

WTO/GATT Thirty-Eighth Session at Ministerial Level Ministerial Declaration (Adopted on 29 November 1982, Geneva)

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**WTO/GATT Thirty-Eighth Session at Ministerial Level
Ministerial Declaration (Adopted on 29 November
1982, Geneva)**

[Opening]

1. The CONTRACTING PARTIES to the General Agreement on Tariffs and Trade have met at Ministerial level on 24-29 November 1982. They recognize that the multilateral trading system, of which the General Agreement is the legal foundation, is seriously endangered. In the current crisis of the world economy, to which the lack of convergence in national economic policies has contributed, protectionist pressures on governments have multiplied, disregard of GATT disciplines has increased and certain shortcomings in the functioning of the GATT system have been accentuated. Conscious of the role of the GATT system in furthering economic wellbeing and an unprecedented expansion of world trade, and convinced of the lasting validity of the basic principles and objectives of the General Agreement in a world of increasing economic interdependence, the CONTRACTING PARTIES are resolved to overcome these threats to the system.

2. The deep and prolonged crisis of the world economy has severely depressed levels of production and trade. In many countries growth rates are low or negative; there is growing unemployment and a climate of uncertainty, exacerbated by persistent inflation, high rates of interest and volatile exchange rates, which seriously inhibit investment and structural adjustment and intensify protectionist pressures. Many countries, and particularly developing countries, now face critical difficulties created by the combination of uncertain and limited access to export markets, declining external demand, a sharp fall in commodity prices and the high cost of borrowing. The import capacity of developing countries, which is essential to their economic growth

and development, is being impaired and is no longer serving as a dynamic factor sustaining the exports of the developed world. Acute problems of debt servicing threaten the stability of the financial system.

3. In the field of trade, the responses of governments to the challenges of the crisis have too often been inadequate and inward-looking. Import restrictions have increased and a growing proportion of them have for various reasons been applied outside GATT disciplines, thus undermining the multilateral trading system. Trade patterns have also been adversely affected by certain forms of economic assistance for production and exports and by some restrictive trade measures applied for non-economic purposes. In the depressed economic circumstances these measures, together with continuing pressures for further protective action, have contributed to further delays in necessary structural adjustment, increased economic uncertainty and discouraged productive investment.

4. The results of the Tokyo Round, including in particular the implementation on schedule of the tariff reductions, have provided some impetus to the functioning of the trading system. However, despite the strength and resilience which it has shown, the stresses on the system, which are reflected in the growing number and intensity of disputes between contracting parties, many of which remain unresolved, have made more pronounced certain shortcomings in its functioning. Existing strains have been aggravated by differences of perception regarding the balance of rights and obligations under the GATT, the way in which these rights and obligations have been implemented and the extent to which the interests of different contracting parties have been met by the GATT. There are also concerns over the manner in which rights are being pursued as well as the manner in which obligations are being fulfilled. Disagreements persist over the interpretation of some important provisions and over their application. Disciplines governing the restric-

tion of trade through safeguard measures are inadequate; there is widespread dissatisfaction with the application of GATT rules and the degree of liberalization in relation to agricultural trade, even though such trade has continued to expand; trade in textiles and clothing continues to be treated under an Arrangement which is a major derogation from the General Agreement—a matter of critical importance to developing countries in particular. Such differences and imbalances are particularly detrimental to the stability of the international trading system when they concern access to the markets of major trading countries or when, through the use of export subsidies, competition among major suppliers is distorted.

6 5. The CONTRACTING PARTIES recognize that the interdependence of national economies means that no country can solve its trade problems in isolation and also that solutions would be greatly facilitated by parallel efforts in the financial and monetary fields. In this light, they commit themselves to reduce trade frictions, overcome protectionist pressures, avoid using export subsidies inconsistent with Article XVI of the GATT and promote the liberalization and expansion of trade. They are therefore determined to create, through concerted action, a renewed consensus in support of the GATT system, so as to restore and reinforce confidence in its capacity to provide a stable and predictable trading environment and respond to new challenges.

7 **6. The CONTRACTING PARTIES have accordingly decided:**

8 - to reaffirm their commitment to abide by their GATT obligations and to support and improve the GATT trading system, so that it may contribute vigorously to the further liberalization and expansion of trade based on mutual commitment, mutual advantage and overall reciprocity, and the most-favoured-nation clause;

- to preserve, in the operation and functioning of GATT instruments, the unity and consistency of the GATT system; and 9

- to ensure that GATT provides a continuing forum for negotiation and consultation, in which an appropriate balance of rights and obligations can be assured for all contracting parties and the rules and procedures of the system are effectively and fairly applied, on the basis of agreed interpretations, for the economic development and benefit of all. 10

7. In drawing up the work programme and priorities for the 1980's, the contracting parties undertake, individually and jointly: 11

(i) to make determined efforts to ensure that trade policies and measure are consistent with GATT principles and rules and to resist protectionist pressures in the formulation and implementation of national trade policy and in proposing legislation; and also to refrain from taking or maintaining any measures inconsistent with GATT and to make determined efforts to avoid measures which would limit or distort international trade; 12

(ii) to give fullest consideration, in the application of measures falling within the GATT framework, and in the general exercise of their GATT rights, to the trading interests of other contracting parties and the shared objective of trade liberalization and expansion; 13

(iii) to abstain from taking restrictive trade measures, for reasons of a non-economic character, not consistent with the General Agreement; 14

(iv)(a) to ensure the effective implementation of GATT rules and provisions and specifically those concerning the developing countries, thereby furthering the dynamic role of developing countries in international trade; 15

(b) to ensure special treatment for the least-developed countries, in 16

the context of differential and more favourable treatment for developing countries, in order to ameliorate the grave economic situation of these countries;

17 (v) to bring agriculture more fully into the multilateral trading system by improving the effectiveness of GATT rules, provisions and disciplines and through their common interpretation; to seek to improve terms of access to markets; and to bring export competition under greater discipline. To this end a major two-year work programme shall be undertaken;

18 (vi) to bring into effect expeditiously a comprehensive understanding on safeguards to be based on the principles of the General Agreement;

19 (vii) to ensure increased transparency of trade measures and the effective resolution of disputes through improvements in the operation of the pertinent procedures, supported by a determination to comply with rulings and respect recommendations;

20 (viii) to examine ways and means of, and to pursue measures aimed at, liberalizing trade in textiles and clothing, including the eventual application of the General Agreement, after the expiry of the 1981 Protocol extending the Agreement Regarding International Trade in Textiles, it being understood that in the interim the parties to the Arrangement shall adhere strictly to its rules;

21 (ix) to give continuing consideration to changes in the trading environment so as to ensure that the GATT is responsive to these changes.

22 **SAFEGUARDS**

23 The CONTRACTING PARTIES decide:

24 1. That, having regard to the objectives and disciplines of the General Agreement, there is need for an improved and more efficient

safeguard system which provides for greater predictability and clarity and also greater security and equity for both importing and exporting countries, so as to preserve the results of trade liberalization and avoid the proliferation of restrictive measures; and

2. That to this end, effect should be given to a comprehensive understanding to be based on the principles of the General Agreement which would contain, inter alia, the following elements:

(i) Transparency; 26

(ii) Coverage; 27

(iii) Objective criteria for action including the concept of serious injury or threat thereof; 28

(iv) Temporary nature, degressivity and structural adjustment; 29

(v) Compensation and retaliation; and 30

(vi) Notification, consultation, multilateral surveillance and dispute settlement with particular reference to the role and functions of the Safeguards Committee. 31

32 **GATT RULES AND ACTIVITIES RELATING TO DEVELOPING COUNTRIES**

The CONTRACTING PARTIES: 33

1. Instruct the Committee on Trade and Development bearing in mind particularly the special responsibility of the developed contracting parties in this regard, to consult on a regular basis with contracting parties individually or collectively, as appropriate to examine how individual contracting parties have responded to the requirements of Part IV; 34

2. Urge contracting parties to implement more effectively Part IV 35

and the Decision of 28 November 1979 regarding “differential and more favourable treatment, reciprocity and fuller participation of developing countries”;

36 3. Urge contracting parties to work towards further improvement of GSP or MFN treatment for products of particular export interest to least-developed countries, and the elimination or reduction of non-tariff measures affecting such products;

37 4. Agree to strengthen the technical co-operation programme of GATT;

38 5. Instruct the Committee on Trade and Development to carry out an examination of the prospects for increasing trade between developed and developing countries and the possibilities in GATT for facilitating this objective;

39 To this effect, the CONTRACTING PARTIES are also taking the decisions annexed and decide to review the action taken in these areas at their 1984 Session.

40 **DISPUTE SETTLEMENT PROCEDURES**

41 The CONTRACTING PARTIES:

42 Agree that the Understanding on Notification, Consultation, Surveillance and Dispute Settlement negotiated during the Tokyo Round (hereinafter referred to as the “Understanding”) provides the essential framework of procedures for the settlement of disputes among contracting parties and that no major change is required in this framework, but that there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end;

43 And agree further that:

44 (i) With reference to paragraph 8 of the Understanding, if a dispute

is not resolved through consultations, any party to a dispute may, with the agreement of the other party, seek the good offices of the Director-General or of an individual or group of persons nominated by the Director-General. This conciliatory process would be carried out expeditiously, and the Director-General would inform the Council of the outcome of the conciliatory process. Conciliation proceedings, and in particular positions taken by the parties to the dispute during conciliation, shall be confidential, and without prejudice to the rights of either party in any further proceedings under Article XXIII:2. It would remain open at any time during any conciliatory process for either party to the dispute to refer the matter to the CONTRACTING PARTIES.

(ii) In order to ensure more effective compliance with the provisions of paragraphs 11 and 12 of the Understanding, the Director-General shall inform the Council of any case in which it has not been found possible to meet the time-limits for the establishment of a panel. 45

(iii) With reference to paragraph 13 of the Understanding, contracting parties will co-operate effectively with the Director-General in making suitably qualified experts available to serve on panels. Where experts are not drawn from Geneva, any expenses, including travel and subsistence allowance, shall be met from the GATT budget. 46

(iv) The secretariat of GATT has the responsibility of assisting the panel, especially on the legal, historical and procedural aspects of the matters dealt with. 47

(v) The terms of reference of a panel should be formulated so as to permit a clear finding with respect to any contravention of GATT provisions and/or on the question of nullification and impairment of benefits. In terms of paragraph 16 of the Understanding, and after reviewing the facts of the case, the applicability of GATT provisions and the arguments advanced, the panel should come to 48

such a finding. Where a finding establishing a contravention of GATT provisions or nullification and impairment is made, the panel should make such suggestions as appropriate for dealing with the matter as would assist the CONTRACTING PARTIES in making recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate.

49 (vi) Panels would aim to deliver their findings without undue delay, as provided in paragraph 20 of the Understanding. If a complete report cannot be made within the period foreseen in that paragraph, panels would be expected to so advise the Council and the report should be submitted as soon as possible thereafter.

50 (vii) Reports of panels should be given prompt consideration by the CONTRACTING PARTIES. Where a decision on the findings contained in a report calls for a ruling or recommendation by the Council, the Council may allow the contracting party concerned a reasonable specified time to indicate what action it proposes to take with a view to a satisfactory settlement of the matter, before making any recommendation or ruling on the basis of the report.

51 (viii) The recommendation or ruling made by the CONTRACTING PARTIES shall be aimed at achieving a satisfactory settlement of the matter in accordance with GATT obligations. In furtherance of the provisions of paragraph 22 of the Understanding the Council shall periodically review the action taken pursuant to such recommendations. The contracting party to which such a recommendation has been addressed, shall report within a reasonable specified period on action taken or on its reasons for not implementing the recommendation or ruling by the CONTRACTING PARTIES. The contracting party bringing the case may also ask the CONTRACTING PARTIES to make suitable efforts with a view to finding an appropriate solution as provided in paragraph 22 of the Understanding.

52 (ix) The further action taken by the CONTRACTING PARTIES in

the above circumstances might include a recommendation for compensatory adjustment with respect to other products or authorization for the suspension of such concessions or other obligations as foreseen in Article XXIII:2, as the CONTRACTING PARTIES may determine to be appropriate in the circumstances.

(x) The Parties to a dispute would fully participate in the consideration of the matter by the CONTRACTING PARTIES under paragraph (vii) above, including the consideration of any rulings or recommendations the CONTRACTING PARTIES might make pursuant to Article XXIII:2 of the General Agreement, and their views would be fully recorded. They would likewise participate and have their views recorded in the considerations of the further actions provided for under paragraphs (viii) and (ix) above. The CONTRACTING PARTIES reaffirmed that consensus will continue to be the traditional method of resolving disputes; however, they agreed that obstruction in the process of dispute settlement shall be avoided.* It is understood that decisions in this process cannot add to or diminish the rights and obligations provided in the General Agreement.

* This does not prejudice the provisions on decision making in the General Agreement.

TRADE IN AGRICULTURE

56 With the purpose of accelerating the achievement of the objectives of the General Agreement, including Part IV, and recognizing that there is an urgent need to find lasting solutions to the problems of trade in agricultural products, the CONTRACTING PARTIES decide:

57 1. That the following matters be examined, in the light of the objectives, principles and relevant provisions of the General Agreement

and also taking into account the effects of national agricultural policies, with the purpose of making appropriate recommendations. The examination shall cover all measures affecting trade, market access and competition and supply in agricultural products, including subsidies and other forms of assistance.

58 (i) Trade measures affecting market access and supplies, with a view to achieving greater liberalization in the trade of agricultural products, with respect to tariffs and non-tariff measures, on a basis of overall reciprocity and mutual advantage under the General Agreement.

59 (ii) The operation of the General Agreement as regards subsidies affecting agriculture, especially export subsidies, with a view to examining its effectiveness, in the light of actual experience, in promoting the objectives of the General Agreement and avoiding subsidization seriously prejudicial to the trade or interests of contracting parties. Other forms of export assistance will be included in this examination.

60 (iii) Trade measures affecting agriculture maintained under exceptions or derogations without prejudice to the rights of contracting parties under the General Agreement.

61 2. That in carrying out the tasks enumerated above, full account shall be taken of the need for a balance of rights and obligations under the GATT, and of the special needs of developing countries in the light of the GATT provisions providing for differential and more favourable treatment for such contracting parties. Full account shall also be taken of specific characteristics and problems in agriculture, of the scope for improving the operation of GATT rules, provisions and disciplines and agreed interpretations of its provisions.

62 3. That for the purpose of carrying out this work, an improved and

unified system of notifications shall be introduced so as to ensure full transparency.

4. That a Committee on Trade in Agriculture shall be established, open to all contracting parties, for the purpose of carrying out the tasks enumerated above and of making recommendations with a view to achieving greater liberalization in the trade of agricultural products. The Committee will report periodically on the results achieved and make appropriate recommendations to the Council and the CONTRACTING PARTIES for consideration not later than their 1984 Session. 63

TROPICAL PRODUCTS 64

The CONTRACTING PARTIES decide to carry out, on the basis of the work programme pursued by the Committee on Trade and Development, consultations and appropriate negotiations aimed at further liberalization of trade in tropical products, including in their processed and semi-processed forms, and to review the progress achieved in eliminating or reducing existing obstacles to trade in tropical products at their 1984 Session. 65

QUANTITATIVE RESTRICTIONS AND OTHER NON-TARIFF MEASURES 66

The CONTRACTING PARTIES decide: 67

1. To review, in a group created for the purpose, existing quantitative restrictions and other non-tariff measures, the grounds on which these are maintained, and their conformity with the provisions of the General Agreement, so as to achieve the elimination of quantitative restrictions which are not in conformity with the General Agreement or their being brought into conformity with the General Agreement, and also to achieve progress in liberalizing other 68

quantitative restrictions and non-tariff measures, adequate attention being given to the need for action on quantitative restrictions and other measures affecting products of particular export interest to developing countries; and

69 2. That the group should make progress reports to the Council and that its complete report containing its findings and conclusions should be available for consideration by the CONTRACTING PARTIES at their 1984 Session.

70 **TARIFFS**

71 The CONTRACTING PARTIES decide:

72 1. That prompt attention should be given to the problem of escalation of tariffs on products with increased processing with a view to effective action towards the elimination or reduction of such escalation where it inhibits international trade, taking into account the concerns relating to exports of developing countries; and agree

73 2. That wide acceptance of a common system for classifying products for tariff and statistical purposes would facilitate world trade and therefore recommend prompt action towards the introduction of such a system. They take note of the ongoing work to this end in the Customs Co-operation Council. They further agree that, if such a system is introduced, the general level of benefits provided by GATT concessions much be maintained, that existing concessions should normally remain unchanged and that any negotiations that may prove necessary should be initiated promptly so as to avoid any undue delay in the implementation of a system. They also agree that technical support shall be provided by the GATT secretariat to developing contracting parties in order to fully assist their participation in such a process.

MTN AGREEMENTS AND ARRANGEMENTS

The CONTRACTING PARTIES decide to review the operation of the MTN Agreements and Arrangements, taking into account reports from the Committees or Councils concerned, with a view to determining what action if any is called for, in terms of their decision of November 1979. The CONTRACTING PARTIES further agree that, for this purpose, the review should focus on the adequacy and effectiveness of these Agreements and Arrangements and the obstacles to the acceptance of these Agreements and Arrangements by interested parties.

STRUCTURAL ADJUSTMENT AND TRADE POLICY

The CONTRACTING PARTIES decide to continue the work on structural adjustment and trade policy in order to focus on the interaction between structural adjustment and the fulfillment of the objectives of the General Agreement, and to review the results of this work at their 1983 Session.

TRADE IN COUNTERFEIT GOODS

The CONTRACTING PARTIES instruct the Council to examine the question of counterfeit goods with a view to determining the appropriateness of joint action in the GATT framework on the trade aspects of commercial counterfeiting and, if such joint action is found to be appropriate, the modalities for such action, having full regard to the competence of other international organizations. For the purposes of such examination, the CONTRACTING PARTIES request the Director-General to hold consultations with the Director-General of WIPO in order to clarify the legal and institutional aspects involved.

80 **EXPORT OF DOMESTICALLY PROHIBITED GOODS**

81 The CONTRACTING PARTIES decide that contracting parties shall, to the maximum extent feasible, notify GATT of any goods produced and exported by them but banned by their national authorities for sale on their domestic markets on grounds of human health and safety. At their 1984 Session, the CONTRACTING PARTIES will consider in the light of experience gained with this notification procedure, the need for study of problems relevant to the GATT in relation to exports of domestically prohibited goods and of any action that may be appropriate to deal with such problems.

82 **EXPORT CREDITS FOR CAPITAL GOODS**

83 The CONTRACTING PARTIES

84 1. Are aware that official export credit provisions on capital goods which apply to developing countries may pose problems for the expansion of imports into these countries consistent with their trade and development needs;

85 2. Therefore recommend that contracting parties, members of those international arrangements concerning official export credit matters, when reviewing or revising their various international undertakings, give special attention to relevant credit provisions, including specific terms and conditions, in order to facilitate the expansion of developing countries' imports of capital goods consistent with their trade and development needs; and

86 3. Request the Director-General of the GATT to consult with the contracting parties concerned and report to the 39th Session.

87 **TEXTILES AND CLOTHING**

The CONTRACTING PARTIES decide: 88

1. To carry out on a priority basis a study of: 89

(i) the importance of textiles and clothing in world trade and particularly for the trade prospects of developing countries; 90

(ii) the impact on economic activity and prospects of countries participating in textiles trade, of the existing systems of restraints and restrictions relating to textiles and clothing, principally the MFA; 91

(iii) consequences for economic and trade prospects in these countries of a phasing out on the basis of the provisions of the General Agreement, or of the continued maintenance, of the restraints and restrictions applied under the existing textile and clothing regimes, principally the MFA; and 92

2. To examine expeditiously, taking into account the results of such a study, modalities of further trade liberalization in textiles and clothing including the possibilities for bringing about the full application of GATT provisions to this sector of trade. 93

3. This work should be completed for consideration by the CONTRACTING PARTIES at their 1984 Session. 94

PROBLEMS OF TRADE IN CERTAIN NATURAL RESOURCE PRODUCTS 95

The CONTRACTING PARTIES decide: 96

1. That problems relating to trade in the following natural resource products including in their semi-processed and processed forms, falling under the competence of the General Agreement relating to tariffs non-tariff measures and other factors affecting trade, 97

should be examined with a view to recommending possible solutions: 109

98 (a) Non-ferrous metals and minerals

99 (b) Forestry products

100 (c) Fish and fisheries products

101 2. That for this purpose the Council should decide, for each of these three items, the terms of reference, time frame and procedures.

102 **EXCHANGE RATE FLUCTUATIONS AND THEIR EFFECT ON TRADE**

103 The CONTRACTING PARTIES decide:

104 To request the Director-General to consult the Managing Director of the International Monetary Fund on the possibility of a study of the effects of erratic fluctuations in exchange rates on international trade, to report to the Council on the results of these consultations and to forward any such study to the Council so that it may consider any implications for the General Agreement.

105 **DUAL PRICING AND RULES OF ORIGIN**

106 The CONTRACTING PARTIES decide:

107 To request the Council to make arrangements for studies of dual-pricing practices and rules of origin; and

108 To consider what further action may be necessary with regard to these matters when the results of these studies are available.

SERVICES

The CONTRACTING PARTIES decide: 110

1. To recommend to each contracting party with an interest in services of different types to undertake, as far as it is able, national examination of the issues in this sector. 111

2. To invite contracting parties to exchange information on such matters among themselves, inter alia, through international organizations such as GATT. The compilation and distribution of such information should be based on as uniform a format as possible. 112

3. To review the results of these examinations, along with the information and comments provided by relevant international organizations, at their 1984 Session and to consider whether any multilateral action in these matters is appropriate and desirable. 113

ANNEX: GATT RULES AND ACTIVITIES RELATING TO DEVELOPING COUNTRIES 114

The CONTRACTING PARTIES decide: 115

1. Decide, in order to improve the review and surveillance procedures in regard to the implementation of Part IV, that: 116

(a) the Committee on Trade and Development, bearing in mind particularly the special responsibility of the developed contracting parties in this regard, shall adopt a programme of consultations with contracting parties individually or collectively, as appropriate, to examine how individual contracting parties have responded to the requirements of Part IV; 117

(b) each such consultation shall be based on information supplied by the contracting party or parties in question and additional factual material prepared by the secretariat; 118

- 119 (c) the Committee on Trade and Development shall also examine other aspects of existing procedures for reviewing the implementation of Part IV and for dealing with problems relating to the application of its provisions, and prepare guidelines for their improvement.
- 120 2. Invite the Committee on Trade and Development to review the operation of the Enabling Clause as provided for in its paragraph 9, with a view to its more effective implementation, inter alia, with respect to objectivity and transparency of modifications to GSP schemes and the operation of consultative provisions relating to differential and more favourable treatment for developing countries;
- 121 3. Invite contracting parties to pursue action as follows towards facilitating trade of least-developed countries and reducing tariff and non-tariff obstacles to their exports:
- 122 (a) further improve GSP or m.f.n. treatment for products of particular export interest to least-developed countries, with the objective of providing fullest possible duty-free access to such products;
- 123 (b) use, upon request and where feasible, of more flexible requirements for rules of origin for products of particular export interest to least-developed countries;
- 124 (c) eliminate or reduce non-tariff measures affecting products of particular export interest to least-developed countries;
- 125 (d) facilitate the participation of least-developed countries in MTN Agreements and Arrangements;
- 126 (e) strengthen the technical assistance facilities of the GATT secretariat targeted to the special requirements of least-developed countries;
- 127 (f) strengthen trade promotion activities, through the ITC and other initiatives, such as y encouraging the establishment of import promotion offices in importing countries;
- (g) give more emphasis to the discussion and examination of policy issues of interest to least-developed countries in the context of further efforts to liberalize trade. 128
4. Decide to strengthen the Technical Co-operation programme of the GATT with a view to facilitating the more effective participation of developing countries in the GATT trading system: 129
- (a) by responding to increasing requests for seminars and other technical assistance activities; 130
- (b) by permitting increased participation in the GATT Commercial Policy Courses, and the inclusion in the training programme of a regular course in the Spanish language; 131
- (c) by encouraging, in the context of this programme, appropriate contributions from individual contracting parties. 132
5. Invite contracting parties individually to grant new voluntary contributions or provide other forms of assistance to the ITC. 133

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