industry. Although non-tariff barriers are not an important obstacle to general aviation exports to most signatory countries, they frequently impede general aviation exports in other parts of the world, notably several South American countries. If these countries and others eventually sign the agreement, the long-run effects for U.S. manufacturers would clearly be positive.

Since U.S. tariffs on complete aircraft are only five percent ad valorem, the removal of these tariffs could only be expected to result in a minimal increase, at most, in imports of passenger and general aviation aircraft. Domestic manufacturers stand to gain from the removal of tariffs on aircraft parts, since it will tend to lower the cost of their final product. However, this impact is also likely to be small. The removal of these tariffs is unlikely to encourage U.S. aircraft firms to shift their parts manufacturing operations to other signatory countries.

Although wages in some of these countries are lower than those in the United States, this advantage is offset by the high U.S. labor productivity in parts manufacturing.

Although the impact of the agreement on the U.S. industry cannot easily be measured, the overall effects are likely to be positive. The potential long term rise in U.S. exports that may result from the agreement could lead to an expansion in the current work force of 200,000 aerospace employees whose jobs are directly dependent on exports. In any event, it promises these employees greater job security in the future, in the face of increased competition from competing foreign aircraft manufacturers.

Potential loss of customs revenue

Based on the estimated value of U.S. imports for civil aircraft and parts in 1978, including all articles in the provisional U.S. list for duty-free coverage, the annual loss of customs revenues resulting from the proposed elimination of customs duties by the agreement would amount to approximately $51.4 million.

U.S. Implementation of the Agreement

Since the agreement would eliminate the duty on many articles which are currently subject to a duty rate in excess of 5 percent ad valorem and since the total duty elimination would take effect on January 1, 1980, rather than being staged in accordance with section 109 of the Trade Act of 1974, legislation would be required to implement the tariff aspects of the agreement in the TSUSA. Further, section 466 of the Tariff Act of 1930 (19 USC 1466) which provides for a duty rate of 50 percent ad valorem on the cost of equipment, repair parts, materials or expenses of repairs made upon U.S. vessels (interpreted by Treasury to include aircraft) employed in the foreign or coasting trade, would have to be amended to exclude aircraft repairs from its coverage.

As previously mentioned, the implementing legislation should make it clear that the term "customs duties and similar charges of any kind levied on or in connexion with, the importation of products", as used in the agreement, does not include dumping duties or countervailing duties.

It does not appear that legislation would be required to implement the non-tariff aspects of the agreement.

APPENDIX A

AGREEMENT ON TRADE IN CIVIL AIRCRAFT

GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

AGREEMENT ON TRADE IN CIVIL AIRCRAFT

Delegations from Canada, EEC, Japan, Sweden, and the United States have agreed ad referendum on the attached Agreement on Trade in Civil Aircraft. They have asked that this Agreement be circulated to all MTN participants for their consideration and possible signature. It is appreciated that some delegations participating in the MTN may not be in a position to sign immediately, and they are invited to do so at their earliest convenience.

It should be noted that the product coverage set out in the Annex to the Agreement may be subject to minor modifications of a non-substantive nature to insure the comparability of the coverage in the tariff nomenclatures of the signatories.

AGREEMENT ON TRADE IN CIVIL AIRCRAFT

PREAMBLE

Signatories to the Agreement on Trade in Civil Aircraft, hereinafter referred to as "this Agreement";

Noting that Ministers on 12-14 September 1973 agreed the Tokyo Round of Multilateral Trade Negotiations should achieve the expansion and ever-greater liberalization of world trade through, inter alia, the progressive dismantling of obstacles to trade and the improvement of the international framework for the conduct of world trade;

Desiring to achieve maximum freedom of world trade in civil aircraft, parts and related equipment, including elimination of duties and to the fullest extent possible, the reduction or elimination of trade restricting or distorting effects;

Desiring to encourage the continued technological development of the aeronautical industry on a world-wide basis;

Desiring to provide fair and equal competitive opportunities for their civil aircraft activities and for their producers to participate in the expansion of the world civil aircraft market;

Being mindful of the importance in the aircraft sector of their overall mutual economic and trade interests

Recognizing that many Signatories view the aircraft sector as a particularly important component of economic and industrial policy;

Seeking to eliminate adverse effects on trade in civil aircraft resulting from governmental support in civil aircraft development, production, and marketing while recognizing that such governmental support, of itself would not be deemed a distortion of trade;

Desiring that their civil aircraft activities operate on a commercially competitive basis, and recognizing that government-industry relationships differ widely among them;

Recognizing their obligations and rights under the General Agreement on Tariffs and Trade, hereinafter referred to as "the GATT", and under other multilateral agreements negotiated under the auspices of the GATT;

Recognizing the need to provide for international notification, consultation, surveillance and dispute settlement procedures with a view to ensuring a fair, prompt and effective enforcement of the provisions of this Agreement and to maintain the balance of rights and obligations;

Desiring to establish an international framework governing conduct of trade in civil aircraft;

Hereby agree as follows:

1. Product Coverage

1.1 This Agreement applies to the following products:

(a) all civil aircraft,

(b) all civil aircraft engines and their parts and components,

(c) all other parts, components, and sub-assemblies of civil aircraft,

(d) all ground flight simulators and their parts and components,

whether used as original or replacement equipment in the manufacture, repair, rebuilding, maintenance, modification or conversion of civil aircraft.

1.2 For the purposes of this Agreement "civil aircraft" means (a) all aircraft other than military aircraft and (b) all other products set out in Article 1.1 above.

2. Customs Duties and Other Charges

2.1 Signatories agree:

2.1.1 to eliminate by 1 January 1980, all customs duties and similar charges of any kind levied on, or in connexion with, the importation of products, classified for customs purposes under their respective tariff headings listed in the Annex, if such products are for use in a civil aircraft, and incorporation therein, in the course of its manufacture, repair, maintenance, rebuilding, modification or conversion;

2.1.2 to eliminate by 1 January 1980, all customs duties and similar charges of any kind levied on repairs on civil aircraft;

(c) to incorporate in their respective GATT Schedules by 1 January 1980, the duty-free or duty-exempt treatment for all products covered by Article 2.1.1 above and for all repairs covered by Article 2.1.2 above.

2.2 Each signatory shall: (a) adopt or adapt an end-use system of customs administration to give effect to its obligations under Article 2.1 above; (b) ensure that its end-use system provides duty-free or duty-exempt treatment that is comparable to the treatment provided by other signatories and is not an impediment to trade; and (c) inform other signatories of its procedures for administering the end-use system.

3. Technical Barriers to Trade

3.1 Signatories note that the provisions of the Agreement on Technical Barriers to Trade apply to trade in civil aircraft. In addition, signatories agree that civil aircraft certification requirements and specifications on operating and maintenance procedures shall be governed, as between signatories of this Agreement, by the provisions of the Agreement on Technical Barriers to Trade.

4. Government-Directed Procurement, Mandatory Sub-Contracts and Inducements

4.1 Purchasers of civil aircraft should be free to select suppliers on the basis of commercial and technological factors.

4.2 Signatories shall not require airlines, aircraft manufacturers, or other entities engaged in the purchase of civil aircraft, nor exert unreasonable pressure on them, to procure civil aircraft from any particular source, which would create discrimination against suppliers from any Signatory.

4.3 Signatories agree that the purchase of products covered by this Agreement should be made only on a competitive price, quality and delivery basis. In conjunction with the approval or awarding of procurement contracts for products covered by this Agreement a Signatory may, however, require that its qualified firms be provided with access to business opportunities on a competitive basis and on terms no less favourable than those available to the qualified firms of other Signatories.[1]

[1] Use of the phrase "access to business opportunities ... on terms no less favourable ..." does not mean that the amount of contracts awarded to the qualified firms of one signatory entitles the qualified firms of other signatories to contracts of a similar amount.

4.4 Signatories agree to avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source which would create discrimination against suppliers from any Signatory.

5. Trade Restrictions

5.1 Signatories shall not apply quantitative restrictions (import quotas) or import licensing requirements to restrict imports of civil aircraft in a manner inconsistent with applicable provisions of the GATT. This does not preclude import monitoring or licensing systems consistent with the GATT.

5.2 Signatories shall not apply quantitative restrictions or export licensing or other similar requirements to restrict, for commercial or competitive reasons, exports of civil aircraft to other Signatories unless consistent with provisions of the GATT.

6. Government Support, Export Credits, and Aircraft Marketing

6.1 Signatories note that the provisions of the Agreement of Subsidies/ Countervailing Measures apply to trade in civil aircraft. They affirm that in their participation in, or support of, civil aircraft programmes they shall seek to avoid adverse effects on trade in civil aircraft in the sense of Articles 8.3 and 8.4 of the Agreement on Subsidies/Countervailing Measures. They also shall take into account the special factors which apply in the aircraft sector, in particular the widespread governmental support in this area, their international economic interests, and the desire of producers of all Signatories to participate in the expansion of the world civil aircraft market.

6.2 Signatories agree that pricing of civil aircraft should be based on a reasonable expectation of recoupment of all costs, including non-recurring programme costs, identifiable and pro-rated costs of military research and development on aircraft, components, and systems that are subsequently applied to the production of such civil aircraft, average production costs, and financial costs.

7. Regional and Local Governments

7.1 In addition to their other obligations under this Agreement, Signatories agree not to require or encourage, directly or indirectly, regional and local governments, non-governmental bodies, and other bodies to take action inconsistent with provisions of this Agreement.

8. Surveillance, Review, Consultation, and Dispute Settlement

8.1 There shall be established a Committee on Trade in Civil Aircraft (hereinafter referred to as "the Committee") composed of all Signatories to this Agreement. The Committee shall elect its own Chairman. It shall meet as necessary, but not less than once a year, for the purpose of affording Signatories the opportunity to consult on any matters relating to the operation of this Agreement, including developments in the civil aircraft industry, to determine whether amendments are required to ensure continuance of free and undistorted trade, to examine any matter for which it has not been possible to find a satisfactory solution through bilateral consultations, and to carry out such responsibilities as are assigned to it under this Agreement.

8.2 Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, Signatories shall undertake further negotiations, with a view to broadening and improving the Agreement, on the basis of mutual reciprocity.

8.3 The Committee may establish such subsidiary bodies as may be appropriate to keep under regular review the application of this Agreement to ensure a continuing balance of mutual advantages. In particular, it shall establish an appropriate subsidiary body in order to ensure a continuing balance of mutual advantages, reciprocity and equivalent results with regard to the implementation of the provisions of Article 2 above related to product coverage, the end-use systems, customs duties and other charges.

8.4 Signatories shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representations made by another Signatory with respect to any matter affecting the operation of this Agreement.

8.5 Signatories recognize the desirability of consultations with other Signatories in the Committee in order to seek a mutually acceptable solution prior to the initiation of an investigation to determine the existence, degree and effect of any alleged subsidy. In those exceptional circumstances in which no consultations occur before such domestic procedures are initiated, Signatories shall notify the Committee immediately of initiation of such procedures and enter into simultaneous consultations to seek a mutually agreed solution that would obviate the need for countervailing measures.

50-139 O - 79 - 8

8.6 Should a signatory consider that its trade interests in civil aircraft have been or are likely to be adversely affected by any action by another Signatory, it may request review of the matter by the Committee. Upon such a request, the Committee shall convene within thirty days and shall review the matter as quickly as possible with a view toward resolving the issues involved as promptly as possible and in particular prior to final resolution of these issues elsewhere. In this connexion the Committee may issue such rulings or recommendations as may be appropriate. Such review shall be without prejudice to the rights of Signatories under the GATT or under instruments multilaterally negotiated under the auspices of the GATT, as they affect trade in civil aircraft. For the purposes of aiding consideration of the issues involved, under the GATT and such instruments, the Committee may provide such technical assistance as may be appropriate.

8.7 Signatories agree that, with respect to any dispute related to a matter covered by this Agreement, but not covered by other instruments multilaterally negotiated under the auspices of the GATT, the provisions of Articles XXII and XXIII of the General Agreement and the provisions of the Understanding related to Notification, Consultation, Dispute Settlement and Surveillance shall be applied, mutatis mutandis, by the Signatories and the Committee for the purposes of seeking resolution of such dispute. These procedures shall also be applied for the resolution of any dispute related to a matter covered by this Agreement and by another instrument multilaterally negotiated under the auspices of the GATT, should the parties to the dispute so agree.

9. Final Provisions

9.1 Acceptance and Accession

9.1.1 This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community.

9.1.2 This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Signatories to this Agreement by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

9.2. Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Signatories to this Agreement.

9.3. Entry into Force

9.3.1 This Agreement shall enter into force on 1 January 1980 for the governments[1] which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

9.4. National Legislation

9.4.1 Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

9.4.2 Each Signatory to this Agreement shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

9.5. Amendments

9.5.1 The Signatories to this Agreement may amend it, having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the Signatories have concurred in accordance with the procedures established by the Committee, shall not come into force for any Signatory until it has been accepted by such Signatory.

9.6. Withdrawal

9.6.1 Any Signatory to this Agreement may withdraw from this Agreement. The withdrawals shall take effect upon the expiration of twelve months from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Signatory to this Agreement may upon such notification request an immediate meeting of the Committee.

---

[1] For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Economic Community.

9.7 Non-application of this Agreement Between Particular Signatories

9.7.1 This Agreement shall not apply as between any two Signatories to this Agreement if either of the Signatories, at the time either accepts or accedes to this Agreement, does not consent to such application.

9.8 Annex

9.8.1 The Annex to this Agreement forms an integral part thereof.

9.9 Secretariat

9.9.1 This Agreement shall be serviced by the GATT secretariat.

9.10 Deposit

9.10.1 This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT who shall promptly furnish to each Signatory to this Agreement and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to Article 9.5 and a notification of each acceptance thereof or accession thereto pursuant to Article 9.1, or each withdrawal therefrom pursuant to Article 9.6.

9.11 Registration

9.11.1 This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this ..... day of ..... nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

ANNEX

PRODUCT COVERAGE

Signatories agree that products classified for customs purposes under their respective tariff headings listed below, shall be accorded duty-free or duty-exempt treatment, if such products are for use in a civil aircraft, and incorporation therein, in the course of its manufacture, repair, maintenance rebuilding, modification, or conversion.

These products shall not include:

- an incomplete or unfinished product, unless it has the essential characteristics of a complete or finished civil aircraft part, component, sub-assembly or item of equipment.[1]

- materials in any form (e.g., sheets, plates, profile shapes, strips, bars, pipes, tubes, or other shapes) unless they have been cut to size or shape or shaped for incorporation in civil aircraft.[1]

- raw materials and consumable goods.

---

[1] E.g., an article which has a civil aircraft manufacturer's parts number.

PROVISIONAL COVERAGE

CCCN	Short description
ex 39.07	Hose, pipe and tubing of plastic materials, with fittings
ex 40.09	Hose, pipe and tubing of unhardened vulcanized rubber, with fittings
ex 40.11	Tyres
ex 40.16	Hose, pipe and tubing of hardener rubber with fittings
ex 62.05	Seat belts
ex 68.13) ex 68.14)	Articles of asbestos
ex 70.08	Windshields, not framed
ex 70.21	Windshields, framed
ex 73.25	Cables with fittings
ex 73.38	Sanitary ware of steel
ex 83.02	Hinges
ex 83.07	Illuminating articles of base metal, and parts
	Sealed beam lamps, and parts
ex 83.08	Flexible metal tubing, with fittings
ex 84.06	Piston engines and parts
ex 84.07	Hydraulic motors, actuators
ex 84.08	Non-piston engines, and parts
ex 84.10	Injection pumps
	Fluid power pumps
ex 84.11	Fans and blowers, and parts
	Compressors
	Air and vacuum pumps
ex 84.12	Air conditioners
ex 84.15	Refrigerators
ex 84.18	Centrifuges and filters
ex 84.21	Fire extinguishers

CCCN	Short description
ex 84.53	Aircraft computers, and parts
ex 84.59	Air humidifiers and dehumidifiers
	Starter motors, propeller regulators (valves) and servo-mechanisms
	Windscreen wipers
	Hydraulic servo-motors
	Hydropneumatic spherical batteries
	Pneumatic starters for jet engines
	Toilet units specially designed for aeroplanes
	Mechanical actuators for thrust reversers
ex 84.63	Speed changers and gear-boxes
	Pulleys and shaft couplings
	Torque converters
	Chain sprockets, clutches and universal joints
ex 85.01	Transformers
	Electric motors
ex 85.08	Magnetos, electrical starters, spark plugs, generators
ex 85.12	Electrical cooking stoves
	Electrical furnaces, heaters and ovens
	Food warmers
ex 85.14	Microphones, loudspeakers, etc. ...
ex 85.15	Radios and parts
	Transceivers, antennas, etc.
	Radio navigation and control apparatus
ex 85.17	Sound signalling apparatus
	Servos, synchros, transducers

CCCN	Short description
ex 85.19	Electrical apparatus for making and breaking electrical circuits, for the protection of electrical circuits or for making connections to or in electrical circuits:
	- Switches used in freight loading, in auxiliary power units and in emergency lighting systems
	- Other:
	- Intended for the power plant
	- Other
	Switchboards and control panels
ex 85.23	Ignition wiring sets
ex 88.01	Balloons and airships (except military)
ex 88.02	Gliders (except military)
	Airplanes and helicopters (except military)
ex 88.03	Aircraft parts
ex 88.05	Flight simulators
ex 90.14	Automatic pilots and parts
	Navigational instruments
	Gyroscopic compasses
	Other compasses
	Navigation instruments
ex 90.18	Oxygen masks
ex 90.23	Thermometers
ex 90.24	Flow meters and other gauges
ex 90.27	Speedometers and tachometers
ex 90.28	Electro-optical instruments
	Automatic flight control instruments
	Electrical measuring instruments
	Other voltage regulators

CCCN	Short description
ex 90.29	Parts of:
	- thermometers
	- flow meters and other gauges
	- automatic flight control instruments
ex 91.04	Clocks over $10 each, and parts
	Apparatus for measuring and recording time, over $10 each, and parts
ex 92.11	Flight and cockpit voice recorders
ex 94.01	Seats (except those covered with leather) and parts
ex 94.03	Other furniture and parts

PROVISIONAL UNITED STATES LIST FOR DUTY-FREE COVERAGE UNDER THE AGREEMENT ON TRADE IN CIVIL AIRCRAFT

TSUS No.	Short description	Excludes
518.51	Other articles of asbestos	
544.41 (Pt.)	Glass windshields	All but windshields
642.20 (Pt.)	Cables with fittings	Ropes, etc.
647.03 (Pt.) 647.05	Hinges (including aileron hinges)	Fittings and mountings
652.09 (Pt.)	Flexible metal tubing, with fittings	Tubing without fittings
653.39	Illuminating articles of base metal, n.e.s.	
653.94 (Pt.)	Sanitary ware	Other parts
660.4415	Piston engines for aircraft	
660.4620 660.4640	Non-piston engines for aircraft	
660.5210	Parts of piston engines	
660.5450	Parts of non-piston engines	
660.85 (Pt.)	Hydraulic motors, actuators	Parts
660.94 (Pt.)	Fluid power pumps	Liquid elevators and parts of pumps
661.1030	Fans and blowers	
661.12 (Pt.)	Compressors	Parts
661.15 (Pt.)	Air and vacuum pumps	Parts
661.20 (Pt.)	Air conditioners	Parts
661.35 (Pt.)	Refrigerators	Parts
661.90 (Pt.) 661.95 (Pt.)	Centrifuges and filters	Parts
662.50 (Pt.)	Aircraft fire extinguishers	Other appliances and parts
676.15 676.30	Aircraft computers	
678.5080 (Pt.)	Flight simulators	Other machines and parts

TSUS No.	Short description	Excludes
680.47	Speed changers and gear boxes	
680.50 (Pt.)	Pulleys and shaft couplings	Parts
680.55 (Pt.)	Torque converters	Parts
680.56 (Pt.)	Chain sprockets, clutches and universal joints	Parts
682.07	Transformers	
682.40	Electric motors, (except for less than 1 HP)	
683.60 (Pt.)	Magnetos, starter motors, spark plugs, generators	Parts
684.30 (Pt.)	Electric cooking stoves	Parts
684.40 (Pt.)	Electric furnaces, heaters and ovens	Parts
684.50 (Pt.)	Food warmers	Parts
684.70 (Pt.)	Microphones, loudspeakers, etc.	Parts
685.24	Radios	
685.29 (Pt.)	Transceivers, antennas, etc.	Parts
685.4023 (Pt.) 685.4065	Aircraft flight and cockpit voice recorders	Parts
685.60 (Pt.)	Radio navigation and control apparatus	Parts
685.70 (Pt.)	Sound signalling apparatus	Parts
686.24 (Pt.)	Other voltage regulators	Parts
686.60	Sealed-beam lamps	
688.40 (Pt.)	Servos, synchros, transducers	Other electrical articles and parts
688.12	Ignition wiring sets	
694.15	Balloons and airships	
694.20	Gliders	
694.40 (except .4010)	Airplanes (including helicopters but excluding military)	
694.60	Aircraft parts	

TSUS No.	Short description	Excludes
709.45 (Pt.)	Oxygen masks	Parts
710.08 (Pt.)	Navigational instruments	Parts
710.14 (Pt.)	Gyroscopic compasses	Parts
710.16 (Pt.)	Other compasses	Parts
710.30	Automatic pilots and parts	
710.46 (Pt.)	Navigation instruments (non-electric)	Parts
711.36 711.37	Thermometers	
711.82 711.8420	Flow meters and other gauges	
711.98 (Pt.)	Speedometers and tachometers	Parts
712.05 (Pt.)	Electo-optical instruments	Parts
712.47	Automatic flight control instruments and parts thereof	
712.4910 (Pt.) 712.4950 712.4980 (Pt.)	Electrical measuring instruments	Parts
715.33	Clocks, over $10 each	
715.53	Apparatus for measuring and recording time, over $10 each	
724.47	Furniture of reinforced laminated plastics	
727.48	Other furniture of rubber or plastic	
727.55	Other furniture	
745.45 (Pt.)	Seat belts	Parts
772.45	Aircraft tyres	
772.65 (Pt.)	Hose, pipe and tubing of rubber or plastic, with fittings	Those without fittings

RESTRICTED

GENERAL AGREEMENT ON TARIFFS AND TRADE

MTN/W/38/Add.1
11 April 1979
Special Distribution

Multilateral Trade Negotiations

AGREEMENT ON TRADE IN CIVIL AIRCRAFT

Addendum

A-20

ANNEX

Provisional Canadian List of Products Covered under the Agreement on Trade in Civil Aircraft

Tariff Item	Short Description	Excludes
31200-1	Asbestos and manufactures thereof	
EX35200-1	Hinges of brass and copper, n.o.p.	
EX35400-1	Hinges, furniture of aluminum, n.o.p.	
EX36215-1	Nickel-plated hinges, n.o.p.	
36800-1	Clocks	
39200-1	Forgings of iron and steel	
41415-1	Bookkeeping, calculating, invoicing machines	
41505-1	Electric refrigerators	
42400-1	Fire extinguishing machines	
42405-1	Hand fire extinguishers, sprinklerheads	
42700-1	Machines and parts, n.o.p.	
42701-1		
43005-1	Hinges and butts of iron and steel	
43300-1	Basins, lavatories, sinks, etc.	
44028-1	Chronometers, compasses	Parts
44043-1	Aircraft, without engines, not made in Canada	
44044-1	Aircraft, without engines, made in Canada	
44047-1	Aircraft engines, not made in Canada	

Tariff Item	Short Description	Excludes
44048-1	Aircraft engines, made in Canada	
44051-1	Parts of aircraft, n.o.p.; not made in Canada	
44052-1	Parts of aircraft, n.o.p.; made in Canada	
44055-1	Parts of aircraft engines, n.o.p.; not made in Canada	
44056-1	Parts of aircraft engines, n.o.p.; made in Canada	
44059-1	Other products not made in Canada for use in aircraft, aircraft engines or parts	
44300-1	Cooking apparatus	Parts
44500-1	Electric light fixtures	
44502-1	Electric head, side, tail lights	
EX44504-1	Sealed beam lights	
44514-1	Electric dynamos or generators and transformers	Parts
44516-1	Electric motors	
44524-1	Electric apparatus, n.o.p.	
44532-1	Precision electrical apparatus, not made in Canada	
44533-1	Radio and television apparatus, n.o.p.	
EX44536-1	Microphones	
44538-1	Recorders, reproducers, dictation recording machines	Parts

Tariff Item	Short Description	Excludes
44540-1	Loudspeakers, amplifiers, etc.	Parts
EX44603-1	Furniture of iron and steel, n.o.p.	
46200-1	Instruments of observation, measurement	Parts
47100-1	Belt pulleys	
EX61800-1	Furniture of rubber, n.o.p.	
61815-1	Tires and tubes	
EX71100-1	Magnesium castings	
EX93907-1	Furniture	

APPENDIX B

CURRENT U.S. TARIFF TREATMENT OF ARTICLES INCLUDED ON THE PROVISIONAL U.S. LIST FOR DUTY-FREE COVERAGE

TSUS(A) item No. 1/	Brief description	Current column 1 rate of duty	Current column 2 rate of duty 2/
		(cents per pound, except as indicated; percent ad valorem)	(cents per pound except as indicated; percent ad valorem)
518.51	Other articles of asbestos	4.5%	25%
544.41(pt.)	Glass windshields	9%	60%
642.20(pt.)	Cables with fittings	9.5%	45%
647.03(pt.)		9.5%	45%
647.05	Hinges (including aileron hinges)	8%	45%
652.09(pt.)	Flexible metal tubing, with fittings	10%	30%
653.39	Illuminating articles of base metal, n.e.s.	19%	45%
653.94(pt.)	Sanitary ware	8.5%	40%
660.4415	Piston engines for aircraft	4%	35%
660.4620	Non-piston engines for aircraft	5%	35%
660.4640	---do---	5%	35%
660.5240	Parts of piston type engines	4%	35%
660.5450	Parts of non-piston aircraft engines	5%	35%
660.85(pt.)	Hydraulic motors, actuators	4.5%	27.5%
660.97(pt.)	Fluid power pumps	5%	35%
661.1030	Fans and blowers	7%	35%
661.12(pt.)	Compressors	4.5%	35%
661.15(pt.)	Air and vacuum pumps	5%	35%
661.20(pt.)	Air conditioners	5.5%	35%
661.35(pt.)	Refrigerators	5%	35%
661.90(pt.)	Centrifuges and filters	5.5%	2[illegible]%
661.95(pt.)	---do---	5.5%	35%
662.50(pt.)	Aircraft fire extinguishers	5%	35%
676.15	Aircraft computers	5.5%	35%
676.30	---do---	5%	35%
678.5080(pt.)	Flight simulators	5%	35%
680.47	Speed changers and gear boxes	$1.12 each & 17.5%	$4.50 each & 65%
680.50(pt.)	Pulley and shaft couplings	9.5%	45%
680.55(pt.)	Torque converters	4.5%	27.5%
680.56(pt.)	Chain sprockets, clutches, and universal joints	9.5%	45%
682.07	Transformers	6%	35%

See footnote at end of table.

TSUS(A) item No. 1/	Brief description	Current column 1 rate of duty	Current column 2 rate of duty 2/
		(cents per pound, except as indicated; percent ad valorem	(cents per pound except as indicated; percent ad valorem
682.40(pt.)	Electric motors	5%	35%
682.60(pt.)	Generators	7.5%	35%
683.60(pt.)	Magnetos, starter motors, spark plugs, generators	4%	35%
684.30(pt.)	Electric cooking stoves	4%	35%
684.40(pt.)	Electric furnaces, heaters and ovens	5%	35%
684.50(pt.)	Food warmers	5.5%	35%
684.70(pt.)	Microphones, loudspeakers, etc.	7.5%	35%
685.24	Radios	10.4%	35%
685.29(pt.)	Transceivers, antennas, etc.	6%	35%
685.4023(pt.) 685.4065	Aircraft flight and cockpit voice recorders	5.5%	35%
685.60(pt.)	Radio navigation and control apparatus	7.5%	35%
685.70(pt.)	Sound signalling apparatus	4%	35%
686.24(pt.)	Other voltage regulators	7.5%	35%
686.60	Sealed-beam lamps	4%	20%
688.12	Ignition wiring sets	5%	30%
688.40(pt.)	Servos, synchros, transducers	5.5%	35%
694.15	Balloons and airships	4.5%	27.5%
694.20	Gliders	4.5%	27.5%
694.40 (except .4010)	Airplanes (except military)	5%	30%
694.60	Aircraft parts	5%	27.5%
709.45(pt.)	Oxygen masks	5%	35%
710.08(pt.)	Navigational instruments	14%	45%
710.14(pt.)	Gyroscopic compasses	5.5%	35%
710.16(pt.)	Other compasses	9.5%	45%
710.30	Automatic pilots and parts	5.5%	35%
710.46(pt.)	Navigation instruments (non-electric	5%	30%
711.36	Thermometers	21%	85%
711.37	---do---	7%	40%
711.82	Flow meters and other guages	$1.12 each + 17.5%	$4.50 each + 65%

TSUS(A) item No. 1/	Brief description	Current column 1 rate of duty	Current column 2 rate of duty 2/
		(cents per pound, except as indicated; percent ad valorem	(cents per pound except as indicated; percent ad valorem
711.8420	Flow meters and other gauges	7%	35%
711.98(pt.)	Speedometers and tachometers	5%	35%
712.05(pt.)	Electro-opticals instruments	25%	50%
712.47	Automatic flight control instruments and parts thereof	6%	40%
712.4910(pt.)	Electrical measuring instruments	10%	40%
712.4950	——————do——————	10%	40%
712.4980(pt.)	——————do——————	10%	40%
715.33	Clocks, over $10 each	$1.12 each + 16% + 6.25¢ for each jewel, if any	$4.50 each + 65% + 25¢ for each jewel, if any
715.53	Apparatus for measuring and recording time, over $10 each	$1.12 each + 17.5% + 6.25¢ for each jewel, if any	$4.50 each + 65% + 25¢ for each jewel, if any
727.47	Furniture of reinforced laminated plastics	15%	65%
727.48	Other furniture of rubber or plastic	6%	25%
727.55	Other funiture	10%	45%
745.45(pt.)	Seat belts	9.5%	45%
772.45	Aircraft tires	5%	30%
772.65(pt.)	Hose, pipe and tubing of rubber or plastic, with fittings	4%	25%

1/ Each of the items on this list with the exception of items 680.50, 680.55, 680.56, 715.33, 715.53, and 727.47 have been disignated as eligible articles for duty-free treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2/ The column 2 rate of duty would not be affected by U.S. adoption of the proposal agreement on civil aircraft.

(pt.) - Part

APPENDIX C

STATISTICAL TABLES

Table 1.--Civil aircraft and parts: 1/ U.S. producers' shipments, 1974-78

(In thousands of dollars)

Article	1974	1975	1976	1977	1978
Complete aircraft:					
Commercial	3,993,000	3,779,000	3,192,000	2,889,000	4,332,000
Helicopters	189,000	274,000	305,000	316,000	365,000
Other 2/	908,000	1,033,000	1,229,000	1,551,000	1,822,000
Total	5,090,000	5,086,000	4,726,000	4,756,000	6,519,000
Aircraft engines and parts:					
Engines	968,916	967,196	948,473	915,833	1,414,284
Parts 3/	584,956	643,219	4/ 598,000	4/ 577,000	4/ 890,000
Total	1,553,872	1,610,415	1,546,473	1,492,833	2,304,284
Aircraft tires 4/	32,800	36,700	20,900	24,500	26,400
Aircraft parts 4/	3,047,000	2,927,000	2,507,000	3,010,000	3,933,000
Grand total	9,723,672	9,660,115	8,800,373	9,283,333	12,782,684

1/ Includes all aircraft and parts other than balloons, airships, gliders, and military aircraft and parts therefor.

2/ General aviation aircraft.

3/ Data are limited to aircraft engine parts produced by companies producing complete civil aircraft engines.

4/ Partly estimated.

Source: Data for complete aircraft compiled from publications of the Aerospace Industries Association of America. Data for aircraft engines and parts and aircraft parts compiled from official statistics of the U.S. Department of Commerce, except as noted. Data shown for the value of shipments of aircraft tires based partly on the quantity of shipments as reported by the Rubber Manufacturers Association.

U.S. International Trade Commission
May 1979

Table 2.—Civil aircraft and parts: 1/ U.S. exports of domestic merchandise, by kinds, 1974-78

(In thousands of dollars)

Article	1974	1975	1976	1977	1978
Complete aircraft	3,365,994	3,202,480	3,211,211	2,747,346	3,616,124
Aircraft engines and parts:					
Engines	228,859	231,064	253,701	233,173	277,040
Parts 2/	478,000	486,000	509,000	478,000	636,000
Total	706,859	717,064	762,701	711,173	913,040
Aircraft tires 2/	7,200	6,900	5,700	6,800	6,100
Automatic flight control instruments 2/	41,100	45,400	41,000	39,900	45,000
Other aircraft parts 2/	1,000,000	1,180,000	1,480,000	1,350,000	1,420,000
Grand total	5,121,153	5,151,844	5,500,612	4,855,219	6,000,264

1/ Includes all aircraft and parts other than military aircraft and parts therefor.

2/ Partly estimated.

Source: Compiled from official statistics of the U.S. Department of Commerce, except as noted.

U.S. International Trade Commission
May 1979

Table 3.--Civil aircraft and parts: U.S. imports for consumption, by kinds, 1974-78 1/

(In thousands of dollars)

Article	1974	1975	1976	1977	1978
Complete aircraft	96,930	79,755	91,149	260,023	286,563
Aircraft engines and parts: 2/					
Engines	200,380	195,070	123,130	111,670	240,510
Parts	72,140	96,220	95,470	86,275	151,850
Total	272,520	291,290	218,600	197,945	392,360
Aircraft tires 2/	920	670	1,220	1,460	2,180
Automatic flight control instruments 2/	8,480	10,550	10,794	16,409	25,772
Other aircraft parts 2/	326,970	276,680	234,250	245,710	312,950
Grand total	705,820	658,945	556,013	721,547	1,019,825

1/ Includes all aircraft and parts (other than military aircraft and parts therefor) identifiable as or for aircraft classified under TSUS items 660.44, 660.46, 660.52, 660.54, 694.15, 694.20, 694.40, 694.60, 712.47, and 772.45.

2/ Partly estimated.

Source: Compiled from official statistics of the U.S. Department of Commerce, except as noted.

U.S. International Trade Commission
May 1979

Table 4.--Civil aircraft and parts: 1/ Total U.S. imports for consumption and total U.S. imports entering under the provisions of items 806.30 and 807.00 from major sources, by kinds, 1978

(Value in thousands of dollars)

Article	Total imports	Imports entering under items 806.30 and 807.00--			
		Total	Dutiable	Duty free	Major source
Complete aircraft	286,563	189,975	140,021	49,954	Canada, France, United Kingdom, and Italy.
Aircraft engines and parts: 2/					
Engines	282,949	210,018	186,362	23,656	Canada
Parts 3/	239,358	13,096	5,791	7,305	Mexico
Total	522,307	223,114	192,153	30,961	-
Aircraft tires 2/	2,569	-	-	-	-
Automatic flight control instruments 2/	30,320	14,016	6,505	7,511	Mexico
Other aircraft parts 2/	368,181	40,858	30,056	10,802	Canada
Grand total	1,209,940	467,963	368,735	99,228	-

1/ Includes civil aircraft and parts for civil and military aircraft identifiable as of for aircraft classified under TSUS items 660.44, 660.46, 660.52, 660.54, 694.15, 694.20, 694.40, 694.60, 712.47, and 772.45.

2/ Includes articles for military aircraft.

3/ Data include parts for piston-type engines for other than aircraft.

Source: Compiled from official statistics of the U.S. Department of Commerce.

U.S. International Trade Commission
May 1979

Table 5.—Provisional U.S. list for duty-free coverage under the Agreement on Trade in Civil Aircraft: Total U.S. imports and estimated U.S. imports for use in civil aircraft, by TSUS(A) items, 1978

(In thousands of dollars)

TSUS(A) item No.	Brief description	Total	Aircraft 1/
518.51	Other articles of asbestos	188,729	1,900
544.41 (pt.)	Glass windshields	3,706	37
642.20 (pt.)	Cables with fittings	12,819	130
647.03 (pt.) 647.05	Hinges (including aileron hinges)	32,281	320
652.09 (pt.)	Flexible metal tubing, with fittings	3,928	40
653.39	Illuminating articles of base metal, n.e.s.	42,241	425
653.94 (pt.)	Sanitary ware	87,521	875
660.4415	Piston engines for aircraft	1,543	1,310
660.4620	Non-piston engines for aircraft	263,082	223,620
660.4640	----------do----------	18,324	15,580
660.5240	Parts of piston type engines	61,945	1,050
660.5450	Parts of non-piston aircraft engines	177,413	150,800
660.85 (pt.)	Hydraulic motors, actuators	23,612	590
660.97 (pt.)	Fluid power pumps	239.664	9,600
661.1030	Fans and blowers	31,337	496
661.12 (pt.)	Compressors	153,447	6,120
661.15 (pt.)	Air and vacuum pumps	38,268	383
661.20 (pt.)	Air conditioners	51,034	434
661.35 (pt.)	Refrigerators	119,395	1,011
661.90 (pt.)	Centrifuges and filters	31,017	1,551
661.95 (pt.)	----------do----------	52,778	2,639
662.50 (pt.)	Aircraft fire extinguishers	34,204	1,710
676.15	Aircraft computers	182,803	4,000
676.30	----------do----------	616,763	6,000
678.5080 (pt.)	Flight simulators	410,011	5,000
680.47	Speed changers and gear boxes	498	8
680.50 (pt.)	Pulley and shaft couplings	19,349	162
680.55 (pt.)	Torque converters	618	16
680.56 (pt.)	Chain sprockets, clutches, and universal joints.	2,767	24
682.07	Transformers	40,684	0
682.40 (pt.)	Electric motors	110,277	3,000
682.60 (pt.)	Generators	219,884	3,000
683.60 (pt.)	Magnetos, starter motors, spark plugs, and generators.	193,926	750
684.30 (pt.)	Electric cooking stoves	202,625	802
684.40 (pt.)	Electric furnaces, heaters, and ovens.	10,213	204
684.50 (pt.)	Food warmers	216,458	420
684.70 (pt.)	Microphones, loudspeakers, etc	445,096	2,000
685.24	Radios	648,680	3,000
685.29 (pt.)	Transceivers, antennas, etc	205.880	1,750
685.4023 (pt.) 685.4065	Aircraft flight and cockpit voice recorders.	15,571	250
685.60 (pt.)	Radio navigation and control apparatus.	65,783	6,000

See footnote at end of table.

Table 5.--Provisional U.S. list for duty-free coverage under the Agreement on Trade in Civil Aircraft: Total U.S. imports and estimated U.S. imports for use in civil aircraft, by TSUS(A) items, 1978--Continued

(In thousands of dollars)

TSUS(A) item No.	Brief description	Total	Aircraft 1/
685.70 (pt.)	Sound signalling apparatus	152,627	1,500
686.24 (pt.)	Other voltage regulators	4,525	200
686.60	Sealed-beam lamps	4,101	30
688.40 (pt.)	Servos, synchros, transducers	161,794	500
688.12	Ignition wiring sets	42,826	70
694.15	Balloons and airships	265	225
694.20	Gliders	2,116	1,800
694.40 (except .4010)	Airplanes (except military)	284,538	2/ 284,538
694.60	Aircraft parts	368,181	312,950
709.45 (pt.)	Oxygen masks	9,533	0
710.0[illegible] (pt.)	Navigational instruments	15,924	159
710.14 (pt.)	Gyroscopic compasses	1,783	17
710.16 (pt.)	Other compasses	4,502	225
710.30	Automatic pilots and parts	717	573
710.46 (pt.)	Navigation instruments (nonelectric)	15,524	12,419
711.36	Thermometers	1,378	13
711.37	----------do----------	3,638	73
711.82	Flow meters and other gauges	1,009	20
711.8420	----------do----------	1/ 41,983	840
711.98 (pt.)	Speedometers and tachometers	20,632	412
712.05 (pt.)	Electro-optical instruments	1,131	23
712.47	Automatic flight control instruments and parts thereof.	30,320	25,772
712.4910 (pt.)	Electrical measuring instruments	23,217	3,482
712.4950	----------do----------	22,500	1,125
712.4980 (pt.)	----------do----------	155,144	155
715.33	Clocks, over $10 each	24,931	0
715.53	Apparatus for measuring and recording time, over $10 each.	4,162	3/
727.47	Furniture of reinforced laminated plastics.	1,709	3/
727.48	Other furniture of rubber or plastic	40,010	3/
727.55	Other furniture	121,763	200
745.45 (pt.)	Seat belts	7,326	10
772.45	Aircraft tires	2,569	2,180
772.65 (pt.)	Hose, pipe and tubing of rubber or plastic, with fittings.	73,589	368
	Total	6,637,603	1,106,886

1/ Estimated, except as noted.
2/ Actual.
3/ Reported to be insignificant.

Source: Compiled from official statistics of the U.S. Department of Commerce, except as noted.

Table 6.--Civil aircraft and parts: 1/ U.S. producers' shipments, exports, and imports for consumption, by kinds, 1974-78

Kind and year	U.S. producers' shipments	Exports	Imports	Apparent consumption	Ratio of imports to consumption
	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars	Percent
Complete aircraft:					
1974	5,090,000	3,365,994	96,930	1,820,936	5.3
1975	5,086,000	3,202,480	79,755	1,963,275	4.1
1976	4,726,000	3,211,211	91,149	1,605,938	5.7
1977	4,756,000	2,747,346	260,023	2,268,677	11.5
1978	6,519,000	3,616,124	286,563	3,189,439	9.0
Aircraft engines and parts:					
1974	1,553,872	706,859	272,520	1,119,533	24.3
1975	1,610,415	717,064	291,290	1,184,641	24.6
1976	1,546,473	762,701	218,600	1,002,372	21.8
1977	1,492,833	711,173	197,945	979,605	20.2
1978	2,304,284	913,040	392,360	1,783,604	22.0
Aircraft tires:					
1974	32,800	7,200	920	26,520	3.5
1975	36,700	6,900	670	30,470	2.2
1976	20,900	5,700	1,220	16,420	7.4
1977	24,500	6,800	1,460	19,160	7.6
1978	26,400	6,100	2,180	22,480	9.7
Other aircraft parts: 2/					
1974	3,047,000	1,041,100	335,450	2,341,350	14.3
1975	2,927,000	1,225,400	287,230	1,988,830	14.4
1976	2,507,000	1,521,000	245,044	1,231,044	19.9
1977	3,010,000	1,389,900	262,119	1,882,219	13.9
1978	3,933,000	1,465,000	338,722	2,806,722	12.1
Total:					
1974	9,723,672	5,121,153	705,820	5,308,339	13.3
1975	9,660,115	5,151,844	658,945	5,167,216	12.8
1976	8,800,373	5,500,612	556,013	3,855,774	14.4
1977	9,283,333	4,855,219	721,547	5,149,661	14.0
1978	12,782,684	6,000,264	1,019,825	7,802,245	13.1

1/ Includes all aircraft and parts other than military aircraft and parts therefor.
2/ Includes flight control instruments.

Source: Tables 1, 2, and 3.

U.S. International Trade Commission
May 1979

FOREWORD

This document represents legal analysis of draft agreements negotiated at the Multilateral Trade Negotiations (MTN) in Geneva under the auspices of the General Agreement on Tariffs and Trade. It was prepared as part of an investigation requested by the Senate Committee on Finance and the House of Representatives Committee on Ways and Means and instituted by the Commission on September 1, 1978 (Investigation No. 332-101, 43 F.R. 40935, of Sept. 13, 1978), to determine the effect on U.S. trade and industry of the adoption of agreements to be concluded in Geneva.

This study along with the other 10 volumes, is being transmitted in accordance with the request in April 1979 by the Finance Committee.

As noted throughout the reports, some of the agreements are incomplete and the status of signing of all of them remains open to the questions whether domestic legislatures (including the United States Congress) will approve all or any of them and whether additional signatories will appear. At present, we are informed by the administration that a proces verbal has been initialed by 24 countries. The attachments to the proces verbal have been initialed as follows:

(A) Standards: U.S., EC-9*, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain, Hungary, Czechoslovakia, Bulgaria.

(B) Government Procurement: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, and Argentina (with reservation).

(C) Subsidies/CVD: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina (with reservation), Spain (with reservation), Hungary, and Bulgaria.

(D) Meat: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Hungary, and Bulgaria.

---

* EC-9" refers to all members of the European Communities.

(E) Dairy: DC version** was initialed by U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain (with reservation), and Bulgaria. Hungary initialed the Agreement with no designation as to whether it was the DC or LDC version. There were no known signatories to the LDC version.

(F) Customs Valuation: DC version was initialed by U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, and Bulgaria. Argentina and Spain initialed the LDC version. Hungary and Czechoslovakia initialed the valuation attachment with no indication as to whether it was the DC or LDC version.

(G) Licensing: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain (with reservation), Hungary, and Bulgaria.

(H) Agriculture Framework: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain, Hungary, Czechoslovakia.

(I) Group Framework: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain, Hungary and Czechoslovakia.

(J) Tariff Negotiations: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Hungary, Czechoslovakia, and Bulgaria.

(K) Civil Aircraft: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, and Switzerland.

(L) Antidumping: DC version was initialed by U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, and Spain. Hungary and Czechoslovakia initialed the antidumping attachment without designating the DC or LDC version. There were no known signatories to the LDC version. McNamara.

** "DC version" is the developed country version of the Arrangement on Dairy. "LDC version" is the one submitted by the less-developed countries.

SUMMARY OF CONTENTS

Volume 1
Introduction and Overview of Legal Issues

Volume 2
An Agreement on Subsidies/Countervailing Measures

Volume 3
Safeguards Agreement (le; l issues only at present)

Volume 4
Customs Valuation Agreement

Volume 5
Import Licensing Agreement

Volume 6
Agreement on Technical Barriers to Trade ("Standards Agreement")

Volume 7
Agreement on Government Procurement

Volume 8
Agricultural Agreements

Volume 9
Agreement on Trade in Civil Aircraft

Volume 10
Frameworks Agreements

Volume 11
Wine-gallon method of Tax and Duty Assessment

50-139 0 - 79 - 10

SUMMARY OF CONTENTS

Section	Title	Page
	Foreword	i
	Summary of Contents of Inv. No. 333-101	iii
	Summary of Contents Volume No. 10	iv
	Table of Contents	v
	Summary of Analysis	vi
10.0	Introduction	1
	Provision-by-Provision Analysis	
10.1/4	Points 1 and 4 - Differential and More Favorable Treatment; Reciprocity and Fuller Participation of Developing Countries	6
10.2A	Point 2A - Draft Declaration on Trade Measures Taken for Balance-of-Payments Purposes	19
10.2B	Point 2B - Safeguard Action for Development Purposes	35
10.3	Point 3 - Draft Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance	45
10.5	Point 5 - Understanding Regarding Export Restrictions and Charges	65

TABLE OF CONTENTS

Section	Title	Page
	Foreword	i
	Summary of Contents of Inv. No. 333-101	iii
	Summary of Contents Volume No. 10	iv
	Table of Contents	v
	Summary of Analysis	vi
10.0	Introduction	1
	Points 1 and 4 - Differential and More Favorable Treatment; Reciprocity and Fuller Participation of Developing Countries	
10.1/4.1	Text	6
10.1/4.2	Background	10
10.1/4.22	Interpretation	16
10.1/4.3	Implementation	18
	Point 2A - Draft Declaration on Trade Measures Taken for Balance-of-Payments Purposes	
10.2A.1	Text	19
10.2A.2	Background	24
10.2A.21	The GATT Scheme	24
10.2A.22	Problems with the GATT Scheme	28
10.2A.3	Interpretation	31
10.2A.31	Preamble	31
10.2A.32	The Declaration	32
	Point 2B - Safeguard Action for Development Purposes	
10.2B.1	Text	35
10.2B.21	Background	37
10.2B.22	Interpretation	42
10.2A/2B.3	Implementation	44
	Point 3 - Draft Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance	
10.3.1	Text	45
10.3.2	Background and Interpretation	59
10.3.3	Implementation	64
	Point 5 - Understanding Regarding Export Restrictions and Charges	
10.5.1	Text	65
10.5.2	Background	75
10.5.3	Implementation	82

GROUP FRAMEWORK

SUMMARY OF ANALYSIS

Group Framework was formed at the MTN in 1976 in response to the demands of developing nations that the GATT take further steps to institutionalise a commitment to special and differential treatment for LDC's. Previous attempts to address the concerns of the LDC's (1) had recognized that developed countries could not expect reciprocity in tariff negotiations, (2) had authorized the establishment of the generalised system of tariff preferences for products of LDC's, and (3) had allowed greater leniency in imposing import controls associated with LDC development programs. Nevertheless, LDC's have continued to press for more far-reaching institutional reforms in the GATT, which they say are required to reverse the increasing disparity between the wealth of developed and developing countries.

Developed nations too have perceived the necessity of institutional reform in the GATT to redress several problems of trade not adequately addressed in the General Agreement. Economic conditions of recent years have forced increasing use of tariff surcharges, import deposit schemes, and export controls, trade restrictive measures not effectively controlled by the GATT. Further, developed countries believe some LDC's abused existing provisions for special treatment, in claiming LDC status when in fact their economies belie such claims. Finally, the United States and LDC's shared the view that the disputes settlement mechanism of the GATT required an overhaul, albeit for different reasons. The United States has generally approached the GATT as a contract, embodying commitments legally enforceable through GATT procedures; most other developed nations view the GATT as merely a statement of objectives

subject to negotiated change when shifting economic conditions render deviations necessary. The LDC's have seen the lax disputes settlement procedures as a means by which developed nations may easily deviate from GATT rules, especially those regarding nontariff barriers particularly damaging to the exports of the LDC's.

Thus, besides the question of special and differential treatment there existed at the commencement of the MTN a number of pressing issues relating to the basic operation of the GATT. These issues were combined on the agenda of Group Framework for negotiations apart from the other MTN codes, although questions of special and differential treatment and disputes settlement were also addressed in the context of particular codes. This agreement represents the product of the Group Framework negotiations.

Points 1 and 4 were combinted in the final agreement. Point 1 addresses the issue os special and differential treatment by providing an "enabling clause" for the GATT which allows -- but does not require -- contracting parties to extend such treatment notwithstanding most-favored-nation principles. Such treatment, however, may only relate to four areas: (1) the GSP; (2) nontariff measures covered by the GATT or codes associated therewith; (3) agreements among LDC's for mutual tariff reductions; and (4) least developed countries. In return, the LDC's agreed to a sort of graduation principle whereby such nations expect to relinquish claims to some measure of special traetment as they develop. Like Point 1, however, this agreement on Point 4 contains no specific commitments by any contracting party.

Points 2A and 2B pertain to procedures affecting specific import restrictive measures which have been used often in recent years without effective GATT control. Point 2A recognizes that nations often establish import deposit schemes or tariff surcharges to combat balance-of-payments problems, although the GATT only countenances the use of quantitative restrictions (QR) in such circumstances. Point 2A does not legalize non-QR measures - it merely attempts to ensure that eh same rules and procedures which are applicable under the GATT to QRs will be used for non-QR measures in balance-of-payment crises. Further, the agreement contains improved consultation and review procedures applicable to <u>all</u> such measures.

Point 2B provides a specific concession on special treatment for developing nations. It releases LDC's from certain prior notification and approval requirements contained in GATT Article XVIII regarding import restrictive measures instituted to aid LDC development programs. Other current GATT requirements will continue to apply.

Point 3 represents the results of the negotiations on disputes settlement procedures. In essence, the parties merely reaffirm existing procedures, except that certan time limits and procedures respecting panel composition and operation are specified in greater detail — but not mandated. Thus, while no structural changes in the GATT are introduced, it is hoped that a specification of normally followed procedures will engender a renewed commitment to their observance.

Point 5 merely admits that the parties were unable to agree to provisions regarding export control measures. Negotiations are to continue on this topic.

Because the various points deal with GATT procedures, no domestic implementing legislation is required to conform U.S. law to the framework agreement. With regard to disputes settlement, however, the Congress may wish to consider providing means for domestic persons complaining of disregard for GATT or code rules by foreign nations to initiate and participate in proceedings brought by the U.S. Government under the appropriate international disputes settlement mechanism. Section 301 of the Trade Act of 1974, discussed in Volume 1 of this report, appears to be the appropriate vehicle to facilitate such participation.

GROUP "FRAMEWORK"

10.0 Introduction

In the post-war negotiations leading to the formulation of the ill-fated International Trade Organization and the GATT, the major trading nations shared a common view of what institutional mode and substantive rules would best facilitate trade and avoid the costly prewar protectionist tactics. A need was seen for a multilateral agreement codifying "legal" rules involving major trade issues, such as nondiscriminatory tariff and other trade barriers, quantitative restrictions, and conduct of state trading enterprises. 1/ For many reasons, including conflicting domestic policies, economic instability in the postwar era, and lack of an agreement on an appropriate institutional framework, the draftsmen found it necessary to formulate the ITO charter and the GATT in a manner offering many deviations from the shared overall goals. Nevertheless, the initial years of the GATT enjoyed a continuing consensus on the nature of the agreement and its proper implementation, thus allowing for a decade of relative peace among the major trading nations.

The past 20 years, however, have witnessed an increasing breakdown of the GATT trading system. 2/ The lack of a present consensus has been attributed to many factors, three of which especially underlie the frameworks agreement: (1) the GATT constructed a trading scheme not intended to aid developing nations (LDCs) industrialize, and LDCs now comprise a significant numerical portion of GATT membership and demand special treatment; (2) certain GATT rules relating to quantitative restrictions were proper for the postwar

1/ See generally, R. Hudec, The GATT Legal System and World Trade Diplomacy 1-58 (1975); J. Jackson, World Trade and the Law of GATT 35-58, 625-72 (1969); K. Dam, The GATT Law and International Economic Organization 1-24 (1970).

2/ See generally Hudec, supra note 1, at 193-264.

era, but have since become obstacles to efficient resolution of balance-of-payments difficulties; and (3) there are insufficient rules for some forms of trade restrictions now practiced by GATT members. 1/ The increasing disregard for GATT rules has spawned a concommitant insistence by many nations that the agreement should not be applied in a rigorously legalistic way, but instead should merely serve to provide parameters for the ad hoc settlement of disputes through conciliation.

Immediately after the conclusion of the Kennedy Round, preparations for the Tokyo Round were initiated because of the recognition of the threat to the GATT from the general legal break-down, the rising use of nontariff barriers, and competition from UNCTAD as the trading institution attracting the allegiance of the LDCs. Indeed, the Congress granted sweeping authority to the Executive branch in the Trade Act of 1974 2/ to negotiate broad reforms in the GATT. At the commencement of the Tokyo Round negotiating groups in many of the targeted areas were established. However, primarily because of LDC dissatisfaction with the dispersion of consideration of issues important to them throughout several negotiating parties, a framework group was formed to consolidate consideration of institutional issues facing the GATT, most sharing the common characteristic of North-South disagreement. As finally agreed, the negotiations focused on four areas: (1) institutional recognition of the right of LDCs to special and differential treatment, with the corrolary issue of graduation from LDC status when special treatment is no longer

---

1/ See Jackson, supra page 1 n.1, at 663-672.

2/ 19 U.S.C. 2111 et. seq.(1976). The negotiating authority of the President granted by this act is extensively reviewed in the Overview to this report, Volume I.

needed; (2) revision of Article XVIII, pertaining to safeguard actions taken by LDCs for development purposes, and the related issue of trade measures (taken primarily by developed countries) for balance-of-payments purposes; (3) revision of rules regarding export controls, of special concern because such methods often are imposed on primary products exported by LDCs; and (4) an overhaul of the disputes settlement mechanism. As will be discussed in this report, significant progress may have been achieved with regard to the first and second issues, but little tangible achievement can be seen in the area of disputes settlement, and no agreement was achieved at all on export controls. Further, few LDCs evidenced any intention of signing the framework agreement at the conclusion of the negotiations. 1/

The issues involved in the separate points will be discussed in more detail below, but one general theme pervading them all should be briefly elaborated upon here. The LDCs, from the earliest ITO and GATT negotiations, have complained that the General Agreement inherently discriminates against them, defeating their efforts to alter their economic dependence on the export of unprocessed tropical products. 2/ They argue tnat the GATT was structured merely to ensure stabilization and orderly growth of existing trade in manufactured products, then as now largely cornered by the developed countries. In this regard, specific dissatisfaction has been voiced about several GATT rules. LDCs claim, for example, that the MFN rules perpetuate economic comparative advantage among developed nations, since any concessions afforded LDCs must also be afforded all other countries; additionally, nontariff barriers instituted by developed countries remove any other

---

1/ Only Argentina initialed the proces verbal.
2 See Jackson, supra p. 1 n.1, at 625-48, 663-92.

advantages so gained. 1/ Further, the GATT proscribes trade restrictive measures of most interest to LDCs for use in protecting development plans, but in some circumstances allows such measures when aimed at tropical products. Moreover, LDCs lack the resources and expertise to effectively participate in GATT proceedings, particularly negotiations. 2/ Finally, LDCs support a more legalistic approach to administering the GATT because of their perception that it is the developed countries which most often abuse the rules and which cannot be expected in any particular dispute to negotiate a settlement with LDCs, which have little to offer in return.

Major GATT and academic studies have tended to support many of the LDC complaints. 3/ The U.S. has generally been sympathetic to many of the goals of the LDCs, while continuing to support strongly the basic validity of the MFN principle and resisting the idea of permanent special treatment (thus the U.S. supports recognition of a graduation principle). Other developed countries have also supported preferences in varying degrees. Indeed, prior to the Tokyo Round a number of steps to accommodate the LDCs were undertaken, including the 1955 revision of Article XVIII, the adoption of Part IV of the General Agreement in 1964, and substantial unilateral tariff concessions to the LDCs in the Kennedy Round. The current negotiations represent another step in the direction of formalizing a commitment by the developed countries to special and differential treatment. It is clear, however, that LDCs think the results of the negotiations are insufficient.

1/ Espiell, "The Most-Favored-Nation Clause: Its Present Significance in GATT," 5 J. World Trade L. 29 (1971).

2/ See Fialls, "The Negotiation Strategy of Developing Countries in the Field of Trade Liberalization," 11 J. World Trade L. 203 (1977).

3/ See Jackson, supra page 1 n.1, at 640-43, 663-65.

Group Framework addressed five "points" concerning GATT reform. Points 1 and 4 - concerning special and differential treatment, and the principle of graduation - were combined in the final agreement. Points 2A and 2B, which attempt to address issues arising primarily from Articles XII and XVIII, were differentiated somewhat in final form but both deal with import restrictions. Point 3 sets forth the results of discussions on disputes settlement, including a statement of customary procedures which presumably will become the normative practice. Finally, Point 5 notes that no agreement could be reached regarding export controls, but that negotiations are expected to resume at a later time. A catalogue of pertinent GATT provisions is included in Point 5.

An overall issue which remains unresolved is the manner in which the substance of the framework agreement will be integrated into the GATT. Possible methods of adoption by the Contracting Parties include approval of appropriate amendments, waivers, or decisions. Because a two-thirds vote would be necessary for approval of an amendment or waiver, and a majority vote is needed for a decision, the interested parties may find it fruitless to submit the agreement for approval at all. In that case, the agreement will remain open for signature by GATT members, who will presumably apply it among the signatories. But difficulties will arise with nonsignatories, which have expectations of the benefits and obligations accorded to them by the GATT different from the expectations arising in nations which sign the framework agreement. Disputes arising out of these differing expectations will have to be resolved on an ad hoc basis.

PROVISION BY PROVISION ANALYSIS

10.1/4 POINTS 1 AND 4 - DIFFERENTIAL AND MORE FAVORABLE TREATMENT; RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES

10.1/4.1 Text

POINTS 1 AND 4 -- DIFFERENTIAL AND MORE FAVOURABLE TREATMENT; RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES

NOTE: The text below has been drawn up without prejudice to the position of any delegation with respect to its eventual legal status. Some delegations consider that such a text should appear as a new Article or set of provisions to be incorporated in the General Agreement. Other delegations consider that it should be adopted by the CONTRACTING PARTIES as a Declaration or Decision. Some consequential amendments to the text may be necessary in the light of the decision taken on this question. 1/

---

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.

2. The provisions of paragraph 1 apply to the following**:

---

*The words "developing countries" as used in this text are to be understood to refer also to developing territories. (Footnote in text.)

**It would remain open for the CONTRACTING PARTIES to consider on an ad hoc basis under the GATT provisions for joint action any proposals for differential and more favourable treatment not falling within the scope of this paragraph. (Footnote in text.)

1/ Note in text.

(a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences***;

(b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;

(c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another;

(d) Special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.

3. Any differential and more favourable treatment provided under this clause

(a) shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties;

***As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of "generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries". (Footnote in text.)

(b) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

(c) shall in the case of such treatment accorded by developed contracting parties to developing countries be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries.*

4.** Any contracting party taking action to introduce an arrangement pursuant to paragraphs 1, 2 and 3 above or subsequently taking action to introduce modifications 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.

5. The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariff and other barriers to

---

*The non-discriminatory character of the GSP does not preclude the adoption of measures and procedures designed to ensure broad and equitable sharing of benefits among developing countries, where the coverage of products under GSP is subject to quantity or value limitation. (Footnote in text.)

**Nothing in these provisions shall affect the rights of contracting parties under the General Agreement. (Footnote in text.)

the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.

6. Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems.

7. The concessions and contributions made and the obligations assumed by developed and less-developed contracting parties under the provisions of the General Agreement should promote the basic objectives of the Agreement, including those embodied in the Preamble and in Article XXXVI. Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed upon action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the

50-139 O - 79 - 11

framework of rights and obligations under the General Agreement through participation in the operation of the GATT system.

8. Particular account shall be taken of the serious difficulty of the least-developed countries in making concessions and contributions in view of their special economic situation and their development, financial and trade needs.

9. The contracting parties will collaborate in arrangements for review of the operation of these provisions, bearing in mind the need for individual and joint efforts by contracting parties to meet the development needs of developing countries and the objectives of the General Agreement.

10.1/4.2 Background

The subject of special and differential treatment has caused repeated and increasingly heated conflicts between developed and developing nations since the formulation of the GATT. Fundamental to the GATT is the most-favored-nation principle, espoused principally in Article I but in other articles as well, which obligates the parties to practice nondiscrimination among trading partners by extending to all members of GATT benefits accorded any one member. But developing nations believe that the MFN principle, combined with the increased use of nontariff barriers to trade, has effectively precluded significant progress in their development; LDCs must depend on increased exports to generate capital for development, but the level of exports cannot be raised where those few tariff concessions of interest to LDCs are granted only on a MFN basis (so that manufactured exports must compete with exports from more competitive developed countries), effective tariff rates on LDC exports remain high, and nontariff barriers often are

aimed at their exports. Several GATT and other economic studies tend to support the claims of the LDCs, at least in part. 1/

Several attempts to achieve institutional reform in the GATT have been made to address this issue. One significant amendment was the 1955 reformulation of Article XVIII, discussed extensively in sections 10.2A and 10.2B of this report. Of more importance here is Part IV of GATT, Articles XXXVI-XXXVIII, which entered into force in 1966.

Article XXXVI contains an extensive recitation of principles and purposes underlying the concept of special and differential treatment. 2/ One particularly significant statement concerns tariff negotiations:

1/ See generally, J. Jackson, supra page 1 n.1, at 663-71.

2/ Article XXXVI provides in full:

1. The contracting parties,
   (a) recalling that the basic objectives of this Agreement include the raising of standards of living and the progressive development of the economies of all contracting parties, and considering that the attainment of these objectives is particularly urgent for less-developed contracting parties;
   (b) considering that export earnings of less-developed contracting parties can play a vital part in their economic development and that the extent of this contribution depends on the prices paid by the less-developed contracting parties for essential imports, the volume of their exports, and the prices received for these exports;
   (c) noting, that there is a wide gap between standards of living in less-developed countries and in other countries;
   (d) recognizing that individual and joint action is essential to further the development of the economies of less-developed contracting parties and to bring about a rapid advance the standards of living in these countries;
   (e) recognizing that international trade as a means of achieving economic and social advancement should be governed by such rules and procedures -- and measures in conformity with such rules and procedures -- as are consistent with the objectives set forth in this Article;
   (f) noting that the CONTRACTING PARTIES may enable less-developed contracting parties to use special measures to promote their trade and development;

(Continued)

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

The paragraph is further explained in the Interpretative Notes:

{Continued}

agree as follows:

2. There is need for a rapid and sustained expansion of the export earnings of the less-developed contracting parties.

3. There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development.

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

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

6. Because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development. There is, therefore, need for close and continuing collaboration between CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these less-developed contracting parties assume in the interest of their economic development.

7. There is need for appropriate collaboration between the CONTRACTING PARTIES, other intergovernmental bodies and the organs and agencies of the United Nations system, whose activities relate to the trade and economic development of less-developed countries.

> It is understood that the phrase "do not expect reciprocity" means, in accordance with the objectives set forth in this Article, that the less-developed contracting parties should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments. 1/

While the statement is thus not a commitment by the developed nations to specific deviations from reciprocity principles, it nevertheless strongly recognizes a discriminatory approach. 2/

Article XXXVII contains the substantive commitments intended to effect the principles of Article XXXVI. Specifically, paragraph 1 states:

> The developed contracting parties shall to the fullest extent possible -- that is, except when compelling reasons, which may include legal reasons, make it impossible -- give effect to the following provisions:
>
> (a) accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;
>
> (b) refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties; and
>
> (c) (i) refrain from imposing new fiscal measures, and
>
> (ii) in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures,
>
> which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or

---

1/ GATT Annex I, Ad Article XXXVI.

2/ Further, paragraph 9 admonishes that "the adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly."

> processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products. 1/

Less specific obligations are set forth in paragraph 3, which generally requires that developed nations accord special consideration to the effects of internal trade measures on the exports of LDCs. 2/ Although the commitments of paragraphs 1 and 3 are partially qualified — i.e., "to the fullest extent possible," "make every effort," etc. — the obligations to consult in paragraphs 2 and 5 3/ realistically limit the extent to which developed

---

1/ GATT Article XXXVII:1.

2/ Paragraph 3 states in full:

> 3. 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;
> (b) give active consideration to the adoption of other measures designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end;
> (c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties.

3/ Paragraph 2 provides:

> 2. (a) Whenever it is considered that effect is not being given to any of the provisions of sub-paragraph (a), (b) or (c) of paragraph 1, the matter shall be reported to the CONTRACTING PARTIES either by the contracting party not so giving effect to the relevant provisions or by any other interested contracting party.
> (b) (i) The CONTRACTING PARTIES shall, if requested so to do by any interested contracting party, and without prejudice to any bilateral consultations that may be undertaken, consult with the contracting party concerned and all interested contracting parties with respect to the matter with a view to reaching solutions satisfactory to all contracting parties concerned in order to further the objectives set forth in Article XXXVI. In the course of these consultations, the reasons given in cases where effect was not being given to

(footnote continued)

nations can ignore Part IV. 1/ In addition, Article XXXVIII obligates all parties to a number of "joint actions," which effectively creates an on-going process of review by developed nations of issues concerning LDCs.

Despite the advent of Part IV there has been continuing dissatisfaction among GATT members with the performance of the General Agreement. Developed nations have dispaired over increasing deviations from GATT rules, through waivers, ad hoc agreements, or otherwise. LDCs have continued to seek firm, de jure commitments on special and differential treatment. Whether viewed as a desirable "reform" or a fundamentally new approach, proposals for change in the GATT became a focus of trade negotiations in the 1960's, and have continued to be a major source of North-South confrontations in trade matters. 2/

(Continued)

the provisions of sub-paragraph (a), (b) or (c) of paragraph 1 shall be examined.

(ii) As the implementation of the provisions of sub-paragraph (a), (b) or (c) of paragraph 1 by individual contracting parties may in some cases be more readily achieved where action is taken jointly with other developed contracting parties, such consultation might, where appropriate, be directed towards this end.

(iii) The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further the objectives of this Agreement as envisaged in paragraph 1 of Article XXV.

Paragraph 5 adds that --

> In the implementation of the commitments set forth in paragraphs 1 to 4 each contracting party shall afford to any other interested contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of this Agreement with respect to any matter or difficulty which may arise.

1/ See Jackson, supra page 1 n.1, at 645-48.

2/ The broadest ideas of special treatment for developing nations are embodied in the concept of a "New International Economic Order" trumpeted by the developing nations primarily through UNCTAD. United Nations, Charter of Economic Rights and Duties of States, U.N. Doc. A/RES/9281 (XXIX) (Jan. 15, 1975). See Note, "Charter of Economic Rights and Duties of States: "A Solution to the Development Aid Problem?" 4 Ga. J. Int'l. Comp. L. 441 (1974).

In recognizing these concerns the Congress authorized the President in the Tokyo Round to negotiate appropriate changes in the GATT:

> A United States negotiating objective under sections 101 and 102 shall be to enter into trade agreements which promote the economic growth of both developing countries and the United States and the mutual expansion of market opportunities. 1/

The negotiating team early undertook this mandate primarily through the individual code negotiations, most of which encompassed these issues. After Brazil tabled the specific legalization issues in 1975, however, a separate framework group undertook negotiations on the five issues described in the introduction. Points 1 and 4 -- concerning special and differential treatment and reciprocity and graduation, respectively -- were combined in the final agreement.

10.1/4.22 Interpretation

The essential principle desired by the LDCs -- an "enabling clause" giving de jure status to special and differential treatment -- is contained in paragraph 1. Significantly, parties are not obligated to extend such treatment; but they may do so without contravening the MFN provisions of Article I and without obtaining a waiver. Paragraph 2 limits the application of paragraph 1 to four types of actions, unless otherwise agreed to by the CONTRACTING PARTIES: (1) the GSP, now in effect under a waiver; (2) special treatment negotiated under the GATT and, presumably, the codes associated therewith; (3) mutual tariff reduction agreements among LDCs; and (4) special treatment of least developed countries.

Paragraph 3 contains a series of limits to the use of paragraph 1, reflecting the position of the developed nations that the basic GATT

1/ Trade Act of 1974, section 106. See also id., section 121.

assumptions and rules remain valid. Subparagraph 3(c) in particular embodies the idea that special treatment should be progressively eliminated as the need for it decreases.

Paragraph 4 contains the obligation to notify the CONTRACTING PARTIES of measures undertaken pursuant to paragraphs 1-3, and consult with "any interested contracting party." Apparently, notification prior to the institution of such measures is not required.

Paragraph 5 repeats nearly verbatim the language of Article XXXVI:8, merely adding a slight expansion of its meaning. The language still does not commit developed countries to specific nonreciprocal concessions, and in view of the Interpretative Notes to Article XXXVI, 1/ it is unclear what is intended by this paragraph. Paragraph 6, however, focuses particular attention on the status of least-developed nations; this focus is repeated in paragraph 8 without a clear reason for any distinction in obligations entailed in the two. Developed countries must exercise "utmost restraint" in bargaining with these nations, which have no obligations respecting reciprocity or graduation.

Paragraph 7 sets forth the graduation principle especially desired by the United States. No commitments by LDCs are made; the paragraph is more a statement of approach similar to that agreed to by the developed nations in Part IV. Thus, LDCs merely "expect" to assume greater obligations under the GATT as their capacity to contribute increases, as "expected." Since no guidelines or interpretative notes define further what graduation entails, the practical operation of this obligation cannot now be determined.

1/ See pages 11-13, supra

Similar to the various provisions of Article XXXVIII, paragraph 9 commits the parties to joint action for review of the provisions.

10.1/4.3 Implementation

Points 1 and 4 of the agreement solely affect the operation of the GATT. Thus, no special domestic implementing legislation need be considered.

10.2A. POINT 2A - TRADE MEASURES TAKEN FOR BALANCE-OF-PAYMENTS PURPOSES

10.2A.1 Text

POINT 2A -- DRAFT DECLARATION ON TRADE MEASURES TAKEN FOR BALANCE-OF-PAYMENTS PURPOSES

The CONTRACTING PARTIES,

Having regard to the provisions of Articles XII and XVIII:B of the General Agreement;

Recalling the procedures for consultations on balance-of-payments restrictions approved by the Council on 28 April 1970 (BISD, Eighteenth Supplement, pages 48-53) and the procedures for regular consultations on balance-of-payments restrictions with developing countries approved by the Council on 19 December 1972 (BISD, Twentieth Supplement, pages 47-49);

Convinced that restrictive trade measures are in general an inefficient means to maintain or restore balance-of-payments equilibrium;

Noting that restrictive import measures other than quantitative restrictions have been used for balance-of-payments purposes;

Reaffirming that restrictive import measures taken for balance-of-payments purposes should not be taken for the purpose of protecting a particular industry or sector;

Convinced that the contracting parties should endeavour to avoid that restrictive import measures taken for balance-of-payments purposes stimulate new investments that would not be economically viable in the absence of the measures;

Recognizing that the less-developed contracting parties must take into account their individual development, financial and trade situation when

implementing restrictive import measures taken for balance-of-payments purposes;

Recognizing that the impact of trade measures taken by developed countries on the economies of developing countries can be serious;

Recognizing that developed contracting parties should avoid the imposition of restrictive trade measures for balance-of-payments purposes to the maximum extent possible.

Agree as follows:

1. The procedures for examination stipulated in Articles XII and XVIII shall apply to all restrictive import measures taken for balance-of-payments purposes. The application of restrictive import measures taken for balance-of-payments purposes shall be subject to the following conditions in addition to those provided for in Articles XII, XIII, XV and XVIII without prejudice to other provisions of the General Agreement:

(a) In applying restrictive import measures contracting parties shall abide by the disciplines provided for in the GATT and give preference to the measure which has the least disruptive effect on trade. 1/

(b) The simultaneous application of more than one type of trade measure for this purpose should be avoided.

(c) Whenever practicable, contracting parties shall publicly announce a time schedule for the removal of the measures.

1/ It is understood that the less-developed contracting parties must take into account their individual development, financial and trade situation when selecting the particular measure to be applied. (footnote in text.)

The provisions of this paragraph are not intended to modify the substantive provisions of the General Agreement.

2. If, notwithstanding the principles of this Declaration, a developed contracting party is compelled to apply restrictive import measures for balance-of-payments purposes, it shall, in determining the incidence of its measures, take into account the export interests of the less-developed contracting parties and may exempt from its measures products of export interest to those contracting parties.

3. Contracting parties shall promptly notify to the GATT the introduction or intensification of all restrictive import measures taken for balance-of-payments purposes. Contracting parties which have reason to believe that a restrictive import measure applied by another contracting party was taken for balance-of-payments purposes may notify the measure to the GATT or may request the GATT secretariat to seek information on the measure and make it available to all contracting parties if appropriate.

4. All restrictive import measures taken for balance-of-payments purposes shall be subject to consultation in the GATT Committee on Balance-of-Payments Restrictions (hereinafter referred to as "Committee").

5. The membership of the Committee is open to all contracting parties indicating their wish to serve on it. Efforts shall be made to ensure that the composition of the Committee reflects as far as possible the characteristics of the contracting parties in general in terms of their geographical location, external financial position and stage of economic developments.

6. The Committee shall follow the procedures for consultations on balance-of-payments restrictions approved by the council on 28 April 1970 and set out in BISD, Eighteenth Supplement, pages 48-53, (hereinafter referred to as "full consultation procedures") or the procedures for regular consultations on balance-of-payments restrictions with developing countries approved by the Council on 19 December 1972 and set out in BISD, Twentieth Supplement, pages 47-49, (hereinafter referred to as "simplified consultation procedures") subject to the provisions set out below.

7. The GATT secretariat, drawing on all appropriate sources of information, including the consulting contracting party, shall with a view to facilitating the consultations in the Committee prepare a factual background paper describing the trade aspects of the measures taken, including aspects of particular interest to less-developed contracting parties. The paper shall also cover such other matters as the Committee may determine. The GATT secretariat shall give the consulting contracting party the opportunity to comment on the paper before it is submitted to the Committee.

8. In the case of consultations under Article XVIII:12(b) the Committee shall base its decision on the type of procedure on such factors as the following:

(a) The time elapsed since the last full consultations;

(b) the steps the consulting contracting party has taken in the light of conclusions reached on the occasion of previous consultations;

(c) the changes in the overall level or nature of the trade measures taken for balance-of-payments purposes;

(d) the changes in the balance-of-payments situation or prospects;

(e) whether the balance-of-payments problems are structural or temporary in nature.

9. A less-developed contracting party may at any time request full consultations.

10. The technical assistance services of the GATT secretariat shall, at the request of a less-developed consulting contracting party, assist it in preparing the documentation for the consultations.

11. The Committee shall report on its consultations to the Council. The reports on full consultations shall indicate:

(a) the Committee's conclusions as well as the facts and reasons on which they are based;

(b) the steps the consulting contracting party has taken in the light of conclusions reached on the occasion of previous consultations;

(c) the case of less-developed contracting parties, the facts and reasons on which the Committee based its decision on the procedure followed; and

(d) in the case of developed contracting parties, whether alternative economic policy measures are available.

If the Committee finds that the consulting contracting party's measures

(a) are in important respects related to restrictive trade measures maintained by another contracting party 1/ or

---

1/ It is noted that such a finding is more likely to be made in the case of recent measures than of measures in effect for some considerable time. (Footnote in text.)

(b) have a significant adverse impact on the export interests of a less-developed contracting party,

it shall so report to the Council which shall take such further action as it may consider appropriate.

12. In the course of full consultations with a less-developed contracting party the Committee shall, if the consulting contracting party so desires, give particular attention to the possibilities for alleviating and correcting the balance-of-payments problem through measures that contracting parties might take to facilitate an expansion of the export earnings of the consulting contracting party, as provided for in paragraph 3 of the full consultation procedures.

13. If the Committee finds that a restrictive import measure taken by the consulting contracting party for balance-of-payments purposes is inconsistent with the provisions of Articles XII, XVIII:B or this declaration, it shall, in its report to the Council, make such findings as will assist the Council in making appropriate recommendations designed to promote the implementation of Articles XII and XVIII:B and this declaration. The Council shall keep under surveillance any matter on which it has made recommendations.

10.2A.2 Background

10.2A.21 - The GATT Scheme

Nothwithstanding arguments to the contrary by some economists, restraints on trade are often perceived by many nations as necessary to ameliorate balance of payments difficulties. Restrictive trade measures serving these purposes include quantitative restrictions (QRs), tariff

surcharges, and deposit schemes. Although the GATT countenances resort to some trade restrictions for balance of payments reasons, in recent years actual practice has diverged from the rules of GATT, causing concern about their continued viability.

In establishing the GATT the draftsmen tempered the general desire to eliminate import restrictions with the recognition that some restrictive measures would be temporarily necessary. It was accepted that to assist the reconstruction of war-torn economies 1/ QRs already in place should be continued in order to lessen existing economic disequilibrium; further, it was believed that QRs were normally the most appropriate means of addressing similar emergency problems which might arise in the future. Other trade restrictive measures -- in particular, tariff surcharges -- were not countenanced because the nature of the payments problem at that time required quantity controls; a market-directed mechanism would have been ineffective because of the general lack of competitive goods at any price. Moreover, it was feared that tariff surcharges, if allowed, would undercut the impending tariff negotiations. Therefore, although QRs were specifically prohibited by the GATT, a significant balance of payments exception was created for their temporary use -- but not for any other trade restrictive measure taken on such grounds.

The GATT scheme governing balance of payments measures is contained in a series of related articles. Foremost among them are Articles XII and XVIII, which specifically authorize QRs despite the general prohibition found in Article XI; Article XII is the general exception, while Article XVIIIB

1/ See generally Vincke, "Trade Restrictions for Balance of Payments Reasons and the GATT: Quotas v. Surcharges," 13 Harv. Int'l L.J. 289, 296-99 (1972).

50-139 O - 79 - 12

provides special rules for developing nations. The criteria by which the use of QRs is judged are very similar under both articles. Article XII authorizes them--

> (1) in order to safeguard a country's external financial position and balance of payments;
>
> (2) but only to the extent necessary;
>
> (i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or
>
> (ii) in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves. 1/

In the case of developing nations, under Article XVIII the threat need not be "imminent," and evaluation of the measures taken must consider the nation's "programme of economic development." 2/ Once restrictions are imposed under either article, certain obligations attach to their use as a way of minimizing their impact and direction. 3/

Because QRs are inherently discriminatory when implemented under quota or licensing schemes, Article XIII was drafted to provide a MFN

1/ Article XII:2, Compare Article XVIII:9 pertaining to LDCs.
2/ Id.
3/ The restrictions may be described as follows:
(1) Restrictions shall be progressively relaxed as conditions permit;
(2) Measures should avoid uneconomic employment of productive resources;
(3) As far as possible, measures should be adopted that expand rather than contract international trade;
(4) Avoid unnecessary damage to commercial or economic interests of any other contracting parties;
(5) Allow minimum commercial quantities of each description of goods so as to avoid impairing regular channels of trade;
(6) Allow imports of commercial samples;
(7) Avoid restrictions that prevent compliance with "patent, trade mark, copyright, or similar procedures";
(8) But imports of certain products deemed more essential may be preferred over other imports.
J. Jackson, International Economic Relations 901 (1977).

obligation tailored to their use; Article I was viewed as inadequate for this purpose. Article XIV, however, allows two exceptions to the principle of nondiscrimination: the first exception allows QRs where the IMF has acknowledged that their effect will be equivalent to authorized exchange restrictions, while under the second the CONTRACTING PARTIES may allow discriminatory QRs on a "small part" of trade where the expected benefits "substantially outweigh" any injury.

The last important element of the exception is the review and consultation process. Contracting parties are requested annually by the secretariat to communicate information on import restrictions and licensing systems. Further, QRs introduced or intensified for balance of payments purposes must be notified, accompanied by certain detailed information. The GATT Council, together with the IMF, 1/ then holds consultations on the matter, usually under the auspices of the Balance of Payments Committee. Even should the measure be found authorized under Articles XII or XVIII, the

---

1/ Article XV requires that the Contracting Parties accept the following findings by the IMF in consultations under Articles XII and Article XVIII:

> (A)ll findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments. . .
>
> (W)hether action by a contracting party in exchange matters is in accordance with the Articles of Agreement of the. . .Fund, or. . .a special exchange agreement. . .
>
> (W)hat constitutes a serious decline in. . .monetary reserves (Article XII or Article XVIII). . .
>
> (What constitutes) a very low level of. . .monetary reserves (Article XII or Article XVIII). . .
>
> (What constitutes) a reasonable rate of increase in. . .monetary reserves (Article XII or Article XVIII). . .
>
> (F)inancial aspects of other matters. . .in such cases.

J. Jackson, International Economic Relations 901 (1977).

restricting nation must consult regularly with the BOP Committee as long as the measure remains in force. Because non-QR balance of payments measures are not authorized under them, these articles contain no provision for consultations relating thereto. Further, the mandatory consultations of Articles XII and XVIII are not triggered by complaint-initiated consultations, such as those required if Article XXII was involved. However, consideration of any such matters may be referred to the Committee.

The purpose of the consultations is to determine whether the measures at issue satisfy the criteria of the pertinent articles. The Committee reports its conclusions to the CONTRACTING PARTIES, who may recommend appropriate modifications. If the consulting nation fails to implement the recommendations, the CONTRACTING PARTIES may release injured nations from obligations to the consulting nation, as appropriate. This remedy has never been adopted, however.

10.2A.22 - Problems With the GATT Scheme

As described above, Articles XI-XIV and XVIII were constructed in the unique post-war economic milieu, leading the draftsmen to authorize the limited use of QRs, but no other import restriction, for balance of payments reasons. The procedures provided to control such measures have often necessitated reconsideration in an attempt to refine their operation, which remains unsatisfactory. Further, an increasing use of tariff surcharges and deposit schemes justified on balance of payments grounds -- but apparently illegal under the GATT -- occasioned particular concern over the lack of rules for such measures in the 1970's,when it was recognized that major trading

nations faced long-term payments difficulties. 1/ Such restrictions by developed countries may be particularly harmful to developing nations. 2/ These issues gave rise to the current negotiations.

Tariff surcharges and deposit schemes, no matter the justification, both suggest conflicts with Article II, which establishes the tariff bindings central to the agreement. A surcharge obviously is a "duty or charge" contrary to Article II:1(b),(c), if it affects a bound item. A deposit scheme effectively is an additional charge upon the bound rates, because it immobilizes funds of the importer, thereby increasing the cost of the imports. 3/ The Contracting Parties, however, have never formally determined whether a deposit scheme should be so evaluated. Further, no contracting party has ever invoked Article XXIII with regard to either type of measure.

Despite their apparent illegality, non-QR measures have become increasingly assimilated into the balance of payments provisions. Perhaps the most succinct justification for their use was given by the United States after the 1971 surcharge was declared:

> (of) several types of action which might have been taken under the circumstances, a surcharge on imports appeared to offer certain advantages or. . .fewer disadvantages. It seemed more easily dismantled than other possible action, more compatible with a competitive approach and efficient resource allocation, would not require an elaborate administrative structure, would be less discriminatory than quota restrictions, and was most rapidly applicable under existing United States legal authority. 4/

1/ Roessler, "Selective Balance-of-Payments Adjustment Measures Affecting Trade: The Roles of the GATT and the IMF," 9 J. World Trade L. 622, 624-25 (1975).

2/ See Murray and Walter, "Quantitative Restrictions, Developing Countries, and GATT, 11 J. World Trade L. 391, 402-411 (1977). See also "Quantitative Restrictions," supra n.2, at 342-98.

3/ Id. at 631.

4/ 65 Dep't State Bull. 305, 307 (1971).

The fundamental difficulty with the current GATT scheme is thus presented: the necessity of utilizing physical import controls in the postwar era became obsolete when the world economy gained equilibrium, but the rules remained the same and now operate to legalize only the most inefficient and discriminatory balance of payment measures -- QRs.

Perhaps persuaded that a strict construction of GATT was counterproductive in these circumstances, the contracting parties adopted a pragmatic approach to consideration of surcharges and deposit schemes. Waivers have been easily gained by developing nations, whose tariff concessions and shares of world trade are relatively limited. Consultations on non-QR measures have increasingly followed the procedures established for QRs, with the consulting parties focusing on whether the criteria for use of QRs have been satisfied, rather than on the question of legality. Such measures have thus assumed a de facto place in the GATT balance of payment scheme.

Nevertheless, the substantive question of legality continues to cause uncertainty as to the viability of the General Agreement. Further, concern over the already deficient procedural rules has been raised increasingly. These latter issues may be summarized as follows: (1) rules for eliminating residual restrictions are not always observed, particularly with regard to notice; (2) although there are no criteria by which to judge non-QR measures, consultations with developing nations have explicitly followed Article XVIII, usually leading to waivers, while Article XII consultations with developed nations are expressed in conclusions with only vague supporting rationales, which generally declare these non-QR measures "inconsistent" with the GATT; (3) the GATT provides no quick and confidential decisionmaking process, thus

making it impossible for nations to practically comply with the notification requirements for new balance of payments measures; (4) there is no clear delineation of the role the IMF should take in non-QR consultations; and (5) regularity of consultations for authorized measures is not always observed, and surveillance is otherwise difficult.

Recognition of these problems led Congress to authorize the President to

> seek modifications in international agreements aimed at allowing the use of surcharges in place of quantitative restrictions and providing rules to govern the use of such surcharges as a balance-of-payments adjustment measure within the context of arrangements for an equitable sharing of balance-of-payments adjustment responsibility among deficit and surplus countries. 1/

Point 2A of the frameworks agreement contains the product of negotiations conducted to that end.

10.2A.3 Interpretation

10.2A.31 Preamble

The preamble to this declaration contains language serving more than the usual precatory purpose. Significantly, the paragraphs firmly state a policy opposed to the use of restrictive trade measures employed for balance-of-payment purposes: the contracting parties are "convinced" such measures are inefficient; they "reaffirm" that protection of particular industries is an unacceptable purpose and should not act as a prop to industries otherwise not economically viable; they recognize various adverse impacts resulting from adoption of such measures; and they recognize their obligation to avoid such

1/ Senate Comm. on Finance, "Trade Reform Act of 1974," S.Rep. No. 93-1298, at 88.

restrictive trade measures "to the maximum extent possible." On the other hand, the parties merely "recall" previously agreed upon procedures for considering balance of payments measures, while "noting" that non-QR measures have been used for these purposes. This language reflects a compromise between delegations which emphasized different considerations in achieving a common goal. The United States preferred to explicitly recognize the de facto legality of non-QRs, bringing them within the discipline of the GATT rules; the EC desired explicit legalization for developing nations only, coupled with a mere "best efforts" obligation by others to avoid their use; and Japan adamantly opposed legalization, while insisting on a strong commitment to refrain from their use if they were to be implicitly recognized.

The preamble thus presages the most difficult, unresolved issue of the agreement: its relationship to the General Agreement. The compromise language apparently expresses the concern that legalization of non-QR measures would encourage their use. This reasoning is suspect--their illegal status apparently discouraged no one -- but the parties opted merely to give some greater formality, through the agreement, to the de facto recognition of non-QR trade measures. The attitude of nonparties to the agreement cannot yet be discerned, but the potential for disputes is clear.

10.2A.32 The Declaration

Paragraph 1 acknowledges that Articles XII, XIII, XV, and XVIII will govern not only QRs, but "all restrictive import measures taken for balance-of-payments purposes." Thus, a uniform evaluation process will henceforth apply to consideration of tariff surcharges and deposit schemes.

In addition, the paragraphs obligate the parties to choose the one, least trade disruptive measure -- which in practice seems unlikely to be QRs. Subparagraph 1(c) is somewhat ambiguous; it is unclear whether "whenever practicable" obligates a party to a continuing obligation to announce a removal schedule at the earliest practicable time after institution, or whether the obligation only attaches to the time of initial announcement. The former interpretation seems most clearly in line with the intent of the agreement to minimize the use of such measures.

Paragraph 1 concludes with the statement that its provisions "are not intended to modify the substantive provisions of the General Agreement." If so, then the imposition of surcharges or deposit schemes will contravene Article II -- despite their implicit recognition by the very existence of the agreement, as well as its substance. The statement reflects the insistence of some parties that such measures not be "legalized," despite the fact that the ultimate worth of the agreement appears seriously compromised as a result. Perhaps the ultimate result will be that some discipline will be imposed on the use of such measures, but retaliation will still be available to affected parties.

Paragraph 2 allows a deviation from MFN principles in the application of import measures in that the effects on exports from developing nations must be given special consideration, with the possible result of selective exemptions granted for particular products from those nations. This paragraph thus creates a third exception to Article XIII, besides the two allowed by Article XIV.

Articles XII and XVIII do not contain explicit requirements for notification by a nation instituting or intensifying balance of payments

measures. Further, consultations under those articles cannot be initiated by notice from an injured nation. Paragraph 3 explicitly requires prompt notice by the initiating party, and similarly allows other parties to notify the GATT. Significantly, notice prior to initiation or intensification is not required; the serious economic disruptions caused by delayed introduction of such measures pending formal notice was a major reason parties previously avoided GATT obligations in this regard.

Paragraph 4 insures that consultations on all restrictive import measures will be held under the auspices of the Balance-of-Payments Committee. Non-QR measures in the past were considered on an ad hoc basis in the Committee, the Council, a Council working party, and elsewhere. Participation by the IMF is now assured. Paragraph 5 seeks to provide a balanced representation on the Committee.

Paragraphs 5-13 set forth the procedures for consultations. The basic procedures previously adopted for QRs in 1970 and 1972, for developed and developing countries, respectively, will be followed. Paragraph 8 continues the attempt to simplify the process for developing nations, in recognition of the administrative burden and slowly changing circumstances these nations have experienced in the past. These simplified procedures may be replaced by "full consultations" at the request of the developing nation. The GATT Secretariat may play an expanded role in producing information relevant to the Committee deliberations, under paragraphs 7 and 10.

Paragraphs 11 and 12 contain important additions to prior practice. The former provides for reasoned opinions to accompany the Committee's

conclusions; the United States has especially desired this practice so that consultations will become precedents not only guiding future Committee deliberations, but also providing guidance for nations contemplating the use of such measures. In addition, paragraph 12 allows the Committee -- if the consulting nation agrees -- to consider alternative courses of action to be taken by other nations which help alleviate the difficulty while avoiding import restrictive measures. The paragraph provides a slight opening for seeking agreement by surplus nations to balance their trade accounts; of course, such nations have no obligation to do so. This recognition that import restrictions are often precipitated by trade difficulties with specific nations is also reflected in paragraph 11 which allows the Committee to make a finding to that effect and recommend "appropriate" action to the Council.

10.2B SAFEGUARD ACTION FOR DEVELOPMENT PURPOSES

10.2B.1 Text

POINT 2B -- SAFEGUARD ACTION FOR DEVELOPMENT PURPOSES

1. The CONTRACTING PARTIES recognize that the implementation by less-developed contracting parties of programmes and policies of economic development aimed at raising the standard of living of the people may involve in addition to the establishment of particular industries* the development of new or the modification or extension of existing production structures with a view to achieving fuller and more efficient use of resources in accordance with the priorities of their economic development. Accordingly, they agree that a less-developed contracting party may, to achieve these objectives,

*As referred to in paragraphs 2, 3, 7, 13 and 22 of Article XVIII and in the Note to these paragraphs. (Footnote in text.)

modify or withdraw concessions included in the appropriate schedules annexed to the General Agreement as provided for in Section A of Article XVIII or, where no measure consistent with the other provisions of the General Agreement is practicable to achieve these objectives, have recourse to Section C of Article XVIII, with the additional flexibility provided for below. In taking such action the less-developed contracting party concerned shall give due regard to the objectives of the General Agreement and to the need to avoid unnecessary damage to the trade of other contracting parties.

2. The CONTRACTING PARTIES recognize further that there may be unusual circumstances where delay in the application of measures which a less-developed contracting party wishes to introduce under Section A or Section C of Article XVIII may give rise to difficulties in the application of its programmes and policies of economic development for the aforesaid purposes. They agree, therefore, that in such circumstances, the less-developed contracting party concerned may deviate from the provisions of Section A and paragraphs 14, 15, 17 and 18 of Section C to the extent necessary for introducing the measures contemplated on a provisional basis immediately after notification.

3. It is understood that all other requirements of the preambular part of Article XVIII and of Sections A and C of that Article, as well as the Notes and Supplementary Provisions set out in Annex I under these Sections will continue to apply to the measures to which this Decision relates.

4. Before. . ., the CONTRACTING PARTIES shall review this Decision in the light of experience with its operation, with a view to determining whether it should be extended, modified or discontinued.

10.2B.21 Background

From the time of the original drafting sessions there has been strong disagreement between developing and developed nations over the extent to which the former should be allowed to deviate from GATT rules in their efforts to implement development programs. 1/ Since adopted in its final form in 1955, Article XVIII has served to acknowledge the right of developing nations to institute restrictive trade measures to assist in the establishment of particular industries; however, the developed nations have prevailed in their insistence that most such actions must be accorded prior GATT approval and, in any case, be the subject of extensive consultations. Point 2B is an attempt to relax the procedural prerequisites of Article XVIII so that developing nations may invoke it with greater ease. These changes will be described below, but in order to understand them a brief review of Article XVIII must first be made.

The first six paragraphs of Article XVIII comprise a type of preamble, setting forth the underlying principles and defining which countries are entitled to invoke the provisions of the succeeding four sections, A through D. With regard to deviations from the GATT provisions pertaining to tariff bindings and quantitative restrictions, the parties recognize that--

> it may be necessary for those contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their people, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives of this Agreement. 2/

1/ See generally, J. Jackson, World Trade and the Law of GATT ch.25 (1969).
2/ GATT Article XVIII:2.

Sections A (paragraph 7) and Section B (paragraphs 8-12, discussed in this report previously in section 10.2A) provide for these circumstances. The parties further—

> agree, however, that there may be circumstances where no measure consistent with those provisions is practicable to permit a contracting party in the process of economic development to grant the governmental assistance required to promote the establishment of particular industries with a view to raising the general standard of living of its people. Special procedures are laid down in Sections C and D of this Article to deal with those cases. 1/

Sections A, B, and C may be involved by "a contracting party the economy of which can only support low standards of living and is in the early stages of development." 2/ Section D is open only to "a contracting party the economy of which is in the process of development," but which does not fit within the above criteria requisite for Sections A, B, and C. 3/

Qualifying nations are entitled to the following privileges granted by this Article:

1/ GATT Article XVIII:3. Paragraph 13-21 and 22-23 comprise sections C and D, respectively.

2/ GATT Article XVIII:4(a). The Interpretative Notes further define these terms:

> 1. When they consider whether the economy of a contracting party "can only support low standards of living", the CONTRACTING PARTIES shall take into consideration the normal position of that economy and shall not base their determination on exceptional circumstances such as those which may result from the temporary existence of exceptionally favourable conditions for the staple export product or products of any such contracting party.
>
> 2/ The phrase "in the early stages of development" is not meant to apply only to contracting parties which have just started their economic development, but also to contracting parties the economics of which are undergoing a process of industrialization to correct an excessive dependence on primary production.

GATT Annex I, Ad Article XVIII.

3/ GATT Article XVIII:4(a). This provision apparently was envisioned as encompassing such nations as Australia and New Zealand. See Jackson, supra page 1 n.1, at 654.

> Part A: The right to renegotiate tariff bindings so as to raise tariffs on products it desires to produce (infant industries);
>
> Part B: The privilege to use quantitative restrictions in balance-of-payments difficulties (with criteria and actions permitted being slightly different from the general BOP clauses of GATT Article XII);
>
> Part C: A privilege to use any measure necessary to promote a particular industry;
>
> Part D: Under this part, certain countries with economies in process of development, but not falling within the criteria of low living standards, can apply for permission to deviate from GATT rules so as to establish a particular industry. 1/

These privileges are in addition to other exceptions developing countries may wish to invoke; for example, Article XIX (escape clause action), Article XX (general exceptions), or Articles XII and XIV (balance of payments). 2/

Each of the sections of Article XVIII has prerequisites for invocation besides the general qualifying criteria listed in the preambular paragraphs. Section B is discussed elsewhere in this report 3/ and section D is of no concern here, but the requirements of sections A and C may be described as follows. 4/

To raise tariffs under section A, a developing nation must have as its purpose the intention "to promote the establishment of a particular industry with a view to raising the general standard of living of its people." 5/ If

---

1/ J. Jackson, International Economic Relations 1013 (1977).

2/ See J. Jackson, supra page 1 n.1, at 649-50; GATT BISD 44th Supp. 38 (1956).

3/ See pages 25-28 supra.

4/ See generally Jackson, supra page 1 n.1, at 649-69.

5/ GATT Article XVIII:7(a). The Interpretative Notes further state:

> The reference to the establishment of particular industries shall apply not only to the establishment of a new industry, but also to the establishment of a new branch of production in an

(Continued)

qualified, the developing nation must then notify the CONTRACTING PARTIES and negotiate with contracting parties directly affected by the tariff change and any others "having a substantial interest." 1/ If no agreement can be reached through negotiation the CONTRACTING PARTIES may authorize an increase. A developing nation therefore cannot take action regarding its bound tariffs unless agreement is reached with those affected or authorization is obtained.

Section C requires the same purposes to be demonstrated, with the additional findings that to accomplish such goals "governmental assistance is required. . .(and) no measure consistent with the other provisions of (the GATT) is practicable to achieve" those goals. 2/ Procedurally, the developing nation must notify the GATT of its intended action 3/ and delay thirty days before institution, 4/ unless a request for consultation is received, in which case a wait of ninety days is required during which negotiations will be conducted at the request of the CONTRACTING PARTIES. 5/ Consultations are also mandatory where the proposed measure will affect a product subject of a previous concession. 6/ The developing party must be

---

(Continued)

existing industry and to the substantial transformation of an existing industry, and to the substantial expansion of an existing industry supplying a relatively small portion of the domestic demand. It shall also cover the reconstruction of an industry destroyed or substantially damaged as a result of hostilities or natural disasters.

GATT Annex I, Ad Article XVIII.

1/ Id.
2/ GATT Article XIII:13.
3/ GATT Article XIII:14.
4/ GATT Article XIII:15.
5/ GATT Article XIII:16, 17.
6/ GATT Article XIII:18.

released from GATT obligations otherwise contravened by the measure under certain circumstances; 1/ further, if the consultations are not successfully concluded within ninety days, the developing nation may proceed with the measures without approval -- "substantially affected" parties, however, may suspend "substantially equivalent" concessions upon sixty days notice. 2/ The developing nation thereafter must comply with the nondiscriminatory requirements of Articles I, II, XIII, and XVIII:10. 3/ Again, the essence of the procedures is to require prior GATT approval of any such trade restrictive measures.

1/ GATT Article XVIII:18 provides

> The CONTRACTING PARTIES shall concur in the measure if they agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective set forth in paragraph 13 of this Article, and if they are satisfied:
> (a) that agreement has been reached with such other contracting parties as a result of the consultations referred to above, or
> (b) if no such agreement has been reached within sixty days after the notification provided for in paragraph 14 has been received by the CONTRACTING PARTIES, that the contracting party having recourse to this Section has made all reasonable efforts to reach an agreement and that the interests of other contracting parties are adequately safeguarded.

2/ GATT Article XVIII:21.

3/ GATT Article XVIII:20. Article XVIII:10 provides:

> In applying these restrictions, the contracting party may determine their incidence on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of its policy of economic development; Provided that the restrictions are so applied as to avoid unnecessary damage to the commercial or economic interests of any other contracting party and not to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and Provided further that the restrictions are not so applied as to prevent the importation of commercial samples or to prevent compliance with patent, trade mark, copyright or similar procedures.

50-139 O - 79 - 13

10.2B.22 Interpretation

Point 2B of the frameworks agreement is a grudging relaxation of some of the above-described procedures affecting section A and C of Article XVIII. The paragraphs essentially provide a means of avoiding the prior consultation and approval rules.

Paragraph 1 adds little flexibility to existing provisions. The parties purport to "recognize that (economic development programs of less-developed nations) involve: in addition to the establishment of particular industries the development of new or the modification or extension of existing production structures with a view to achieving fuller and more efficient use of resources in accordance with the priorities of their economic development." 1/ But the footnote suggests the definition of "particular industries" already encompasses "the development of new. . .structures," etc. 2/ Thus, nothing new appears to be "recognized" in this paragraph. Further, a proviso is imposed to the statement that the "additional flexibility" allowed in paragraph 2 may be used: "due regard" must be given the objectives of GATT and "the need to avoid unnecessary damage to the trade of other contracting parties." This requirement would appear to be satisfied if Article XVIII:20 is followed, as required by paragraph 3. 3/

Paragraph 2 includes the only real change in existing procedures. It provides that where "delay in the application of measures. . .may give rise to difficulties in the application (of sanctioned development programs),"

1/ Emphasis added. "Less-developed nations" are those nations qualified to invoke sections A-C of Article XVIII. See pages 37-38, supra.

2/ See page 39 n.5, supra.

3/ See page 41 n.3, supra.

developing nations may institute the measure upon notification without delay for consultations and approval.

Nonobservance of the rules, however, must only be "to the extent necessary for introducing the measures contemplated on a provisional basis" -- whether consultations must thereafter proceed as otherwise expected is a question presented, but not clearly answered, by this language. In essence, the paragraph appears to allow invocation of Article XVIII without the ninety day delay; if so, then perhaps the draftsmen believed that because Article XVIII:21 remains in effect, its provision for Article XXII consultations would satisfactorily substitute for a specific requirement for consultations. Alternatively, and perhaps most likely, the intent may have been to leave all procedures for consultation and review by the CONTRACTING PARTIES in place, save only that the measures could continue to operate pending resolution by agreement or a finding that an automatic waiver is justified under paragraph 18. The section would then operate much like Articles XII and XVIIIB with respect to balance-of-payment restrictions.

Paragraph 3 reaffirms all other applicable obligations of Article XVIII. Thus, the nondiscriminatory provisions of paragraph 20, among others, must be observed.

Paragraph 4 obligates the CONTRACTING PARTIES to review Point 2B by an as yet undetermined date. The language infers that Point 2B is a "Decision," as opposed to an amendment of or waiver under GATT, but the relationship of the agreement to the General Agreement had not been finally settled as of May 1979.

10.2A/2B.3 Implementation

Because Points 2A and 2B merely affect procedural rules of the GATT, it does not appear that the Congress needs to take any implementing steps for these agreements, other than possibly to extend the negotiating authority of the President to a date encompassing the date of review specified in paragraph 4 of Point 2B.

10.3 -- DRAFT UNDERSTANDING REGARDING NOTIFICATION, CONSULTATION, DISPUTE SETTLEMENT AND SURVEILLANCE

10 3.1 Text

POINT 3 -- DRAFT UNDERSTANDING REGARDING NOTIFICATION, CONSULTATION, DISPUTE SETTLEMENT AND SURVEILLANCE

The CONTRACTING PARTIES reaffirm their adherence to the basic GATT mechanism for the management of disputes based on Articles XXII and XXIII. 1/ With a view to improving and refining the GATT mechanism, the CONTRACTING PARTIES agree as follows:

Notification

Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification. 2/

Contracting parties moreover undertake, to the maximum extent possible, to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement, it being understood that such notification would of itself be without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the General Agreement. Contracting parties should endeavour to notify such measures in advance of implementation. In other cases, where prior notification has not been possible, such measures should be notified promptly ex post facto. Contracting parties which have reason to believe that such

---

1/ It is noted that Article XXV may, as recognized by the CONTRACTING PARTIES, inter alia, when they adopted the report of the Working Party on particular difficulties connected with trade in primary products (L/930), also afford an appropriate avenue for consultation and dispute settlement in certain circumstances. (Footnote in text.)

2/ See Secretariat note, "Notifications required from contracting parties" (MTN/FR/W/17, dated 1 August 1978). (Footnote in text.)

trade measures have been adopted by another contracting party may seek information on such measures bilaterally, from the contracting party concerned.

Consultations

Contracting parties reaffirm their resolve to strengthen and improve the effectiveness of consultative procedures employed by contracting parties. In that connexion, they undertake to respond to requests for consultations promptly and to attempt to conclude consultations expeditiously, with a view to reaching mutually satisfactory conclusions. Any requests for consultations should include the reasons therefor.

During consultations, contracting parties should give special attention to the particular problems and interests of less-developed contracting parties.

Contracting parties should attempt to obtain satisfactory adjustment of the matter in accordance with the provisions of Article XXIII:1 before resorting to Article XXIII:2.

Resolution of disputes

The CONTRACTING PARTIES agree that the customary practice of the GATT in the field of dispute settlement, described in the Annex, should be continued in the future, with the improvements set out below. They recognize that the efficient functioning of the system depends on their will to abide by the present understanding. The CONTRACTING PARTIES reaffirm that the customary practice includes the procedures for the settlement of disputes between developed and less-developed countries adopted by the CONTRACTING PARTIES in 1966 (BISD, fourteenth supplement, page 18) and that these remain available to less-developed contracting parties wishing to use them.

If a dispute is not resolved through consultations the contracting parties concerned may request an appropriate body or individual to use their good offices with a view to the conciliation of the outstanding differences between the parties. If the unresolved dispute is one in which a less developed contracting party has brought a complaint against a developed contracting party, the less-developed contracting party may request the good offices of the Director-General who, in carrying out his tasks, may consult with the Chairman of the CONTRACTING PARTIES and the Chairman of the Council.

It is understood that requests for conciliation and the use of the dispute settlement procedures of Article XXIII:2 should not be intended or considered as contentious acts and that, if disputes arise, all contracting parties will engage in these procedures in good faith in an effort to resolve the disputes. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

It is agreed that if a contracting party invoking Article XXIII:2 requests the establishment of a panel to assist the CONTRACTING PARTIES to deal with the matter, the CONTRACTING PARTIES would decide on its establishment in accordance with standing practice. It is also agreed that the CONTRACTING PARTIES would similarly decide to establish a working party if this were requested by a contracting party invoking the Article. It is further agreed that such requests would be granted only after the contracting party concerned had had an opportunity to study the complaint and respond to it before the CONTRACTING PARTIES.

When a panel is set up, the Director-General, after securing the agreement of the contracting parties concerned, should propose the composition

of the panel, of three or five members depending on the case, to the CONTRACTING PARTIES for approval. The members of a panel would preferably be governmental. It is understood that citizens of countries whose governments 1/ are parties to the dispute would not be members of the panel concerned with that dispute. The panel should be constituted as promptly as possible and normally not later than thirty days from the decision by the CONTRACTING PARTIES.

The parties to the dispute would respond within a short period of time, i.e., seven working days, to nominations of panel members by the Director-General and would not oppose nominations except for compelling reasons.

In order to facilitate the constitution of panels, the Director-General should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade relations, economic development, and other matters covered by the General Agreement, and who could be available for serving on panels. For this purpose, each contracting party would be invited to indicate at the beginning of every year to the Director-General the name of one or two persons who would be available for such work. 2/

Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization.

1/ In the case customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets. (Footnote in text.)

2/ The coverage of travel expenses should be considered within the limits of budgetary possibilities. (Footnote in text.)

Governments would therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience. 1/

Any contracting party having a substantial interest in the matter before a panel, and having notified this to the Council, should have an opportunity to be heard by the panel. Each panel should have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a State it shall inform the government of that State. Any contracting party should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided should not be revealed without formal authorization from the contracting party providing the information.

The function of panels is to assist the CONTRACTING PARTIES in discharging their responsibilities under Article XXIII:2. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the General Agreement and, if so requested by the CONTRACTING PARTIES, make such other findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2. In this connexion, panels should consult regularly with the parties

---

1/ NOTE: A statement would be included in the Annex describing the current practice with respect to inclusion on panels of persons from developing counties. (Footnote in text.)

50-139 O - 79 - 14

to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

Where the parties have failed to develop a mutually satisfactory solution, the panel should submit its findings in a written form. The report of a panel should normally set out the rationale behind any findings and recommendations that it makes. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the CONTRACTING PARTIES.

If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any contracting party with an interest in the matter has a right to enquire about and be given appropriate information about that solution insofar as it relates to trade matters.

The time required by panels will vary with the particular case. 1/ However, panels should aim to deliver their findings without undue delay, taking into account the obligation of the CONTRACTING PARTIES to ensure prompt settlement. In cases of urgency the panel would be called upon to deliver its findings within a period normally of three months from the time the panel was established.

1/ NOTE: An explanation is included in the Annex that "in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months." (Footnote in text.)

Reports of panels and working parties should be given prompt consideration by the CONTRACTING PARTIES. The CONTRACTING PARTIES should take appropriate action on reports of panels and working parties within a reasonable period of time. If the case is one brought by a less-developed contracting party, such action should be taken in a specially convened meeting, if necessary. In such cases, in considering what appropriate action might be taken the CONTRACTING PARTIES shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of less-developed contracting parties concerned.

The CONTRACTING PARTIES shall keep under surveillance any matter on which they have made recommendations or given rulings. If the CONTRACTING PARTIES' recommendations are not implemented within a reasonable period of time, the contracting party bringing the case may ask the CONTRACTING PARTIES to make suitable efforts with a view to finding an appropriate solution. If the matter is one which has been raised by a less-developed contracting party, the CONTRACTING PARTIES shall consider what joint action they might take which would be appropriate to the circumstances.

Surveillance

The CONTRACTING PARTIES agree to conduct a regular and systematic review of developments in the trading system. Particular attention would be [illegible] developments which affect rights and obligations under the GATT, to matters affecting the interests of less-developed contracting parties, to trade measures notified in accordance with this understanding and to measures which have been subject to consultation, conciliation or dispute settlement procedures laid down in this understanding.

Technical assistance

The technical assistance services of the GATT secretariat shall, at the request of a less-developed contracting party, assist it in connexion with matters dealt with in this understanding.

ANNEX

Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement (Article XXIII:2)

Paragraph 1

Any dispute which has not been settled bilaterally under the relevant provisions of the General Agreement may be referred to the CONTRACTING PARTIES 1/ which are obliged, pursuant to Article XXIII:2, to investigate matters submitted to them and make appropriate recommendations or give a ruling on the matter as appropriate. Article XXIII:2 does not indicate whether disputes should be handled by a working party or by a panel. 2/

Paragraph 2

The CONTRACTING PARTIES adopted in 1966 a decision establishing the procedure to be followed for Article XXIII consultations between developed and less-developed contracting parties (BISD, 14 Supplement, page 18). This procedure provides, inter alia, for the Director-General to employ his good offices with a view to facilitating a solution, for setting up a panel with the task of examining the problem in order to recommend appropriate solutions, and for time-limits for the execution of the different parts of this procedure.

1/ The Council is empowered to act for the CONTRACTING PARTIES, in accordance with normal GATT practice. (Footnote in text.)

2/ At the review session (1955) the proposal to institutionalize the procedures of panels was not adopted by CONTRACTING PARTIES mainly because they preferred to preserve the existing situation and not to establish judicial procedures which might put excessive strain on the GATT. (Footnote in text.)

Paragraph 3

The function of a panel has normally been to review the facts of a case and the applicability of GATT provisions and to arrive at an objective assessment of these matters. In this connexion, panels have consulted regularly with the parties to the dispute and have given them adequate opportunity to develop a mutually satisfactory solution. Panels have taken appropriate account of the particular interests of developing countries. In cases of failure of the parties to reach a mutually satisfactory settlement, panels have normally given assistance to the CONTRACTING PARTIES in making recommendations or in giving rulings as envisaged in Article XXIII:2.

Paragraph 4

Before bringing a case, contracting parties have exercised their judgment as to whether action under Article XXIII:2 would be fruitful. Those cases which have come before the CONTRACTING PARTIES under this provision have, with few exceptions, been brought to a satisfactory conclusion. The aim of the CONTRACTING PARTIES has always been to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the CONTRACTING PARTIES is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the General Agreement. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measures which are inconsistent with the General Agreement. The last resort which Article XXIII provides to the country invoking this procedure is the possibility of suspending the application of concessions or other obligations on a discriminatory basis vis-a-vis

the other contracting party, subject to authorization by the CONTRACTING PARTIES of such measures. Such action has only rarely been contemplated and cases taken under Article XXIII:2 have led to such action in only one case.

Paragraph 5

In practice, contracting parties have had recourse to Article XXIII only when in their view a benefit accruing to them under the General Agreement was being nullified or impaired. In cases where there is an infringement of the obligations assumed under the General Agreement, the action is considered prima facie to constitute a case of nullification or impairment. A prima facie case of nullification or impairment would ipso facto require consideration of whether the circumstances are serious enough to justify the authorization of suspension of concessions or obligations, if the contracting party bringing the complaint so requests. This means that there is normally a presumption that a breach of the rules has an adverse impact on other contracting parties, and in such cases, it is up to the other contracting parties to rebut the charge. Paragraph 1(b) permits recourse to Article XXIII if nullification or impairment results from measures taken by other contracting parties whether or not these conflict with the provisions of the General Agreement, and paragraph 1(c) if any other situation exists. If a contracting party bringing an Article XXIII case claims that measures which do not conflict with the provisions of the General Agreement have nullified or impaired benefits accruing to it under the General Agreement, it would be called upon to provide a detailed justification.

Paragraph 6

Concerning the customary elements of working parties and panels procedures, the following elements have to be noted:

(i) working parties are instituted by the Council upon the request of one or several contracting parties. The terms of reference of working parties are generally "to examine the matter in the light of the relevant provisions of the General Agreement and to report to the council". Working parties set up their own working procedures. The practice for working parties has been to hold one or two meetings to examine the matter and a final meeting to discuss conclusions. Working parties are open to participation of any contracting party which has an interest in the matter. Generally working parties consist of a number of delegations varying from about five to twenty according to the importance of the question and the interests involved. The countries who are parties to the dispute are always members of the Working Party and have the same status as other delegations. The report of the Working Party represents the views of all its members and therefore records different views if necessary. Since the tendency is to strive for consensus, there is generally some measure of negotiation and compromise in the formulation of for Working Party's report. The Council adopts the report. The reports of working parties are advisory opinions on the basis of which the CONTRACTING PARTIES may take a final decision.

(ii) In the case of disputes, the CONTRACTING PARTIES have established panels (which have been called by different names) or working parties in order to assist them in examining questions raised under Article XXIII:2. Since 1952, panels have become the usual procedure. However, the Council has taken such decisions only after the party concerned has had an occasion to study the complaint and prepare its response before the Council. The terms of reference are discussed and approved by the Council. Normally, these terms of reference are "to examine the matter and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII". When a contracting party having recourse to Article XXIII:2 raised questions relating to the suspension of concessions or other obligations, the terms of reference were to examine the matter in accordance with the provisions of Article XXIII:2. Members of the panel are usually selected from permanent delegations or, less frequently, from the national administrations in the capitals amongst delegates who participate in GATT activities on a regular basis. The practice has been to appoint a member or members from developing countries when a dispute is between a developing and a developed country.

(iii) Members of panels are expected to act impartially without instructions from their governments. In a few cases, in view of the nature and complexity of the matter, the parties concerned have agreed to designate non-government experts. Nominations

are proposed to the parties concerned by the GATT secretariat. The composition of panels (three or five members depending on the case) has been agreed upon by the parties concerned and approved by the GATT Council. It is recognized that a broad spectrum of opinion has been beneficial in difficult cases, but that the number of panel members has sometimes delayed the composition of panels, and therefore the process of dispute settlement.

(iv) Panels set up their own working procedures. The practice for the panels has been to hold two or three formal meetings with the parties concerned. The panel invited the parties to present their views either in writing and/or orally in the presence of each other. The panel can question both parties on any matter which it considers relevant to the dispute. Panels have also heard the views of any contracting party having a substantial interest in the matter, which is not directly party to the dispute, but which has expressed in the Council a desire to present its views. Written memoranda submitted to the panel have been considered confidential, but are made available to the parties to the dispute. Panels often consult with and seek information from any relevant source they deem appropriate and they sometimes consult experts to obtain their technical opinion on certain aspects of the matter. Panels may seek advice or assistance from the secretariat in its capacity as guardian of the General Agreement, especially on historical or procedural aspects. The secretariat provides the secretary and technical services for panels.

(v) Where the parties have failed to develop a mutually satisfactory solution, the panel has submitted its findings in a written form. Panel reports have normally set out findings of fact, the applicability of relevant provisions, and the basic rationale behind any findings and recommendations that it has made. Where a bilateral settlement of the matter has been found, the report of the panel has been confined to a brief description of the case and to reporting that a solution has been reached.

(vi) The reports of panels have been drafted in the absence of the parties in the light of the information and the statement made.

(vii) To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel has normally first submitted the descriptive part of its report to the parties concerned, and also their conclusions, or an outline thereof, a reasonable period of time before they have been circulated to the CONTRACTING PARTIES.

(viii) In accordance with their terms of reference established by the CONTRACTING PARTIES panels have expressed their views on whether an infringement of certain rules of the General Agreement arises out of the measure examined. Panels have also, if so requested by the CONTRACTING PARTIES, formulated draft recommendations addressed to the parties. In yet other cases panels were invited to give a technical opinion on some precise aspect of the matter (e.g. on the modalities of a withdrawal or suspension

in regard to the volume of trade involved). The opinions expressed by the panel members on the matter are anonymous and the panel deliberations are secret.

(ix) Although the CONTRACTING PARTIES have never established precise deadlines for the different phases of the procedure, probably because the matters submitted to panels differ as to their complexity and their urgency, in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months.

The 1966 decision by the CONTRACTING PARTIES referred to in paragraph 2 above lays down in its paragraph 7 that the Panel shall report within a period of sixty days from the date the matter was referred to it.

10.3.2 Background and Interpretation

Although the substantive provisions of the GATT are expressed in legalistic, prohibitory language, the remedies for their breach reflect a far different view of the nature of the agreement. 1/ A primary goal expressed throughout GATT is the settlement of disputes between the involved parties alone without resort to formal adjudicatory procedures. Thus, besides seventeen other obligations to consult in specific circumstances, articles XXII and XXIII provide for consultations affecting the operation of the Agreement as a whole. 2/ Article XXII requires that "sympathetic

1/ See generally, K. Dam, supra page 1 n.1, at 351-75; R. Hudec, supra page 1 n.1.

2/ Jackson, supra page 1 n.1, at 165-66.

consideration" and an opportunity to consult be afforded by any party to another "with respect to any matter affecting the operation of this Agreement." Article XXIII is more specific; it provides first for consultations where a party believes a benefit to which it is entitled is nullified or impaired, or an objective of the Agreement is being impeded, as a result of conduct by another party or "the existence of any other situation." Failing settlement in these consultations, the complaining party may appeal to the Contracting Parties for an investigation leading to appropriate recommendations and rulings, possibly including suspension of obligations. 1/ Consultations under Article XXII fulfill the Article XXIII consultation prerequisite to retaliation.

1/ Id. See also Jackson,"The Jurisprudence of International Trade: The DISC Case in GATT,"72 Am.J.Int'l L. 747, 753-57 (1978) (hereinafter cited as "The Disc Case in GATT"); Hudec,"Retaliation Against "Unreasonable" Foreign Trade Practices: The New Section 301 and GATT Nulification and Impairment,"59 Minn. L. Rev. 461, 461-81 (1975). The text of Article XXIII provides in full:

> 1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of
>
> (a) the failure of another contracting party to carry out its obligations under this Agreement, or
>
> (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
>
> (c) the existence of any other situation,
>
> the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.
>
> 2. If no satisfactory adjustment is effected between the contracting parties concerned with a reasonable time, or if the difficulty is of the type described in paragraph 1(c) of the Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting

(Continued)

At the core of the Article XXIII dispute settlement process is the concept of "nullification and impairment," under which violation of the Agreement alone is neither a sufficient nor a necessary condition to authorize retaliation. The draftsmen imported the concept into the GATT from several contemporary trade agreements in which similar language had evolved as an attempt to account for conduct by nations which did not contravene the letter of their trade obligations yet effectively nullified the benefits expected by their trade partners. 1/ The GATT is supposed to represent a scheme of reciprocal obligations that parties reasonably believed would remain in equilibrium so that each would obtain certain expected benefits. The balance could be upset by conduct not in breach of GATT obligations, or simply by circumstances not within the control of any party; either event was believed sufficient reason to allow a party to seek to restore its benefits and

---

(Continued)

parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organization in cases where they consider such consultation necessary. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

1/ Jackson, supra page 1 n.1, at 165-66.

obligations to a perceived correct balance. Further, the draftsmen felt that there existed an underlying consensus on the nature of the GATT, which was sufficient to prevent abuse by the contracting parties of their power to allow retaliation, even against a party which did not breach any specific obligations but nevertheless engaged in conduct which injured another party. 1/

"Nullification and impairment" is nowhere defined; thus, its meaning (and therefore the relative rights of GATT disputants) has been left to development in a common law process of case precedents. In Chile v. Australia, 2/ the Contracting Parties developed the policy that nullification could result from the breach of a party's "reasonable expectations" of the benefits it was to derive from the Agreement. Further cases led to acceptance of a doctrine called "prima facie nullification and impairment," whereby certain practices were presumed to cause nullification and impairment unless the defendant nation (referred to as the "consulting contracting party") proved otherwise. Among these practices are quantitative restrictions, domestic production subsidies, and violation of specific GATT obligations. The lack of a definition for the operative language of Article XXIII, however, has continued to be a major source of problems for its effective application.

Because GATT was expected to be replaced quickly by the ITO charter, the draftsmen decided to avoid including procedures for the conduct of Article XXIII proceedings. Thus, like its substantive meaning, Article XXIII's

---

1/ See generally Hudec, supra page 1 n.1
2/ GATT, 2d Supp. BISD 188 (1952).

procedures have also been devised by practice. 1/ Currently, once consultations have failed and a complaint has been tabled with the GATT Council, a panel will be appointed to investigate the matter according to the "terms of reference" in the resolution instituting the proceeding. The panel is normally composed of three to five government officials from "neutral" nonparties to the dispute. 2/ The panels are left to devise their own procedures, but normally these include giving notice and an opportunity for argument, followed by the drafting of a report stating whether GATT obligations have been breached, nullification and impairment has occurred, and what recommendations the panel has. Throughout the proceeding conciliation efforts are maintained in an effort to achieve a settlement before the Contracting Parties must consider whether to authorize sanctions.

There have been less than one hundred complaints tabled in the three decades of GATT; most were in the first fifteen years and in only one case has retaliation been authorized. 3/ The breakdown in the dispute settlement procedures has been attributed to many factors, including: 4/

(1) the lack of definition for nullification and impairment;

(2) inadequate personnel, resources, and factfinding procedures;

(3) the uncertain role of the panels, exacerbated by faulty procedures and foot-dragging tactics;

1/ See Dam, supra page 1 n.1, at 364-660.

2/ In the recent DISC cases nongovernment official tax experts were included on the panels.

3/ Netherlands v. United States, GATT, 1st Supp., BISD 32 (1953).

4/ See Jackson, supra page 1 n.1 at ch. 8; "The DISC Case in GATT," supra page 60 n.1 at 753-56, 780-81; Hudec, supra page 1 n.1 at 269-7; Dam, supra page 1 n.1, at 356-75; and Jackson, "The Crumbling Institutions of the World Trade System," 12 J. World Trade L. 93 (1978). See also Jackson, "Governmental Disputes in International Trade Relations: A Proposal in the Context of GATT," 13 J. World Trade L. 1 (1979).

(4) the lack of means to reconsider an erroneous decision;

(5) countermeasures are ineffective, or worse, counterproductive in that a chain of retaliatory conduct may be initiated or the complainant may harm itself more by removal of concessions from the nation to which they are directed;

(6) lack of definition of the types of issues for which dispute settlement procedures are appropriate; and

(7) a fundamental change in the consensus of beliefs surrounding the structure and purpose of the Agreement.

The current round of negotiations has not attempted to address these criticisms by introducing structural changes into the GATT. Rather, disputes settlement problems are approached in two ways -- by solidifying procedures through the frameworks agreement, and by constructing dispute settlement procedures in the individual codes tailored specifically to the problems likely to arise there. (The latter procedures are discussed in the separate reports on the codes.)

The language of Point 3 appears self-explanatory. The results of the negotiations appear negligible insofar as basic structural changes may be deemed desirable. Perhaps the ultimate outcome will be twofold: first, disputes settlement procedures may become more consistent and deliberate in their execution, and second, the negotiation of the procedures in the frameworks group and the individual codes may have engendered a reneved sense of commitment to good faith observance of existing procedures.

10.3.3 Implementation

The agreement requires no specific steps in order to be implemented domestically. Desirable legislative action, however, would include consideration of procedures to facilitate participation by domestic private parties in disputes involving foreign actions for which they are aggrieved.

Section 301 of the Trade Act of 1974 1/ is the obvious mode for such proceedings and is considered in Volume I: Introduction and Overview of Legal Issues, of this study.

10.5 UNDERSTANDING REGARDING EXPORT RESTRICTIONS AND CHARGES

10.5.1 Text

POINT 5 -- UNDERSTANDING REGARDING EXPORT RESTRICTIONS AND CHARGES

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

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

ANNEX

STATEMENT OF EXISTING GATT PROVISIONS RELATING TO EXPORT RESTRICTIONS AND CHARGES

Introductory observations

1. This statement covers only those GATT provisions that are of particular relevance to export restrictions and charges. The omission of any provision 2/ from this statement does not mean that it is not applicable to such restrictions and charges.

1/ 19 U.S.C. 2411 (1976).

2/ Such as Articles XIX and XXIII which provide, under certain conditions, for the suspension or withdrawal of concessions and other obligations under the General Agreement. (Footnote in text.)

2. The subsequent paragraphs are organized as follows:

	Paragraphs
I. Export restrictions	3-4
II. Export charges	5
III. General exceptions	6-8
IV. Other provisions relating to export restrictions and charges	9
V. Publication and notification	10-11

I. Export restrictions

3. Article XI is entitled "General Elimination of Quantitative Restrictions".

Paragraph 1 of Article XI reads with the wording relating to imports omitted:

> "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, . . .export licenses or other measures, shall be instituted or maintained by any contracting party. . .on the exportation or sale for export of any product destined for the territory of any other contracting party." 1/

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

> (a) "Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party", and
>
> (b) ". . .export prohibitions or restriction necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade".

1/ A note to Articles XI, XII, XIII, XIV, and XVIII provides: "Throughout Articles XI, XII, XIII, XIV and XVIII, the terms 'import restrictions' or 'export restrictions' includes restrictions made effective through State-trading operations". (Footnote in text)

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

4. Article XIII is entitled "Non-discriminatory Administration of Quantitative Restrictions." Paragraph 1 of this Article reads with the wording relating to imports omitted: "No prohibition or restriction shall be applied by any contracting party on. . .the exportation of any product destined for the territory of any other contracting party, unless. . .the exportation of the like product to all third countries is similarly prohibited or restricted." 1/ Paragraphs 2 to 4 of Article XIII regulate the non discriminatory administration of quantitative import restrictions. Paragraph 5 of Article XIII provides inter alia: "In so far as applicable, the principles of this Article shall also extend to export restrictions." Article XIV is entitled: "Exceptions to the Rule of Non-discrimination". Paragraph 4 of this Article reads:

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

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

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

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

II. Export charges

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

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

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

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

"With respect to customs duties and charges of any kind imposed on or in connection with. . .exportation or imposed on the international transfer of payments for. . .exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with. . .exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product. . .destined for any other country shall be accorded immediately and unconditionally to the like product. . .destined for the territories of any other contracting parties." 1/

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

"The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on. . .exports. . ., and conducted with due regard to the objectives of this Agreement and the varying needs of individual contracting parties, are of great importance to the expansion of

international trade. The CONTRACTING PARTIES may therefore sponsor such negotiations from time to time." 1/

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

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

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

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

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

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

"The charging by a state enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets." (Footnote in text.)

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

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

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

"Negotiations which contracting parties agree to conduct under this paragraph may be directed towards the reduction of duties and other charges on. . .exports or towards the conclusion of any other mutually satisfactory arrangement consistent with the provisions of this Agreement." (Footnote in text.)

A note to this provision states inter alia:

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

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

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

The schedules annexed to the General Agreement contain only two export duty bindings. 1/

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

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

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

1/ See GATT, Consolidated Schedules of Tariff Concessions, Volume 3, Geneva, 1952, page 135; and GATT, Third Certification of Changes to Schedules to the General Agreement on Tariffs and Trade, Geneva, 1974, p. 763. (footnote in text.)

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

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

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

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

III. General Exceptions.

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

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

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

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

(a) necessary to protect public morals;

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

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

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

(e) relating to the products of prison labour;

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

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

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

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

(j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960."

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

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

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

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

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

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

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

IV. Other provisions relating to export restrictions and charges

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

(a) Paragraph 4 of Article XXXVI:

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

(b) Paragraph 5 of Article XXXVI:

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

(c) Paragraph 6 of Article XXXVI:

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

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

In particular, the CONTRACTING PARTIES shall:

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

V. Publication and notification

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

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

Paragraph 3 of this Article reads:

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

"(b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies

unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts."

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

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

10.5.2. Background

Although the bulk of negotiations on the MTN has focused upon problems of restrictions on importations, recent experience has shown that restrictive practices regarding the exportation of goods or services from a country may be as disruptive to the world economic system as restrictions on importations. 1/ The Congress expressed its concern regarding the disruptive effects of export restrictions in the Trade Act of 1974, when in section 121(a) (7) and (8) it instructed the President to take action to bring about trade agreements that would be consistent with the following principles:

(7) the improvement and strengthening of the provisions of GATT and other international agreements governing access to supplies of food, raw materials, and manufactured or semi-manufactured products including rules and procedures governing the imposition of export controls, the denial of fair and equitable access to such supplies, and effective consultative procedures on problems of supply shortages,

(8) the extension of the provisions of GATT or other international agreements to authorize multilateral procedures by contracting parties with respect to member or nonmember countries which deny fair and equitable access to supplies of

1/ See Pollack, "The Economic Consequences of the Energy Crisis," 52 Foreign Affairs 452 (April 1974).

> food, raw materials and manufactured or semi-manufactured products and thereby substantially injure the international community.

In the early stages of the Tokyo Round the U.S. sought to improve the rules governing the use of trade restrictions affecting exports and to add new obligations. By November 1978, however, it had become apparent that an agreement covering any "new" rights and obligations would not be reached. At present it appears that not even much strengthening of the present rules will emerge from the MTN; only changes in disputes settlement procedures as they might relate to export restraints will emerge from the negotiations. 1/

The increasing attention given to export restraints in international trade necessitates that the current status of such restraints under the GATT be examined and general problems with the present rules be identified. In the absence of a specific agreement it is obviously impossible to identify with precision U.S. domestic legislative changes that may be required to implement an international agreement on export restrictions. The present analysis is intended merely to briefly describe U.S. law regarding export restrictions to illustrate the myriad reasons for which export restrictions may now be imposed, and which may be affected by a future agreement.

The Use of Export Restrictions

Export restrictions come in a variety of types and are used for a variety of reasons. Assistant Secretary of the Treasury C. Fred Bergsten has identified several reasons for the use of such restrictions including:

1/ Executive Summary, Framework (January 3, 1979), at 234.

(1) to reinforce domestic price controls;
(2) to improve the terms of trade;
(3) to avoid "unacceptable" price rises;
(4) to capture for exporting countries the scarcity rents generated by other countries' import controls;
(5) to conserve limited resources;
(6) to develop domestic processing industries;
(7) to avoid physical shortages;
(8) for revenue reasons;
(9) to limit the military and economic capability of other countries;
(10) for foreign policy reasons. 1/

The methods used to restrict exports have included quantitative restrictions on exports, taxes on exports, quantitative restrictions on domestic production, and taxes on domestic production. 2/ The products that have been restricted by various countries in the past include textile machinery, rice, soybeans, bananas, bauxite, and of course, oil.

The worldwide pattern of inflation is seen by many authorities as the primary factor lying behind the increased use of export restrictions. In the words of Bergsten:

> They (export restrictions) usually represented national efforts to export inflation and the effects of shortages, especially of raw materials, just as import controls represented national efforts to export unemployment and the effects of excess production. 3/

If one goal of the export restriction is to increase export earnings, or at least avoid reductions in such earnings, the restrictions most likely to be effective are those which are undertaken (1) for a limited period, (2) in a good with few substitutes, and (3) by a country or group of countries which

---

1/ Bergsten, "Completing the GATT: Toward New International Rules to Govern Export controls," British-North America Committee (1974) at 5-10 (as quoted in J. Jackson, Legal Problems of International Economic Relations 916 (1977))
2/ Id. at 6.
3/ Id. at 2.

largely dominate the world market. 1/ Because of the potentially high costs of maintaining export restrictions on goods that do not meet these criteria, in the long run countries may be hesitant to impose restrictions on other goods regardless of the goals that they wish to achieve.

The present GATT provisions regarding export restrictions have been criticized largely for two reasons: (1) the exceptions provided render any prohibition on their use meaningless and (2) the lack of an effective disputes mechanism makes enforcement of any rules impossible. Export restrictions are mentioned in several sections of the GATT. 2/ In 1950 the Contracting Parties to GATT examined several types of quantitative export restrictions and determined that the following ones were violative of GATT, falling outside of exceptions:

(i) export restrictions used by a contracting party for the purpose of obtaining the relaxation of another contracting party's import restrictions;
(ii) export restrictions used by a contracting party to obtain a relaxation of another contracting party's export restrictions on commodities in local or general short

---

1/ Id. at 15.

2/ Export restrictions provisions include the following:
(1) Art. I - MFN treatment
(2) Art. VIII - Fees on exportation are to be limited to the approximate cost of services rendered.
(3) Art. X - Requirement of publication of export regulations.
(4) Art. XI - Quantitative Restrictions (QR's) prohibited for exports. Exceptions provided for: (a) restrictions for prevention or relief of critical shortages of foodstuffs; (b) restrictions for standards.
(5) Art. XIII - Non-discriminatory administration of QR's.
(6) Art. XIV - Exceptions to Art. XIII non-discrimination.
(7) Art. XVI - General exceptions to GATT.
(8) Art. XV - Restrictions permitted for exchange control.
(9) Art. XXI - Security Exceptions
Art. XX - Generalized exceptions from GATT which must not be applied "arbitrarily" or "unjustifiably".

supply, or otherwise to obtain an advantage in the procurement from another contracting party of such commodities;

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

(iv) export restrictions used by a contracting party to avoid price competition among exporters. 1/

Despite the declaration that such restrictions are unwarranted under GATT the present provisions contain ample exceptions to enable a country that is determined to impose export restrictions in conformance with GATT to find a provision that fits its situation. The general exceptions found in Article XX include measures:

(a) necessary to protect public morals;
(b) necessary to protect human, animal or plant life or health;
(c) relating to the importation or exportation of gold or silver;
(d) necessary to secure compliance with laws or regulations not inconsistent with GATT, including laws concerning patents, trademarks, and deceptive practices;
(e) relating to the products of prison labor;
(f) imposed to protect national historic or artistic treasures;
(g) relating to the conservation of exhaustible natural resources;
(h) undertaken pursuant to commodity agreements conforming to certain criteria;
(i) involving restriction on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan;
(j) essential to the acquisition or distribution of products in general or local short supply.

Article XI also permits certain export prohibitions, when they (1) are temporarily applied to prevent or relieve critical shortages of foodstuffs or other critical products, or (2) are necessary to the application of standards

1/ See The General Agreement on Tariffs and Trade, "The Use of Quantitative Restrictions for Protective and other Commercial Purposes" (Geneva, 1950), at 4.

or regulations for the classification, grading, or marketing of commodities in international trade.

Perhaps the most important exception to the present GATT rules is the fact that the provisions only apply to quantitative restrictions, leaving open the possibility that countries could apply export taxes or fees consistent with GATT. Unlike the GATT provisions on import restrictions which have appended to them tariff schedule concessions, the GATT obligations on export restrictions contain no explicit provision for concessions. Some leading commentators have seen this lack of a concessions schedule as a major problem. 1/

A disputes resolution mechanism is almost wholly lacking as GATT stands today. In the history of GATT only three complaints against export restrictions have been made, the last one having been made in 1952. 2/ In theory, the export restrictions disputes should fall within the same provisions that are to be used for import restrictions, Article XXII (consultation) and Article XXIII (nullification or impairment). But in practice these articles have not been effectively used. The reasons for their lack of use are probably the same reasons that the disputes resolution mechanism has not been used with regard to import restrictions. They include perceptions by some countries that the panels deciding the disputes are less than impartial and that long delays are inevitable before a resolution of a dispute is forthcoming. 3/ Coupled with the many rather vague exceptions to

---

1/ Roessler, "GATT and Access to Supplies," 9 J. World Trade L. 25 (1975).
2/ Id. at 30.
3/ For a discussion of the general problems with disputes settlement, see Jackson, "Governmental Disputes in International Trade Relations: A Proposal in the Context of GATT," 13 J. World Trade L. 1 (1979).

the obligations not to use export restrictions, the chances of a country adversely effected by export restrictions receiving relief through the GATT dispute resolution seem slim under the present provisions.

Changes Proposed and the Present Status of the Negotiations

By July 1978 it seemed that substantial progress had been made at the MTN in Geneva on the issue of export restriction. The MTN delegates reported that for the first time the developed countries and the LDC's had reached agreement on a working text. That text provided for several major changes in the export restrictions provisions. These major changes are as follows: 1/

(1) Information relevant to consultations -

a) upon request, any export restrictions implemented under Article I by QR's shall require the party imposing the restriction to furnish information establishing that the measure is consistent with the provisions of Article XIII;
b) restrictions under Art. XI shall require upon request a showing that product shortages are "critical," that the products are "essential," and that the measures will be applied "temporarily;"
c) restrictions under Art. XX shall require the party, upon request, to show that the measure will not be applied arbitrarily or unjustifiably and that other relevant requirements of Art. XX have been met.

(2) Surveillance and follow-up - Tentative provision for a subsidiary body which would review developments and advise the contracting parties.

The U.S. MTN delegation also reported in November that the negotiation of additional rights and obligations (contained in Part B of the Note by the Secretariat) should address certain subject areas, but stated that the conclusion of negotiations on these new rights and obligations were not to be expected in the current round. Future negotiations on export restrictions

15/ See Note by the Secretariat, MTN/INF/20/Rev. 1, July 7, 1978.

50-139 O - 79 - 15

were to address the following:

(1) More precise definitions - particularly needed for determining when QR's can be used; also needed for deciding the duration of "temporary" export restrictions;

(2) Discriminatory action under Article XX - eliminating the possibility of such action;

(3) Export embargoes - whether the use should be subject to rules separate from rules on export restrictions in general;

(4) Progressive liberalization of restrictions - including problems over the base period to be used;

(5) Binding of export taxes - the negotiation of such binding and their inclusion in the GATT Schedules, including problems relating to emergency action and renegotiation;

(6) Developing countries - consideration of their special problems.

10.5.3 Implementation

Because the MTN has not made much headway with regard to export restrictions it would be pointless to undertake a paragraph by paragraph description of current U.S. laws permitting export restrictions and an analysis of how such laws would have to be changed to bring them into conformance with new GATT obligations. What follows instead is a brief description and analysis of the major U.S. laws dealing with export restrictions. Several of the less far-reaching U.S. laws which contain provisions for export restrictions are contained in Appendix A.

A. Section 301 of the Trade Act of 1974.

Section 301 1/ grants to the President the power to "take all

---

1/ 19 U.S.C. 2411 (1976). Section 301 provides in full:

(a) Whenever the President determines that a foreign country or instrumentality--

(1) maintains unjustifiable or unreasonable tariff or other import restrictions which impair the value of trade commitments made

(Continued)

(Continued)
to the United States or which burden, restrict, or discriminate against United States commerce,

(2) engages in discriminatory or other acts or policies which are unjustifiable or unreasonable and which burden or restrict United States commerce,

(3) provides subsidies (or other incentives having the effect of subsidies) on its exports of one or more products to the United States or to other foreign markets which have the effect of substantially reducing sales of the competitive United States product or products in the United States or in those other foreign markets, or

(4) imposes unjustifiable or unreasonable restrictions on access to supplies of food, raw materials, or manufactured or semimanufactured products which burden or restrict United States commerce,

The President shall take all appropriate and feasible steps within his power to obtain the elimination of such restrictions or subsidies, and he --

(A) may suspend, withdraw, or prevent the application of, or may refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality; and

(B) may impose duties or other import restrictions on the products of such foreign country or instrumentality, and may impose fees or restrictions on the services of such foreign country or instrumentality, for such time as he deems appropriate.

For purposes of this subsection, the term "commerce" includes services associated with the international trade.

(b) In determining what action to take under subsection (a), the President shall consider the relationship of such action to the purposes of this Act. Action shall be taken under subsection (a) against the foreign country or instrumentality involved, except that, subject to the provisions of section 302, any such action may be taken on a nondiscriminatory treatment basis.

(c) The President in making a determination under this section, may take action under subsection (a)(3) with respect to the exports of a product to the United States by a foreign country or instrumentaility if --

(1) the Secretary of the Treasury has found that such country or instrumentality provides subsidies (or other incentives having the effect of subsidies) on such imports;

(2) the International Trade Commission has found that such exports to the United States have the effect of substantially reducing sales of the competitive United States product or products in the United States; and

(3) the President find that the Antidumping Act, 1921, and section 303 of the Tariff Act of 1930 are inadequate to deter such practices.

(Continued)

(Continued)

(d)(1) The President shall provide an opportunity for the presentation of views concerning the restrictions, acts, policies, or practices referred to in paragraphs (1), (2), (3), and (4) of subsection (a).

(2) Upon complaint filed by any interested party with the special Representative for Trade Negotiations alleging any such restriction, act, policy, or practice, the Special Representative shall conduct a review of the alleged restriction, act, policy, or practice, and, at the request of the complainant, shall conduct public hearings thereon. The Special Representative shall have a copy of each complaint filed under this paragraph published in the Federal Register. The Special Representative shall issue regulations concerning the filing of complaints and the conduct of reviews and hearings under this paragraph and shall submit a report to the House of Representatives and the Senate semi-annually summarizing the reviews and hearings conducted by it under this paragraph during the preceding 6-month period.

(e) Before the President takes any action under subsection (a) with respect to the import treatment of any product or the treatment of any service --

(1) he shall provide an opportunity for the presentation of views concerning the taking of action with respect to such product or service,

(2) upon request by any interested person, he shall provide for appropriate public hearings with respect to the taking of action with respect to such product or service, and

(3) he may request the International Trade Commission for its views as to the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the President determines that, because of the need for expeditious action under subsection (a), compliance with paragraphs (1) and (2) would be contrary to the national interest, then such paragraphs shall not apply with respect to such action, but he shall thereafter promptly provide an opportunity for the presentation of views concerning the action taken and, upon request by any interested person, shall provide for appropriate public hearings with respect to the action taken. The President shall provide for the issuance of regulations concerning the filing of requests for, and the conduct of, hearings under this subsection.

appropriate and feasible steps" to obtain the elimination of certain restrictions of foreign countries. Among the restrictions that the President is empowered to respond to is one that "imposes unjustifiable or unreasonable restrictions on access to supplies of food, raw materials, or manufactured or semimanufactured products which burden or restrict United States commerce." 1/

To date no complaint has been filed by an interested party in the United States charging that 301(a)(4) is being violated. 2/

The most important point regarding section 301(a)(4) is the wide scope of authority that it grants the President to make responses. The House Ways and Means Committee Report described the requirements for taking action under this section as follows:

> In this section 'unjustifiable' refers to restrictions which are illegal under international law or inconsistent with international obligations. 'Unreasonable' refers to restrictions which are not necessarily illegal but which nullify or impair benefits accruing to the United States under trade agreements or otherwise discriminate against or unfairly restrict or burden U.S. commerce. 3/

The Senate Finance Committee Report was even more explicit in its insistence that section 301(a)(4) was to be interpreted without regard to GATT procedures:

> The Committee is not urging that the United States undertake wanton or reckless retaliatory action under section 301 in total disdain of applicable international agreements. However, the Committee felt it was necessary to make it clear that the President could act to protect U.S. economic interests

---

1/ Section 301(a)(4).
2/ See Appendix C, Vol. No. I, Introduction and Overview of Legal Issues.
3/ House Report 95-571, 93d Cong., 1st Sess. (1973) at 65.

whether or not such action was consistent with the articles of an outmoded agreement initiated by the Executive 25 years ago and never approved by the Congress. 1/

The present provisions of section 301 permit the President to impose quotas to obtain the elimination of foreign export restrictions. 2/ The actions taken by the President are to continue for an unlimited amount of time. Under the terms of section 301 the Special Representative for Trade Negotiations is required to conduct a review of complaints filed with it alleging restrictions and, at the request of the complainant, must conduct public hearings. 3/ Generally section 301 actions were designed to be taken on a selective rather than an MFN basis. 4/ Section 302 of the Trade Act of 1974 specifically provides for Congressional disapproval of section 301 actions taken on an MFN basis and restriction of the action to the country which was applying the export restriction under section 301(a).

B. The Export Administration Act

The heart of U.S. law concerning export restrictions is 50 U.S.C. App. 2401-2413 (1976). These sections, known collectively as the Export Administration Act, are designed to effectuate several purposes. Section 2402 sets forth the Congressional policies embodied in the act, including the protection of U.S. security, the protection of U.S. economy from the excessive drain of scarce materials, the reduction of inflation, removal of foreign

---

1/ S. Rep. No. 93-1298, 93d Cong., 2d Sess. 166 (1974).
2/ See section 301(a)(B).
3/ See section 301(d)(2).
4/ See S. Rep. No. 93-1298, 93d Cong., 2d Sess. 166 (1974).

export restrictions, and the prevention of international terrorism. 1/ The power of the President to achieve the policies of section 2402 is set forth in section 2403(b)(1), which states that "the President may prohibit or curtail the exportation, except under such rules and regulations as he shall prescribe, of any articles, materials, or supplies, including technical data or other information. . . ." Section 2403(i) provides that the President's authority to enact restrictions to protect the U.S. economy from scarcities of materials or to reduce inflation shall include but not be limited to, the imposition of export license fees." Section 2405 provides criminal penalties for the knowing violation of any provision of the Export Administration Act.

The Export Administration Act, like section 301 of the Trade Act of 1974, provides wide discretion for Presidential action. The present GATT exceptions from prohibition or the use of export restrictions parallel the reasons for which restrictions can be used under the Export Administration Act in several respects. For example, both GATT and the Export Administration Act provide for use of restrictions to conserve scarce natural resources; both allow restrictions to protect human life; both permit measures to relieve critical shortages of supply.

The present Export Administration Act expires on September 30 of this year. Some changes may be made with regard to the stringency of controls under that Act. At present two bills have been introduced in the Congress dealing with extension of authority, S. 737 and H.R. 3216 2/.

1/ See 50 U.S.C. App. 2402 (1976).

2/ See Bingham and Johnson, "A Rational Approach to Export Controls," 57 Foreign Affairs 894 1979).

C. Other Important Controls

In addition to the Commerce Department, which administers the regulations issued pursuant to the Export Administration Act, two other departments have a major role in national security related exports. The Trading with the Enemy Act 1/ is administered by the Treasury Department. Under the Mutual Security Act of 1954, 2/ the State Department administers a licensing system regarding arms, ammunition, and technical data. A number of other controls also affect a variety of products, including: (1) Narcotic Drugs Import and Export Act (21 USC 958 (1976)); (2) Atomic Energy Act of 1954 (42 USC 2011 et seq. (1976)); (3) Natural Gas Act of 1938 (15 USC 717 et seq. (1976)); (4) Federal Power Act (16 USC 825 (1976)); and (5) Tobacco and Seed and Plant Exportation Act of 1954 (7 USC 516, 517 (1976)).

With the gradual elimination of import restrictions as distortions and with continued inflation throughout the world, it is probable that export restrictions will play a larger role in the future of international trade. If this is the case, it will be necessary to ensure all nations that relevant information is available so that it may be determined if GATT is being complied with. Rules explicitly dealing with the problems of export embargoes and export taxes may be necessary. Such changes in GATT would in all probability require major changes in U.S. law, which at present allows a number of opportunities to impose various export restrictions. Until such agreements are entered into at the international level, however, U.S. export laws will not require amendment.

1/ 50 U.S.C. App. 1 et seq. (1976).
2/ 50 U.S.C. App. 1878 (1976).

Background and current status

Domestic and imported distilled spirits are subject to U.S. internal revenue taxes; in addition, imported distilled spirits are subject to U.S. import duties. The United States levies an internal revenue tax of $10.50 on each proof gallon (or wine gallon, when the beverage is below proof)1/ of domestic and imported distilled beverages. In short, if the beverage tests over 100 proof, it is taxed a proportionate additional amount of the base tax; but if it is below 100 proof, it nevertheless pays the full $10.50 per gallon base rate. 2/ The U.S. import duty on distilled spirits is assessed in the same manner as the excise tax, but at the rate specified "per gallon" in the Tariff Schedules of the United States (TSUS). In sum, the beverage which is assessed when it is below 100 proof actually bears a higher tax or duty per unit of proof.

The internal revenue tax is assessed on domestically produced spirits at a point in the production process when the product is at or above 100 proof, and before it has been "cut" (diluted with water) to the lower proof at which it is normally bottled (for whiskey, usually 80 to 86 proof). Imported spirits may also be assessed at this "low-tax-rate-point" in the production process if they are shipped in bulk to the United States and bottled after entering the country. However, if the spirits shipped already have been bottled, they normally have been cut to 80-86 proof (in the case of whiskey, more for some other beverages), and therefore

---

1/ 26 USC 5001(a)(1). The term "proof" refers to the ethyl alcohol content of a liquid at 60 degrees Fahrenheit stated as twice the percent of ethyl alcohol by volume; e.g., a gallon of pure ethyl alcohol is 200 proof and is equivalent to 2 proof gallons. A "proof gallon" is the equivalent of a U.S. gallon containing 50 percent of ethyl alcohol by volume, i.e., 100 proof. A "wine gallon" is a standard U.S. gallon of liquid measure equivalent to a volume of 231 cubic inches.

2/ The majority of U.S. imports of distilled spirits less than 100° proof enter the U.S. in bottled form.

must pay approximately 14-20 percent more tax than the competing bottle of domestic distilled spirits (or foreign spirits imported in bulk). For example, the domestic producer of an 86 proof whiskey pays an internal revenue tax of $9.03 per bottled gallon (proof-gallon assessment) on his product, while the foreign shipper of a bottled Canadian whiskey to the United States pays a tax of $10.50 (wine-gallon assessment) on his product. The imported Canadian whiskey also is assessed an import duty of 62 cents per gallon (wine-gallon assessment) that is 9 cents more per gallon than if the duty were assessed on a proof gallon basis. In effect, the assessment of the excise tax and duty on the bottled Canadian whiskey on a wine gallon basis results in $1.56 per gallon difference compared to an assessment on a straight proof gallon basis.

The European Community, Canada, Jamaica, Trinidad and Tobago, Poland, and Bangladesh have requested the elimination of the U.S. wine gallon method of assessing U.S. excise taxes and import duties on specific distilled products (e.g., brandy, cordials and liqueurs, gin, Scotch and Irish whiskey, other whiskey, preparations in chief part of spirits, rum, and vodka) at the Multilateral Trade Negotiations (MTN) in Geneva. This issue is not being dealt with multilaterally, but the United States has offered to selectively eliminate the wine gallon assessment method on those products requested, which correspond to individual tariff lines, in return for adequate compensation from each of the requesting parties.

In effect this would mean repeal of the wine gallon method of tax and duty assessment and the imposition of increased tariffs, equal to the value of the wine gallon margins of revenue protection, on specific spirits from the primary supplying countries of those spirits which do not provide reciprocal concessions.

The United States has reached agreement with respect to the elimination of the wine gallon assessment method with the EC, Canada and Finland. While we are not aware of the precise concessions which the United States

Trade Representative that the United States has received concessions from the EC concerning U.S. tariff and non-tariff measure requests on distilled spirits and agricultural products. The Canadian concessions include the elimination of the "Made In Canada/Not Made In Canada" provisions from its tariff schedules, and tariff and non-tariff offers on distilled spirits. The Finnish concessions responded to U.S. tariff and non-tariff measure requests on distrilled spirits. It now appears that Mexico (tequila), Trinidad and Tobago (bitters), Spain (brandy under $9 per gallon), Israel (arrack), Peru (Pisco under $9 per gallon), and Jamaica (rum) will not offer adequate compensation and thus will necessitate tariff increases on the above named products.

Tariff treatment

The current tariff treatment of spirits, spirituous beverages, and beverage preparations is as follows.

GSP 1/	TSUS item	Description	Rate of duty	
			Column 1	Column 2
	168.05	Aquavit	42¢ per gal.	$5 per gal.
	168.10	Arrack	$1 per gal.	$5 per gal.
		Bitters of all kinds containing spirits:		
A*	168.15	Not fit for use as beverages	94¢ per gal.	$5 per gal.
A	168.17	Fit for use as beverages	50¢ per gal.	$5 per gal.
		Brandy:		
		Pisco and singani:		
		In containers each holding not over 1 gallon:		
A	168.18	Valued not over $9 per gallon	62¢ per gal.	$5 per gal.
A	168.23	Valued over $9 per gallon	$1.25 per gal.	$5 per gal.

1/ The "A" in the column entitled "GSP" indicates that the articles imported under the particular TSUS item number are eligible for duty free treatment under the Generalized System of Preferences (GSP) if produced in a designated beneficiary developing country. The "A*" for TSUS item 168.15 indicates that imports under this item from 11 beneficiary developing countries, except Trinidad, are eligible for duty-free treatment under GSP.

GSP 1/	TSUS item	Description	Rate of duty	
			Column 1	Column 2
		In containers each holding over 1 gallon:		
A	168.24	Valued not over $9 per gallon	50¢ per gal.	$5 per gal.
A	168.26	Valued over $9 per gallon	$1 per gal.	$5 per gal.
		Other:		
		In containers each holding not over 1 gallon:		
	168.27	Valued not over $9 per gallon	62¢ per gal.	$5 per gal.
	168.28 2/	Valued over $9 per gallon	$1.25 per gal.	$5 per gal.
		In containers each holding over 1 gallon:		
	168.29	Valued not over $9 per gallon	50¢ per gal.	$5 per gal.
	168.32 2/	Valued over $9 per gallon	$1 per gal.	$5 per gal.
A	168.33	Cordials, liqueurs, kirschwasser, and ratafia	50¢ per gal.	$5 per gal.
	168.34	Ethyl alcohol for beverage purposes	$1.12 per gal.	$5 per gal.
A	168.35	Gin	50¢ per gal.	$5 per gal.
	168.40	Rum (including cana paraguaya)	$1.75 per gal.	$5 per gal.
		Whiskey:		
	168.45	Irish and Scotch	51¢ per gal.	$5 per gal.
	168.46	Other	62¢ per gal.	$5 per gal.
		Tequila:		
	168.47	In containers each holding not over 1 gallon	$1.25 per gal.	$5 per gal.
A	168.48	In containers each holding over 1 gallon	$1.25 per gal.	$5 per gal.
		Other spirits, and preparations in chief value of distilled spirits, fit for use as beverages or for beverage purposes:		
A	168.52	Spirits	$1.25 per gal.	$5 per gal.
A	168.55	Other	$1.25 per gal.	$5 per gal.
	168.90	Imitations of brandy and other spirituous beverages	$2.50 per gal.	$5 per gal.

1/ The "A" in the column entitled "GSP" indicates that the articles imported under the particular TSUS item number are eligible for duty free treatment under the Generalized System of Preferences (GSP) if produced in a designated beneficiary developing country.

2/ It should be noted that the rates of duty for certain brandy (items 168.2830, 168.2840, 168.3220, and 168.3240) have been temporarily increased by Executive Order 11888 of November 24, 1975, in response to the unreasonable import restrictions maintained by the European Community upon imports of poultry from the United States which directly and substantially burden United States commerce. These temporary rates are designated by items 945.17, 945.18, 945.19, and 945.20 and are listed in appendix A, page 14.

Structure of domestic industry

The major distilled beverage products produced in the United States are whiskey, vodka, cordials and liqueurs, gin, rum, and brandy. 1/ U.S. production, exports, imports, and apparent consumption of these beverages are shown in the tables listed in appendix B (pages 15-35). 2/

The Department of Treasury reports that during fiscal years 1972-76 the number of plants licensed by the Internal Revenue Service to produce distilled spirits decreased from 148 to 129, while authorized distilled spirit warehousing and bottling facilities decreased from 171 to 160. The number of distilled spirits rectifiers declined from 150 to 143 during the same period. 3/ In 1976 there were 2,755 importers and 10,164 wholesalers licensed for alcoholic beverage operations under the Federal Alcohol Administration Act 4/ as shown in the following tabulation:

Year ending June 30	Distilled spirits plants			Importers	Wholesalers
	Distillers	Warehousing and bottling	Rectifiers		
1972	148	171	150	2,302	9,720
1973	145	166	129	2,423	9,796
1974	142	163	128	2,563	9,901
1975	136	162	146	2,666	10,014
1976	129	160	143	2,755	10,164

1/ The Code of Federal Regulations defines distilled spirits as ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use, except that this term shall not include mixtures containing wine, bottled at 48° proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

2/ Statistical tables for bitters and imitations of wines and imitations of brandy and other spirituous beverages (less significant distilled beverages) are also included in appendix B.

3/ In brief, the Code of Federal Regulations defines a rectifier as a person who purifies or refines distilled spirits or who mixes distilled spirits or other liquor with any material.

4/ 27 CFR Chapter I.

A few large concerns control the bulk of U.S. production and sales of the whiskey industry. Most are manufacturer-importers who produce a variety of products and operate import divisions for the importation and sale of imported whiskeys. It is believed the four largest companies account for about half and the 10 largest for about 90 percent of total domestic shipments. Trade sources indicate about half of U.S. vodka production is produced by five companies, but most U.S. distillers produce one or more vodka brands. It is estimated that about 20 U.S. firms produce cordials and liqueurs and about half of these firms consider cordial and liqueur production to be of major importance. Trade sources indicate gin sales of four domestic companies annually account for about half of all gin sold in the U.S. market. It is estimated that about a dozen firms produce rum (including those located in Puerto Rico and the U.S. Virgin Islands). The industry is dominated by one firm which is believed to supply about 70 percent of the domestic market. Wineries are the principal U.S. producers of brandy and in 1976, 62 plants were authorized to produce distilled fruit beverages. About half of these establishments are believed to market brandy as a beverage, since much of the California production is shipped to other companies where it is bottled under a variety of labels.

Domestic production

During 1973-77, U.S. distilled spirit production considered in the aggregate, increased from about 306 million wine gallons valued at about $1.3 billion to 319 million wine gallons valued at $1.6 billion (table 1). 1/

1/ There is no information available on domestic production of bitters and imitation brandies and other imitation spirituous beverages.

Domestic whiskey production declined from 147 million wine gallons to 123 million during 1973-77 (table 2), while production of miscellaneous spirituous beverages (mostly vodka) increased from about 71 million wine gallons to 102 million (table 5). During the same period, U.S. gin production declined from about 37 million wine gallons to 33 million (table 7), while domestic production of cordials and liqueurs remained relatively unchanged at 26 million wine gallons (table 9). During 1973-77, domestic rum production increased from 13 million wine gallons to 19 million (table 11), while brandy production increased from 13 million wine gallons to 15 million (table 14).

Imports

The quantity and value of imports of U.S. distilled spirits are shown in total (table 1) and by type in the tables of appendix B. In 1977, total U.S. imports of these distilled beverages amounted to about 125 million wine gallons valued at approximately $674 million, compared to imports of about 116 million wine gallons valued at approximately $591 million in 1973.

U.S. imports of whiskey in 1977 amounted to about 101 million wine gallons valued at $527 million (table 2). The United Kingdom and Canada were the chief suppliers, respectively accounting for 58 and 41 percent of the total value of whiskey imports (table 3). Imports of cordials and liqueurs reached a record high of 5.8 million wine gallons valued at $58.9 million in 1977 (table 9). France and Italy each supplied about 28 percent of the total value of these imports (table 10). U.S. brandy imports amounted to 3.5 million wine gallons valued at $42.0 million in 1977, of which France supplied about 87 percent (tables 14 and 15). Imports of gin in 1977 reached 5.3 million wine gallons valued at $32.5 million (table 7). The United Kingdom supplied 99 percent (table 8). Imports of miscellaneous spirituous beverages (mostly tequila) were 7.8 million wine gallons valued at $17.1 million in 1977 (table 5). Mexico supplied 78 percent (by value) of the total (table 6). In 1977 U.S. imports of rum amounted to 798, 000 wine gallons valued at $1.7 million, with Jamaica supplying 62 percent (by value) of the total (tables 11 and 12). Imports of bitters reached 225,000 proof gallons valued at $1.2 million in 1977 (table 17). Trinidad and Tobago and Italy each supplied about 49 percent of the total value (table 18). Imports of imitation wines, brandies and other spirituous beverages are minor.

Apparent U.S. consumption

During 1973-77 apparent U.S. consumption of whiskey, cordials and liqueurs, brandy, gin, miscellaneous spirituous beverages (primarily vodka and tequila), and rum, considered in the aggregate, is estimated to have increased from 415 million wine gallons to 437 million (table 1). During 1973-77 U.S. consumption of whiskey declined from 240 million wine gallons to 219 million (table 2), cordial and liqueur consumption increased from 29.6 million wine gallons to 32.0 million (table 9), brandy consumption increased from 16.3 million wine gallons to 19.2 million (table 14), gin

consumption declined from 41.5 million wine gallons to 38.2 million (table 7), miscellaneous spirituous beverage consumption increased from 74.4 million wine gallons to 109.4 million (table 5), and rum consumption increased from 13.4 million wine gallons to 19.8 million (table 11).

Potential effect on revenue 1/

It is estimated that the following additional excise taxes and imported duties were collected from individual countries in 1977 as a result of using the wine-gallon/proof-gallon method of assessment rather than a straight proof gallon method for imported bottled distilled spirits: 2/

Source	Estimated Additional Tax & Duty Collected	Type of Spirit
	Thousand dollars	
United Kingdom	61,763	Scotch, Gin, Brandy, Cordials and Liqueurs, etc.
France	9,033	Cordials and Liqueurs, Brandy, etc.
Italy	4,022	Cordials and liqueurs, bitters, etc.
Ireland	353	Irish whiskey, cordials and liqueurs, etc.
Denmark	187	Cordials and liqueurs, aquavit, etc.
West Germany	157	Cordials and liqueurs, brandy, etc.
Netherlands	62	Cordials and liqueurs, etc.
Canada	37,941	Canadian whiskey, etc.
Mexico	651	Tequila, brandy, etc.
Spain	560	Brandy, cordials and liqueurs, etc.
Greece	354	Cordials and liqueurs, brandy, etc.
Jamaica	188	Rum
Poland	55	Vodka, etc.
Portugal	33	Brandy, cordials and liqueurs, etc.
All others	5,963	Various
Grand total	121,322	

1/ See also the Commission's report of May 11, 1979, to the Subcommittee on Trade of the House Ways and Means Committee on the effect of implementation of the MTN on U.S. imports and customs revenues.

2/ Estimations based on the assumption that imports of distilled spirits in containers less than 1 gallon were subject to internal revenue tax and duty on a wine gallon basis. Tax and duty on these imports were estimated on the usual proof of such imports when imported.

The wine-gallon/proof-gallon method of assessment provides a significant source of revenue to the U.S. Treasury. It is estimated that in recent years the United States has collected $110-121 million annually in additional revenues resulting from the present method of assessment compared to those which would have been collected using a method based only on a proof-gallon basis. In 1977, about 51 percent of the estimated difference in the extra revenue collected on imports by the two methods was from the United Kingdom, while about 31 percent was collected on imports from Canada. Significant amounts were also collected on imports from France and Italy. It is estimated that the additional revenue resulting from the wine-gallon/proof-gallon method annually accounts for about 15 percent of all U.S. excise taxes and import duties collected on imported distilled spirits.

Widely divergent views on the consequence of the removal of the wine-gallon/proof-gallon system have been put forth by the U.S. distilled spirit producers and by importers. At one extreme, it is contended that the difference in tax and duty collections would be simply transferred from receipts of the U.S. Treasury (approximately $120 million) to receipts of the importers and foreign producers without change in existing trade practices or patterns. On the other extreme, it is suggested that the amount of the overpayment would be largely passed on to consumers in the form of reduced prices for imported distilled spirits (with a concomitant increase in competition for domestic spirits and possibly complete elimination of the practice of importing bulk spirits for bottling in the United States.)

The actual division to be realized is probably impossible to predict.

However, it is likely that if foreign producers and importers realize cost-savings from a change in the method of assessment, they are more likely to use the savings for increased advertising rather than reduce costs to consumers, inasmuch as distilled beverage demand generally is relatively price inelastic.

U.S. implementation

In order to implement the agreements eliminating the wine gallon assessment method it will be necessary for Congress to enact legislation amending the Internal Revenue Code and the TSUS to provide for the assessment of taxes and duties on the basis of proof gallon. Specifically, this necessitiates:

1. the modification of section 5001(a) of the Internal Revenue Code of 1954 (26 U.S.C. 5001(a)) to remove referances to the wine gallon assessment method;

2. the modification of headnote 2 to part 12, of schedule 1 of the TSUS (19 U.S.C. 1202) to delete the phrase "each and every gauge or wine gallon measurement is counted as at least one proof gallon";

3. the modification of the column 1 and column 2 rates of duty in subpart D of part 12, schedule 1 of the TSUS to a proof gallon basis;

4. the conversion of column 1 rates of duty, on spirits from the primary supplying countries of those spirits which have not provided reciprocal concessions, to rates of duty which would maintain existing wine gallon margins of revenue protection; and

5. the conversion of all column 2 rates of duty in subpart D of part 12, schedule 1 of the TSUS to rates which would maintain existing margins of revenue protection.

A conversion of all column 1 and column 2 rates of duty in subpart D, part 12, schedule 1 of the TSUS to rates of duty which would maintain existing wine gallon margins of revenue protection in the absence of the wine gallon assessment method is provided in appendix C.

In addition to the above necessary legislation the Administration has made the following additional legislative proposals which--

1. would convert to an "all-in-bond" system of taxation on distilled spirits. Excise taxes would be imposed on products based on their bottled proof rather than on the proof of uncut spirits,

2. would repeal the rectification tax of 30¢ per proof gallon on purified or blended distilled spirits or wines,

3. would repeal the 30¢ per proof gallon tax on brandies aged in wood less than two years at the time of first mixing or blending, and

4. would repeal the $1.92 per wine gallon tax on cordials and liqueurs.

Appendix A

Part 2, Subpart B, Appendix to the Tariff Schedules of the United States Annotated

Item	Stat. Suf-fix	Articles	Units of Quantity	Rates of Duty	
				1	2
		Subpart B. - Temporary Modifications Pursuant to Section 252 of the Trade Expansion Act of 1962			
945.13	1/	Potato starch (provided for in item 132.50).....	1/	1.5¢ per lb.	No change
		Brandy:			
		Provided for in item 168.20:			
945.17	1/	Valued over $13, but not over $17 per gallon..	1/	$3 per gal.	No change
945.18	1/	Valued over $17 per gallon.....	1/	$5 per gal.	No change
		Provided for in item 168.32:			
945.19	1/	Valued over $9, but not over $17 per gallon...	1/	$3 per gal.	No change
945.20	1/	Valued over $17 per gallon.....	1/	$5 per gal.	No change
945.49	1/	Dextrins and soluble or chemically treated starches (provided for in item 493.30).....	1/	3¢ per lb.	No change
945.69	1/	Automobile trucks valued at $1,000 or more (provided for in item 692.02).....	1/	25% ad val.	No change
		Subpart C. - Deleted			
		Subpart D. - Deleted			

1/ See Appendix statistical headnote 1.

Appendix B

Statistical Tables

Table 1.--Distilled beverages: Estimated production, exports, imports, and apparent consumption, 1973-77

Period	Production	Exports	Imports	Apparent consumption	Ratio of imports to consumption (percent)
	Quantity (1,000 wine gallons)				
1973	306,447	6,696	115,821	415,359	27.9
1974	313,183	7,455	120,058	417,348	28.8
1975	327,551	6,561	124,355	444,572	28.0
1976	317,822	5,834	123,372	430,517	28.7
1977	318,734	5,915	124,664	437,138	28.5
	Value (1,000 dollars)				
1973	1,308,096	1/	591,490	1/	1/
1974	1,350,378	1/	622,320	1/	1/
1975	1,577,218	1/	642,508	1/	1/
1976	1,578,745	1/	674,500	1/	1/
1977	1,605,622	1/	674,336	1/	1/

1/ Not available.

Source: Production and/or shipments compiled from official statistics of the U.S. Department of the Treasury and the U.S. Department of Commerce; value of production based on official statistics of the U.S. Department of Commerce and the Bureau of Labor Statistics; imports and exports compiled from official statistics of the U.S. Department of Commerce. Adjustment by the U.S. International Trade Commission.

Table 2.--Whiskey: Producers' shipments, exports, imports, and apparent consumption, 1968-77.

Period	Producers' Shipments 1/	Exports 2/	Imports 3/	Apparent consumption 4/	Ratio of imports to consumption (percent)
	Quantity (1,000 wine gallons)				
1968	161,037	2,249	70,491	228,423	31
1969	169,137	2,986	79,003	244,690	32
1970	167,012	3,051	85,692	248,833	34
1971	161,917	4,356	95,612	252,309	38
1972	159,735	4,613	94,675	248,555	38
1973	146,627	5,906	99,860	240,102	42
1974	143,567	6,420	101,798	230,397	43
1975	143,034	6,225	104,482	240,772	43
1976	125,951	5,469	101,974	217,674	47
1977	123,419	5,568	101,128	218,633	46
	Value (1,000 dollars)				
1968	711,469	8,200	395,862	5/	5/
1969	747,249	9,488	436,732	5/	5/
1970	762,[illegible]1	11,417	457,078	5/	5/
1971	749,676	14,997	480,852	5/	5/
1972	788,423	15,835	454,075	5/	5/
1973	733,870	19,197	468,325	5/	5/
1974	728,491	21,430	518,159	5/	5/
1975	828,880	21,360	523,266	5/	5/
1976	771,064	27,334	524,249	5/	5/
1977	766,305	21,852	520,915	5/	5/
	Average unit value (per wine gallon)				
1968	$4.42	$3.65	$5.62		
1969	4.42	3.18	5.53		
1970	4.56	3.74	5.33		
1971	4.63	3.44	5.03		
1972	4.94	3.24	4.80		
1973	5.01	3.24	4.89		
1974	5.07	3.34	5.09		
1975	5.80	3.43	5.01		
1976	6.15	4.10	5.14		
1977	6.21	3.93	5.15		

1/ Withdrawals of [illegible] whiskey, as reported by the Bureau of Alcohol, Tobacco and Firearms, adjusted to exclude whiskey exported and to exclude bottling of foreign whiskey imported in bulk. Value is based on reported value of bottled whiskey in the 1967 Census of Manufactures for the period 1968-72, and the 1972 Census of Manufactures for the period 1973-77, adjusted yearly in accordance with the wholesale price index for whiskey of the Bureau of Labor Statistics. 2/ Includes adjustment in exports of bulk whiskey to convert proof gallons to wine gallons. 3/ Includes adjustment in imports of bulk whiskey to convert proof gallons to wine gallons based on [illegible] than bottled. 4/ Allowance made for minor exports of foreign whiskey. 5/ Not meaningful since values at different trade levels are not comparable.

Source: Compiled from official records of the U.S. Department of the Treasury and the U.S. Department of [illegible]; production based on official statistics of the U.S. Department of Commerce; the Bureau of Labor Statistics; imports and exports compiled from official records of the U.S. Department of Commerce. Adjustment by the U.S. International Trade Commission.

Table 3.--Whiskey: U.S. imports by principal sources 1974-77.

SOURCE	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
U KING	52,223	51,440	49,140	47,616
CANADA	41,316	43,295	42,545	43,190
IRELAND	367	234	366	303
JAPAN	9	8	10	33
FRANCE			6	
MALTA				13
NETHLDS			1	
ITALY			1	•
ALL OTHER COUNTRIES	1	•	1	•
TOTAL IMPORTS	93,917	94,978	92,069	91,154
		VALUE (1,000 DOLLARS)		
U KING	310,975	313,322	314,301	302,208
CANADA	204,928	208,183	209,989	216,000
IRELAND	2,151	1,674	2,163	2,323
JAPAN	99	84	96	248
FRANCE			57	
MALTA				52
NETHLDS			11	
ITALY			7	2
ALL OTHER COUNTRIES	6	3	12	2
TOTAL IMPORTS	518,159	523,266	526,636	520,915
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
U KING	$5.95	$6.09	$6.40	$6.35
CANADA	4.96	4.81	4.94	5.00
IRELAND	5.85	7.15	5.91	7.67
JAPAN	10.45	10.10	9.99	7.48
FRANCE			9.74	
MALTA				4.14
NETHLDS			14.68	
ITALY			10.15	11.28
ALL OTHER COUNTRIES	6.77	7.90	9.24	23.80
TOTAL IMPORTS	5.52	5.51	5.72	5.71

• = LESS THAN 500.
NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPPESENTS UP TO EIGHT LEADING SUPPLIERS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1974-77.

SOURCE : COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE

Table 5.--Miscellaneous spirituous beverage products: Production, exports, imports, and apparent consumption, 1968-77.

	Production 1/	Exports 2/	Imports 3/	Apparent consumption	Ratio of imports to consumption (percent)
	Quantity (1,000 wine gallons)				
1968	41,409	88	917	42,326	2.2
1969	45,688	42	1,048	46,736	2.2
1970	50,432	20	1,120	51,552	2.2
1971	56,918	25	1,461	58,379	2.5
1972	63,208	48	2,065	65,273	3.2
1973	70,952	553	3,432	74,384	4.6
1974	80,067	471	5,188	85,255	6.1
1975	91,387	41	6,149	97,536	6.3
1976	98,089	23	5,977	105,123	5.7
1977	101,556	E 23	7,846	E 109,402	E 7.2
	Value (1,000 dollars)				
1968	141,493		2,277	4/	4/
1969	156,114		2,651	4/	4/
1970	177,673		2,620	4/	4/
1971	203,424		3,741	4/	4/
1972	209,344	NOT	4,723	4/	4/
1973	238,045	AVAILABLE	7,708	4/	4/
1974	272,309		12,322	4/	4/
1975	354,124		14,656	4/	4/
1976	404,816		15,587	4/	4/
1977	423,083		17,081	4/	4/
	Average unit value (per wine gallon)				
1968	$3.42		$2.48		
1969	3.42		2.53		
1970	3.52		2.34		
1971	3.57		2.56		
1972	3.31	NOT	2.29		
1973	3.36	AVAILABLE	2.25		
1974	3.40		2.38		
1975	3.88		2.38		
1976	4.13		2.61		
1977	4.17		2.18		

1/ U.S. bottlings of vodka and beverage spirits, not specially provided for, adjusted to exclude bulk imports bottled here, converted from proof gallons to wine gallons. Value for 1968-71 based on the 1967 Census of Manufactures and for 1972-77 on the 1972 Census of Manufactures adjusted by the wholesale price index for distilled spirits of the Bureau of Labor Statistics. 2/ Exports of vodka and the other products covered by this digest are not reported separately in the foreign trade data of the U.S. Department of Commerce, but tax-free withdrawals from bond of vodka for export are reported by the Bureau of Alcohol, Tobacco and Firearms in proof gallons on a fiscal year basis. 3/ Imports converted to wine gallons from reported proof gallons. 4/ Not meaningful since values at different trade levels are not comparable. E= Estimated.

Source: Production compiled from official statistics of the U.S. Department of the Treasury; value of production based on official statistics of the U.S. Department of Commerce and the Bureau of Labor Statistics; imports compiled from official statistics of the U.S. Department of Commerce. Adjustments by the U.S. International Trade Commission.

Table 6.--Miscellaneous spirituous beverage products: U.S. imports by principal sources, 1974-77.

SOURCE	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
MEXICO	4,314	5,190	5,569	5,932
USSR	80	123	198	336
U KING	149	60	35	50
POLAND	29	70	44	39
DENMARK	23	15	24	38
FINLAND	5	10	14	56
CANADA	26	14	18	22
BRAZIL	1	*	2	121
ALL OTHER COUNTRIES	31	22	74	142
TOTAL IMPORTS	4,658	5,509	5,977	6,734
		VALUE (1,000 DOLLARS)		
MEXICO	10,964	12,989	13,660	13,394
USSR	361	538	895	1,099
U KING	506	395	284	286
POLAND	130	349	242	154
DENMARK	93	105	133	211
FINLAND	16	42	73	332
CANADA	78	89	73	88
BRAZIL	3	2	6	303
ALL OTHER COUNTRIES	170	147	221	414
TOTAL IMPORTS	12,322	14,656	15,587	17,081
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
MEXICO	$2.54	$2.50	$2.45	$2.26
USSR	4.52	4.38	4.52	5.66
U KING	3.40	6.54	8.12	5.76
POLAND	4.44	5.01	5.54	3.97
DENMARK	4.07	5.40	5.64	5.60
FINLAND	3.16	4.35	5.36	5.96
CANADA	3.03	6.32	4.12	4.02
BRAZIL	3.16	3.73	4.02	2.51
ALL OTHER COUNTRIES	5.56	6.73	2.98	2.91
TOTAL IMPORTS	2.65	2.66	2.61	2.54

* = LESS THAN 500.
NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPRESENTS UP TO EIGHT LEADING SUPPLIERS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1974-77.

SOURCE: COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE.

Table 6.--Miscellaneous spirituous beverage products: U.S. imports by principal sources, 1974-77.

SOURCE	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
MEXICO	4,314	5,190	5,569	5,932
USSR	80	123	198	336
U KING	149	60	35	50
POLAND	29	70	44	39
DENMARK	23	15	24	38
FINLAND	5	10	14	56
CANADA	26	14	18	22
BRAZIL	1	*	2	121
ALL OTHER COUNTRIES	31	22	74	142
TOTAL IMPORTS	4,658	5,509	5,977	6,734
		VALUE (1,000 DOLLARS)		
MEXICO	10,964	12,989	13,660	13,394
USSR	361	538	895	1,899
U KING	506	395	284	286
POLAND	130	349	242	154
DENMARK	93	105	133	211
FINLAND	16	42	73	332
CANADA	78	89	73	88
BRAZIL	3	2	6	303
ALL OTHER COUNTRIES	170	147	221	414
TOTAL IMPORTS	12,322	14,656	15,587	17,081
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
MEXICO	$2.54	$2.50	$2.45	$2.26
USSR	4.52	4.38	4.52	5.66
U KING	3.40	6.54	8.12	5.76
POLAND	4.44	5.01	5.54	3.97
DENMARK	4.07	5.40	5.68	5.60
FINLAND	3.16	4.35	5.36	5.96
CANADA	3.03	6.32	4.12	4.02
BRAZIL	3.16	3.73	4.02	2.51
ALL OTHER COUNTRIES	5.56	6.73	2.98	2.91
TOTAL IMPORTS	2.65	2.66	2.61	2.54

* = LESS THAN 500.
NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPRESENTS UP TO EIGHT LEADING SUPPLIERS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1974-77.

SOURCE: COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE.

Table 7.--Gin: Producers shipments, exports, imports, and apparent consumption, 1968-77.

Period	Producers Shipments 1/	Exports 2/	Imports 3/	Apparent consumption	Ratio of imports to consumption (percent)
	Quantity (1,000 wine gallons)				
1968	33,065	14	3,210	36,275	9
1969	34,707	9	3,531	38,238	9
1970	34,945	7	3,885	38,820	10
1971	36,365	6	4,269	40,634	11
1972	36,464	6	4,228	40,712	10
1973	36,838	6	4,639	41,477	11
1974	36,868	11	4,978	41,845	12
1975	38,908	19	4,836	43,744	11
1976	36,848	25	5,083	41,932	12
1977	32,948	E 30	5,317	E 38,222	E 14
	Value (1,000 dollars)				
1968	77,406		14,841	4/	4/
1969	81,248		16,855	4/	4/
1970	84,358		19,248	4/	4/
1971	89,059		21,357	4/	4/
1972	100,112	NOT	20,337	4/	4/
1973	107,410	AVAILABLE	24,173	4/	4/
1974	103,893		23,950	4/	4/
1975	124,894		25,705	4/	4/
1976	125,904		30,491	4/	4/
1977	113,737		32,493	4/	4/
	Average unit value (per wine gallon)				
1968	$2.34		$4.62		
1969	2.34		4.77		
1970	2.41		4.95		
1971	2.45		5.00		
1972	2.74	NOT	4.81		
1973	2.78	AVAILABLE	5.21		
1974	2.82		4.81		
1975	3.21		5.32		
1976	3.42		6.00		
1977	3.45		6.11		

1/ Gin bottled in the United States excluding cases reported wine gallon equivalents of imported gin released for bottling reported in proof gallons by the Bureau of Alcohol, Tobacco and Firearms. Value based on the 1967 Census of Manufactures for the period 1968-71 and the 1972 Census of Manufactures for the period 1972-77, adjusted by the wholesale price index for distilled spirits of the Bureau of Labor Statistics. 2/ Exports are not reported separately in the foreign trade statistics of the U.S. Department of Commerce, but tax-free withdrawals of gin from bond for export are reported by the Bureau of Alcohol, Tobacco and Firearms in proof gallons on a fiscal year basis. 3/ Includes gin imported in bulk converted to wine gallons of 86° proof by the U.S. International Trade Commission. 4/ Not meaningful because values at different trade levels are not comparable. E = Estimated.

Source: Shipments and exports compiled from official statistics of the U.S. Department of the Treasury; value of production from official statistics of the U.S. Department of Commerce and the Bureau of Labor Statistics; imports compiled from official statistics of U.S. Department of Commerce, except as noted.

TABLE 8.--Gin: U.S. imports by principal sources, 1974-77.

10274 : GIN

SOURCE	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
U KING	4,928	4,780	5,019	5,253
SPAIN	7	4	18	11
ITALY	4	6	7	9
FRANCE	1	5	5	4
FR GERM	5	6	6	6
JAMAICA				5
NETHLDS	6	6	7	4
CANADA	2	4	2	5
ALL OTHER COUNTRIES	13	11	10	10
TOTAL IMPORTS	4,965	4,821	5,073	5,307
		VALUE (1,000 DOLLARS)		
U KING	23,692	25,406	30,078	32,021
SPAIN	74	46	147	121
ITALY	22	46	71	98
FRANCE	15	52	46	75
FR GERM	38	39	38	39
JAMAICA				32
NETHLDS	28	30	42	24
CANADA	6	19	11	24
ALL OTHER COUNTRIES	74	67	57	58
TOTAL IMPORTS	23,950	25,705	30,491	32,493
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
U KING	$4.81	$5.32	$5.99	$6.10
SPAIN	10.31	10.86	8.41	11.25
ITALY	5.88	7.53	10.14	10.95
FRANCE	11.36	10.85	10.10	16.97
FR GERM	7.83	6.87	6.61	6.94
JAMAICA				6.12
NETHLDS	4.64	5.27	6.03	5.49
CANADA	4.17	5.30	4.33	4.86
ALL OTHER COUNTRIES	5.88	6.13	5.59	5.84
TOTAL IMPORTS	4.82	5.33	6.01	6.12

NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPRESENTS UP TO EIGHT LEADING SUPPLIERS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1974-77.

SOURCE : COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE.

Table 9.--Cordials and liqueurs: Producers shipments, exports, imports, and apparent consumption, 1968-77

Period	Producers Shipments 1/	Exports 2/	Imports 3/	Apparent consumption	Ratio of imports to consumption (percent)
	Quantity (1,000 wine gallons)				
1968	18,052	NOT AVAILABLE	2,427	20,479	12
1969	20,406		2,862	23,268	12
1970	20,102		3,045	23,147	13
1971	21,958		3,622	25,580	14
1972	23,095		3,305	26,400	13
1973	25,682		3,934	29,616	13
1974	29,040		4,335	33,374	13
1975	27,228		4,788	32,015	15
1976	25,701		5,301	29,695	18
1977	26,158		5,816	31,974	18
	Value (1,000 dollars)				
1968	63,722	NOT AVAILABLE	24,251	4/	4/
1969	72,033		28,972	4/	4/
1970	73,152		31,540	4/	4/
1971	81,069		37,762	4/	4/
1972	140,810		36,188	4/	4/
1973	158,612		43,306	4/	4/
1974	181,846		40,887	4/	4/
1975	196,215		45,324	4/	4/
1976	185,323		59,731	4/	4/
1977	200,633		58,929	4/	4/
	Average unit value (per wine gallon)				
1968	$3.53	NOT AVAILABLE	$9.99		
1969	3.53		10.12		
1970	3.64		10.36		
1971	3.69		10.43		
1972	6.10		10.95		
1973	6.18		11.01		
1974	6.26		9.43		
1975	7.13		9.47		
1976	7.21		9.57		
1977	7.67		10.13		

1/ Cordials and liqueurs bottled in the United States adjusted to exclude cordials and liqueurs imported in bulk and bottled were based on Bureau of Alcohol, Tobacco and Firearms reports of imported distilled spirits released for bottling with reported proof gallons converted to wine gallons of 80° proof. Value based on the 1967 Census of Manufactures for the period 1968-71 and the 1972 Census of Manufactures for the period 1972-77 adjusted by the wholesale price index for distilled spirits of the Bureau of Labor Statistics. 2/ Exports are not separately reported but are believed to be small. 3/ Includes cordials and liqueurs imported in bulk converted to wine gallons of 80° proof by the U.S. International Trade Commission. 4/ Not meaningful because values at different trade levels are not comparable.

Source: Shipments compiled from official statistics of the U.S. Department of the Treasury value of production based on official statistics of the U.S. Department of Commerce and the Bureau of Labor Statistics; imports compiled from official statistics of the U.S. Department of Commerce.

Table 10.--Cordials and liqueurs: U.S. imports by principal sources, 1974-77.

SOURCE	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
FRANCE	894	930	989	1,159
ITALY	987	1,240	1,337	1,450
U.K.	714	655	699	851
MEXICO	651	742	967	1,254
JAMAICA			154	169
GREECE	198	181	188	162
JAMAICA	148	139		
IRELAND	64	58	80	74
ALL OTHER COUNTRIES	381	487	491	458
TOTAL IMPORTS	4,056	4,433	4,905	5,585
		VALUE (1,000 DOLLARS)		
FRANCE	11,620	12,776	13,797	16,716
ITALY	8,935	12,543	13,697	16,308
U.K.	9,829	9,384	10,344	12,130
MEXICO	2,855	3,245	4,176	5,485
JAMAICA			1,845	2,296
GREECE	1,910	1,770	1,645	1,320
JAMAICA	1,499	1,429		
IRELAND	1,123	927	1,202	1,298
ALL OTHER COUNTRIES	3,116	3,249	3,945	3,377
TOTAL IMPORTS	40,887	45,324	50,731	58,929
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
FRANCE	$13.00	$13.74	$13.95	$14.43
ITALY	9.06	10.11	10.24	11.19
U.K.	13.76	14.32	14.81	14.25
MEXICO	4.38	4.37	4.32	4.37
JAMAICA			11.97	13.55
GREECE	9.66	9.79	8.76	8.13
JAMAICA	10.15	10.28		
IRELAND	13.32	15.90	16.09	17.53
ALL OTHER COUNTRIES	8.16	6.66	8.04	7.38
TOTAL IMPORTS	10.08	10.22	10.34	10.55

NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPRESENTS UP TO EIGHT LEADING SUPPLIERS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1974-77.

SOURCE : COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE.

Table 11.--Rum: Production, exports, imports, and apparent consumption, 1968-77.

Period	Production	Exports 2/	Imports 3/	Apparent consumption 4/	Ratio of imports to consumption (percent)
	Quantity (1,000 wine gallons)				
1968	1/ 8,702	297	325	8,727	3.7
1969	1/ 8,390	303	370	8,454	4.4
1970	1/10,273	337	423	10,302	4.1
1971	1/13,528	306	418	13,637	3.1
1972	1/14,578	230	462	14,776	3.1
1973	5/ 13,175	167	435	13,443	3.2
1974	5/ 10,828	484	487	10,831	4.5
1975	5/ 14,605	233	811	15,183	5.3
1976	5/ 18,393	252	701	18,842	3.7
1977	5/ 19,258	266	769	19,731	4.0
	Value (1,000 dollars)				
1968	1/ 31,413	1,157	873	6/	6/
1969	1/ 29,704	1,161	997	6/	6/
1970	1/ 34,927	1,648	1,019	6/	6/
1971	1/ 41,397	1,314	1,108	6/	6/
1972	1/ 45,628	915	1,009	6/	6/
1973	5/ 47,825	630	1,097	6/	6/
1974	5/ 36,923	2,562	1,153	6/	6/
1975	5/ 45,422	1,203	1,634	6/	6/
1976	5/ 57,386	1,224	1,463	6/	6/
1977	5/ 62,203	1,352	1,719	6/	6/
	Average unit value (per wine gallon)				
1968	$3.61	$3.99	$2.69		
1969	3.55	3.83	2.69		
1970	3.40	4.26	2.41		
1971	3.06	4.29	2.65		
1972	3.13	3.98	2.18		
1973	3.63	3.77	2.31		
1974	3.41	5.29	2.37		
1975	3.11	5.16	2.02		
1976	3.12	4.86	2.09		
1977	3.23	5.08	2.13		

Footnotes and sources on following page.

10275--Rum

Footnotes:

1/ Represents rum bottled in the United States, as reported by the Bureau of Alcohol, Tobacco and Firearms (formerly the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service), and entries of bottled rum into the United States from the Virgin Island and Puerto Rico, reported by the Bureau of the Census of the U.S. Department of Commerce, less imports in bulk converted to 80° proof. Entries from the Virgin Islands and Puerto Rico were converted from proof gallons to wine gallons on the basis of 80° proof at time of bottling. Value is based on the average value of bottled rum from the Virgin Island and Puerto Rico.

2/ Adjusted to reflect conversion to wine gallons of rum exported in bulk, and includes foreign and domestic merchandise.

3/ Adjusted to reflect conversion to wine gallons of rum imported in bulk.

4/ Allowance made for minor exports of foreign rum.

5/ Represents U.S.-produced rum bottled in the United States, as reported by the U.S. Treasury Department, plus shipments of bulk and bottled rum into the United States from the Virgin Islands and Puerto Rico, reported by the Bureau of Census of the U.S. Department of Commerce. Entries from the Virgin Islands and Puerto Rico were converted from proof gallons to wine gallons on the basis of 80° proof at time of bottling. The percent of Puerto Rican rum shipped as bulk or bottled was estimated by data supplied by the Puerto Rican Rum Producers Association. Value is based on the average value of shipments of wine gallons of rum from the Virgin Islands and Puerto Rico.

6/ Not meaningful.

Source: Production data compiled from official statistics of the U.S. Department of the Treasury and the U.S. Department of Commerce, with conversions by the U.S. International Trade Commission; imports and exports compiled from official statistics of the U.S. Department of Commerce.

TABLE 12.--Rum: U.S. imports by principal sources, 1974-77.

SOURCE	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
JAMAICA			424	474
JAMAICA	296	407		
BRAZIL		99		
GUYANA	51	60	54	65
BARBADO	18	16	33	49
F W IND	6	18	4	14
CANADA	22	1	1	2
HAITI	4	6	6	6
ALL OTHER COUNTRIES	28	76	66	47
TOTAL IMPORTS	426	682	588	658
		VALUE (1,000 DOLLARS)		
JAMAICA			951	1,071
JAMAICA	682	914		
BRAZIL		189		
GUYANA	141	213	170	229
BARBADO	66	69	109	166
F W IND	24	69	23	61
CANADA	143	6	7	11
HAITI	24	33	38	49
ALL OTHER COUNTRIES	73	139	163	131
TOTAL IMPORTS	1,153	1,634	1,462	1,719
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
JAMAICA			$2.24	$2.26
JAMAICA	2.30	2.24		
BRAZIL		1.91		
GUYANA	2.76	3.57	3.16	3.51
BARBADO	3.74	4.38	3.30	3.35
F W IND	3.87	3.96	6.00	4.82
CANADA	6.51	7.54	7.02	4.95
HAITI	5.33	5.82	6.46	7.93
ALL OTHER COUNTRIES	2.61	1.83	2.47	2.79
TOTAL IMPORTS	2.71	2.40	2.49	2.61

NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPRESENTS UP TO EIGHT LEADING SUPPLIERS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1974-77.

SOURCE : COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE.

TABLE 13.--Rum: U.S. exports by principal markets, 1974-77.

MARKET	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
SWEDEN	123	29	25	17
W GERMANY	26	43	47	52
NETHERLDS	57	3	4	17
FINLAND	57	10	3	12
BELGIUM	27	15	17	31
BAHAMAS	24	15	16	9
UK & N I	8	12	24	7
GUATMAL	5	8	11	13
ALL OTHER COUNTRIES	68	51	81	80
TOTAL EXPORTS	396	193	227	239
		VALUE (1,000 DOLLARS)		
SWEDEN	794	139	169	127
W GERMANY	86	192	210	237
NETHERLDS	411	18	25	110
FINLAND	300	97	43	61
BELGIUM	109	75	94	153
BAHAMAS	84	63	82	45
UK & N I	35	56	114	48
GUATMAL	33	59	65	96
ALL OTHER COUNTRIES	302	263	379	448
TOTAL EXPORTS	2,153	964	1,178	1,325
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
SWEDEN	$6.45	$4.86	$6.69	$7.45
W GERMANY	3.27	4.49	4.48	4.57
NETHERLDS	7.21	7.06	6.45	6.51
FINLAND	5.23	5.30	13.85	5.10
BELGIUM	3.98	5.09	5.67	4.89
BAHAMAS	3.48	4.20	5.02	4.77
UK & N I	4.39	4.63	4.78	6.64
GUATMAL	6.49	7.50	5.98	7.35
ALL OTHER COUNTRIES	4.45	5.16	4.70	5.60
TOTAL EXPORTS	5.44	4.99	5.19	5.55

NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPRESENTS UP TO EIGHT LEADING MARKETS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1974-77.

SOURCE: COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE.

Table 16--Brandy: Producers shipments, exports, imports, and apparent consumption, 1968-77.

	Producers shipments 1/	Exports 2/	Imports 3/	Apparent consumption 4/	Ratio of [illegible]
	Quantity (1,000 wine gallons)				
1968	9,275	123	2,512	11,627	22
1969	10,502	77	2,695	13,059	21
1970	10,510	40	2,901	13,301	22
1971	11,628	36	3,558	15,093	24
1972	12,005	48	2,990	14,823	20
1973	13,173	64	3,333	16,337	20
1974	12,813	69	3,104	15,446	20
1975	12,389	43	3,084	15,322	20
1976	13,408	72	4,130	17,751	24
1977	15,395	28	3,543	19,176	19
	Value (1,000 dollars)				
1968	17,696	182	15,093	5/	5/
1969	20,037	116	15,641	5/	5/
1970	20,674	73	17,827	5/	5/
1971	23,256	83	22,940	5/	5/
1972	24,586	110	20,307	5/	5/
1973	27,334	140	25,929	5/	5/
1974	26,946	189	24,977	5/	5/
1975	29,683	159	30,836	5/	5/
1976	34,217	259	50,832	5/	5/
1977	39,658	233	41,973	5/	5/
	Average unit value (per wine gallon)				
1968	$1.91	$1.48	$6.01		
1969	1.91	1.51	5.82		
1970	1.97	1.83	6.15		
1971	2.00	2.31	6.45		
1972	2.05	2.29	6.86		
1973	2.08	2.19	7.78		
1974	2.10	2.74	8.05		
1975	2.40	3.70	10.00		
1976	2.55	3.60	12.31		
1977	2.58	8.32	11.85		

1/ Tax paid in the United States adjusted to exclude brandy exported in bulk and bottled brandy with removal tax gallons converted to wine gallons of 200 proof. Value for 1968-71 based on the 1967 Census of Manufactures and for 1972-77 on the 1972 Census of Manufactures adjusted by the wholesale price index for distilled spirits of the Bureau of Labor Statistics. 2/ Exports converted from proof gallons to wine gallons of 200 proof. 3/ Includes brandy imported in bulk converted to wine gallons of 200 proof. 4/ Allowance made for exports of foreign brandy.

5/ Not meaningful since values at different trade levels are not comparable.

Source: Production compiled from records and statistics of the U.S. Department of the Treasury; value of production based on official statistics of the U.S. Department of Commerce and the Bureau of Labor Statistics; imports and exports compiled from official statistics of the U.S. Department of Commerce. Conversions made by the U.S. International Trade Commission.

Table 15.--Brandy: U.S. imports by principal sources, 1974-77.

SOURCE	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
FRANCE	1,970	2,086	3,096	2,435
SPAIN	281	208	321	338
MEXICO	74	61	100	171
U KING	33	34	100	64
ITALY	295	205	129	191
FR GERM	25	37	32	24
PORTUGL	56	60	55	39
YUGOSLV	26	32	28	30
ALL OTHER COUNTRIES	25	27	33	22
TOTAL IMPORTS	2,766	2,630	3,894	3,315
		VALUE (1,000 DOLLARS)		
FRANCE	21,444	27,101	45,558	36,503
SPAIN	1,308	1,354	1,826	2,043
MEXICO	443	390	742	1,308
U KING	216	358	1,220	737
ITALY	768	541	417	531
FR GERM	223	326	332	231
PORTUGL	254	285	264	206
YUGOSLV	143	195	198	207
ALL OTHER COUNTRIES	177	277	305	205
TOTAL IMPORTS	24,972	30,036	50,832	41,973
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
FRANCE	$10.88	$12.99	$14.72	$14.99
SPAIN	4.65	6.71	5.68	6.05
MEXICO	6.02	6.51	7.43	7.64
U KING	6.55	10.52	12.22	11.48
ITALY	2.59	2.64	3.24	2.78
FR GERM	9.05	8.87	9.41	9.45
PORTUGL	4.51	4.73	4.83	5.26
YUGOSLV	5.45	6.07	7.02	6.88
ALL OTHER COUNTRIES	7.00	10.20	9.17	9.18
TOTAL IMPORTS	8.96	10.90	13.05	12.66

NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPRESENTS UP TO EIGHT LEADING SUPPLIERS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1974-77.

SOURCE : COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE.

Table 16.--Brandy: U.S. exports by principal markets, 1974-77.

MARKET	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
CANADA	43	28	26	6
MEXICO	1	1	6	10
JAPAN	•	•	9	1
N. AMER.			•	2
AUSTRAL	3		6	
CHINA T	1	1	1	2
U KING		1		
FRANCE		•		•
ALL OTHER COUNTRIES	7	3	10	2
TOTAL EXPORTS	55	34	57	22
		VALUE (1,000 DOLLARS)		
CANADA	115	87	111	51
MEXICO	8	19	41	82
JAPAN	6	11	70	6
N. AMER.			1	45
AUSTRAL	16		11	
CHINA T	11	9	9	20
U KING		12		
FRANCE		8		8
ALL OTHER COUNTRIES	33	14	16	21
TOTAL EXPORTS	189	159	259	233
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
CANADA	$2.68	$3.11	$4.32	$9.18
MEXICO	11.37	13.08	7.03	8.00
JAPAN	26.46	66.42	8.11	10.42
N. AMER.			8.75	26.79
AUSTRAL	5.09		1.66	
CHINA T	9.11	8.72	9.81	11.35
U KING		12.39		
FRANCE		25.38		15.63
ALL OTHER COUNTRIES	4.79	5.48	1.66	10.89
TOTAL EXPORTS	3.44	4.61	4.53	10.44

• = LESS THAN 500.
NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPRESENTS UP TO EIGHT LEADING MARKETS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1976-77.

SOURCE: COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE

Table 17.-- Bitters: Production, exports, imports, and apparent consumption, 1968-77.

	Production	Exports 1/	Imports	Apparent consumption	Ratio of imports to consumption (percent)
	Quantity (1,000 proof gallons)				
1968	NOT AVAILABLE	NOT AVAILABLE	133	NOT AVAILABLE	NOT AVAILABLE
1969			170		
1970			155		
1971			147		
1972			192		
1973			188		
1974			168		
1975			205		
1976			206		
1977			225		
	Value (1,000 dollars)				
1968	NOT AVAILABLE	NOT AVAILABLE	606	NOT AVAILABLE	NOT AVAILABLE
1969			899		
1970			788		
1971			736		
1972			1,049		
1973			1,042		
1974			877		
1975			1,087		
1976			1,147		
1977			1,226		
	Average unit value (per proof gallon)				
1968	NOT AVAILABLE	NOT AVAILABLE	$4.56	NOT AVAILABLE	NOT AVAILABLE
1969			5.29		
1970			5.08		
1971			5.01		
1972			5.42		
1973			5.54		
1974			5.22		
1975			5.30		
1976			5.57		
1977			5.45		

1/ Exports are not separately reported but are believed to be negligible.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 18.--Bitters: U.S. imports by principal sources, 1974-77.

SOURCE	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
TRINID...	73	106	106	107
ITALY...	77	86	95	109
F & IND...	10	10		5
FR GUIN...	2	1	2	2
JAMAICA...	5			
SWITZLD...	1	1	*	1
DENMARK...			*	1
SPAIN...	*	1	2	
ALL OTHER COUNTRIES...	1	*		*
TOTAL IMPORTS...	168	205	206	225
		VALUE (1,000 DOLLARS)		
TRINID...	405	578	573	597
ITALY...	334	414	494	545
F & IND...	54	54		28
FR GUIN...	42	15	66	30
JAMAICA...	27			
SWITZLD...	12	20	7	14
DENMARK...			1	9
SPAIN...	*	5	6	
ALL OTHER COUNTRIES...	4	1		2
TOTAL IMPORTS...	877	1,087	1,142	1,226
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
TRINID...	$5.55	$5.43	$5.41	$5.56
ITALY...	4.31	4.82	5.21	5.01
F & IND...	5.51	5.68		5.73
FR GUIN...	22.03	17.41	28.09	16.42
JAMAICA...	5.80			
SWITZLD...	12.21	14.07	14.45	14.80
DENMARK...			9.51	11.43
SPAIN...	4.00	4.41	2.47	
ALL OTHER COUNTRIES...	7.17	2.70		7.47
TOTAL IMPORTS...	5.21	5.29	5.56	5.45

* = LESS THAN 500.
NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPRESENTS UP TO EIGHT LEADING SUPPLIERS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1974-77.

COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE.

Table 19.--Imitations of wines and imitations of brandy and other spirituous beverages: Production, exports, imports, and apparent consumption, 1968-77..

Period	Production 1/	Exports 1/	Imports	Apparent consumption 1/	Ratio of imports to consumption (percent) 1/
	Quantity (1,000 proof gallons)				
1968			7		
1969			4		
1970			2		
1971			1		
1972	NOT	NOT	2/	NOT	NOT
1973	AVAILABLE	AVAILABLE	1	AVAILABLE	AVAILABLE
1974			10		
1975			7		
1976			2		
1977			3		
	Value (1,000 dollars)				
1968			7		
1969			37		
1970			18		
1971			5		
1972	NOT	NOT	1	NOT	NOT
1973	AVAILABLE	AVAILABLE	5	AVAILABLE	AVAILABLE
1974			40		
1975			44		
1976			12		
1977			13		
	Average unit value (per proof gallon)				
1968			$8.94		
1969			9.47		
1970			9.79		
1971			9.92		
1972	NOT	NOT	4.38		
1973	AVAILABLE	AVAILABLE	3.96		
1974			4.05		
1975			6.29		
1976			5.22		
1977			4.94		

1/ There is no known domestic production of imitation wine or imitation brandy. There is small production of other spirituous beverages. Exports of all these items are not separately reported but are believed to be nil.

2/ Less than 500 proof gallons..

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 20.--Imitations of wines and imitations of brandy and other spirituous beverages: U.S. imports by principal sources, 1974-77.

SOURCE	1974	1975	1976	1977
		QUANTITY (1,000 PROOF GALLONS)		
FRANCE	2	3		
FR GERM	3			
YUGOSLV	*	1	2	3
AUSTRIA		1	*	*
MEXICO	4	*		
SPAIN	*	1		
PORTUGL	1			
ITALY	*			
ALL OTHER COUNTRIES	*	*		
TOTAL IMPORTS	10	7	2	3
		VALUE (1,000 DOLLARS)		
FRANCE	10	23		
FR GERM	15			
YUGOSLV	2	6	10	13
AUSTRIA		7	2	*
MEXICO	6	*		
SPAIN	1	5		
PORTUGL	3			
ITALY	2			
ALL OTHER COUNTRIES	1	2		
TOTAL IMPORTS	40	44	12	13
		AVERAGE UNIT VALUE (PER PROOF GALLON)		
FRANCE	$6.00	$6.97		
FR GERM	5.62			
YUGOSLV	5.94	4.33	4.83	4.86
AUSTRIA		8.53	8.84	8.88
MEXICO	1.63	4.50		
SPAIN	3.62	5.53		
PORTUGL	3.88			
ITALY	7.96			
ALL OTHER COUNTRIES	5.19	4.96		
TOTAL IMPORTS	4.05	6.29	5.22	4.94

* = LESS THAN 500.
NOTE 1: UNIT VALUES CALCULATED FROM THE UNROUNDED FIGURES. COLUMNS MAY NOT ADD TO TOTALS SHOWN DUE TO ROUNDING.
NOTE 2: THE ABOVE COUNTRY ORDER (RANKING) REPRESENTS UP TO EIGHT LEADING SUPPLIERS OF THE PRODUCTS COVERED BY THIS TABLE, BASED ON A TRADE-WEIGHTED AVERAGE, BY VALUE, FOR YEARS 1974-77.

SOURCE : COMPILED FROM OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE.

Appendix C

Spirits, Spirituous Beverages and Beverage Preparation: Present Rates of Duty, Estimated Average Proof, Estimated Rates of Duty Necessary to Collect Equivalent Revenue After Conversion to Proof-Gallon Basis of Assessment

The following table presents a conversion of column 1 and column 2 rates of duty which attempts to maintain existing margins of revenue protection in the absence of the wine gallon tax and duty assessment method. The converted rates are based on the Commission staff's estimations of average proof levels. It should be noted, however, that bottled distilled alcoholic beverages, even those entering under a single TSUSA item number, enter at varying proofs. Thus, the establishment of a single rate (applicable to a varying proof content) can only approximate existing margins on an over all basis, but cannot maintain existing margins of revenue protection for each individual importation. In addition, the wine-gallon method of tax and duty assessment effectively discriminiates against bottled alcoholic beverages as opposed to bulk liquor. Thus the converted rates, which are based on average proofs of bottled importations, will result in the assessment of higher duties on bulk importations. We have attempted to ameliorate this problem by providing separate conversions for imports of the two products where the Administration has indicated that converted rates will be needed and there have been substantial shipments in both bulk and bottles. This has been accomplished by subdividing items 168.40 (rum) and 168.52 (vodka) to provide for importations in containers of over and of not over one gallon.

Spirits, Spirituous Beverages and Beverage Preparations: Present Rates of Duty, Estimated Average Proof, Estimated Rates of Duty Necessary to Collect Equivalent Revenues After Conversion to Proof-Gallon Basis of Assessment

TSUS Item	Articles	Present Rates of Duty		Estimated average proof	Estimated rates of duty necessary to collect equivalent revenues after conversion to proof-gallon basis of assessment at 100° proof	
		Column 1	Column 2		Column 1	Column 2
168.05	Aquavit	42¢ per gal.	$5 per gal.	86	$2.20 per proof gal.	$7.52 per proof gal.
168.10	Arrack	$1 per gal.	$5 per gal.	90	$2.28 per proof gal.	$6.72 per proof gal.
	Bitters of all kinds containing spirits:					
168.15	Not fit for use as beverages	94¢ per gal.	$5 per gal.	90	$1.04 per proof gal.	$5.56 per proof gal.
168.17	Fit for use as beverages	50¢ per gal.	$5 per gal.	48	$12.42 per proof gal.	$21.79 per proof gal.
	Brandy:					
	Pisco and singani:					
	In containers each holding not over 1 gallon:					
168.18	Valued not over $9 per gallon	62¢ per gal.	$5 per gal.	90	$1.86 per proof gal.	$6.72 per proof gal.
168.23	Valued over $9 per gallon	$1.25 per gal.	$5 per gal.	90	$2.56 per proof gal.	$6.72 per proof gal.
	In containers each holding over 1 gallon:					
168.24	Valued not over $9 per gallon	50¢ per gal.	$5 per gal.	100 +	50¢ per proof gal.	$5 per proof gal.
168.26	Valued over $9 per gallon	$1 per gal.	$5 per gal.	100 +	$1 per proof gal.	$5 per proof gal.
	Other:					
	In containers each holding not over 1 gallon:					
168.27	Valued not over $9 per gallon	62¢ per gal.	$5 per gal.	80	$3.40 per proof gal.	$8.88 per proof gal.
168.28	Valued over $9 per gallon	$1.25 per gal.	$5 per gal.	80	$4.19 per proof gal.	$8.88 per proof gal.
	In containers each holding over 1 gallon:					
168.29	Valued not over $9 per gallon	50¢ per gal.	$5 per gal.	100 +	50¢ per proof gal.	$5 per proof gal.
168.32	Valued over $9 per gallon	$1 per gal.	$5 per gal.	100 +	$1 per proof gal.	$5 per proof gal.
168.33	Cordials, liqueurs, kirschwasser, and ratafia	50¢ per gal.	$5 per gal.	70	$5.21 per proof gal.	$11.64 per proof gal.
168.34	Ethyl alcohol for beverage purposes	$1.12 per gal.	$5 per gal.	100 +	$1.12 per proof gal.	$5 per proof gal.

Spirits, Spirituous Beverages and Beverage Preparations: Present Rates of Duty, Estimated Average Proof, Estimated Rates of Duty Necessary to Collect Equivalent Revenues After Conversion to Proof-Gallon Basis of Assessment

TSUS Item	Articles	Present Rates of Duty		Estimated average proof	Estimated rates of duty necessary to collect equivalent revenues after conversion to proof-gallon basis of assessment at 100° proof	
		Column 1	Column 2		Column 1	Column 2
168.35	Gin	50¢ per gal.	$5 per gal.	86	$2.29 per proof gal.	$7.52 per proof gal.
168.40	Rum (including cana paraguaya):					
	In containers each holding not over 1 gallon	$1.75 per gal.	$5 per gal.	86	$3.74 per proof gal.	$7.52 per proof gal.
	In containers each holding over 1 gallon	$1.75 per gal.	$5 per gal.	100 +	$1.75 per proof gal.	$5 per proof gal.
	Whiskey:					
168.45	Irish and Scotch	51¢ per gal.	$5 per gal.	86	$2.30 per proof gal.	$7.52 per proof gal.
168.46	Other	62¢ per gal.	$5 per gal.	85	$2.59 per proof gal.	$7.73 per proof gal.
	Tequila:					
168.47	In containers each holding not over 1 gallon	$1.25 per gal.	$5 per gal.	92	$2.27 per proof gal.	$6.35 per proof gal.
168.48	In containers each holding over 1 gallon	$1.25 per gal.	$5 per gal.	100 +	$1.25 per proof gal.	$5 per proof gal.
	Other spirits, and preparations in chief value of distilled spirits, fit for use as beverages or for beverage purposes:					
168.52	Spirits:					
	In containers each holding not over 1 gallon	$1.25 per gal.	$5 per gal.	90	$2.56 per proof gal.	$6.72 per proof gal.
	In container each holding over 1 gallon	$1.25 per gal.	$5 per gal.	100 +	$1.25 per proof gal	$5 per proof gal.
168.55	Other	$1.25 per gal.	$5 per gal.	60	$9.08 per proof gal.	$15.33 per proof gal.
168.90	Imitations of brandy and other spirituous beverages	$2.50 per gal.	$5 per gal.	80	$5.75 per proof gal.	$8.88 per proof gal.