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TECHNIQUES AND MODALITIES OF NEGOTIATION FOR  
DEVELOPING COUNTRIES

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## INTRODUCTORY NOTE

In connexion with the participation of the developing countries in the multilateral negotiations to be held in 1973, the ECLA secretariat produced an initial document (E/CN.12/L.85) on the scope and frame of reference of the negotiations with some comments on the negotiations within the General Agreement on Tariffs and Trade (GATT) on the expansion of the European Economic Community (EEC) and on certain matters considered to be of fundamental interest to the developing countries, such as the actual conditions for their participation, the concept of reciprocity, and the impact of the negotiations on the generalized system of preferences.

On the subject of techniques and modalities of negotiation, this document briefly reviewed the results of studies made by various organs of the GATT in response to the programme of preparatory work laid down by the Council in March 1972. The present document, which supplements the earlier document, is a first attempt at making a more detailed examination of suitable techniques and modalities to enable the developing countries to secure the objectives and targets they have set themselves for the negotiations.

It should not be forgotten that the techniques and modalities mentioned are very much of a preliminary nature and refer to the current pre-negotiation stage. They will have to be modified and improved as the actual negotiations proceed, particularly once the developed countries have defined their specific targets and objectives and the ground rules for negotiations among themselves.

With respect to the negotiations that are expected to take place within the GATT in early 1973 on the effect of the expansion of the EEC on concessions <sup>1/</sup>, rules and procedures exist within GATT under article XXIV.

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<sup>1/</sup> See "Impacto en el comercio de América Latina del ingreso del Reino Unido y otros países de Europa a la CEE" - Information note (E/CN.12/L.82) and "Las relaciones de América Latina con Europa Occidental" (E/CN.12/L.83).

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## I. OBJECTIVES, GOALS AND BASIC RULES OF THE NEGOTIATIONS

1. It is clear that there is a direct relationship between the objectives and goals decided upon for negotiations, the basic rules governing the negotiations themselves, and the techniques and modalities used during the negotiations. This is why it has so far been difficult within the GATT to consider and select the most suitable techniques and modalities.

### 1. The position of the developed countries

2. As indicated in the Joint Declarations and the Declaration of the Council of Ministers of GATT at its meeting in March 1972 <sup>2/</sup>, the developed countries are approaching the 1973 multilateral negotiations with the objectives of achieving "the expansion and the ever greater liberalization of world trade and improvements in the standard of living of the people of the world", through the "progressive dismantling of obstacles..." and "the improvement of the international framework for the conduct of world trade".

3. To date, however, no definition has yet emerged of the actual goals or scope of the negotiations. For example, as regards tariffs, it is not known whether the idea is to continue or speed up the process of tariff cuts which was the fundamental purpose of the Dillon Round and the Kennedy Round, or rather to deal with the complete elimination of tariffs in pre-established stages. Moreover, nothing is known about the targets to be achieved in the agricultural sector or as regards non-tariff barriers, nor even what products or barriers are to be negotiated.

4. With respect to the major ground rules or basic principles that the industrialized countries intend to apply to the 1973 negotiations, it is necessary to refer once again to the Joint Declarations which state that the negotiations will be conducted "on the basis of mutual advantage and mutual commitment with overall reciprocity". Furthermore, the developed countries are apparently prepared to continue applying in the negotiations the fundamental ground rules of the General Agreement, in particular the "most-favoured-nation clause".

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<sup>2/</sup> See annexes 1 and 2 of document E/CN.12/L.85.

8. From the standpoint of the developing countries, the objectives to be pursued in the negotiations can be classified under three heads: (a) legal; (b) economic; and (c) commercial.

(a) Legal objectives

9. The aim is to ensure that during or upon completion of the negotiations <sup>4/</sup> rules are incorporated into the General Agreement that genuinely respond to the urgent need to restructure the existing system of world trade, with a view to securing achievement of the goals and objectives identified by the international community in the International Development Strategy for the Second Development Decade. The General Agreement should, inter alia, include precise rules governing non-reciprocity, non-discrimination among developing countries and preferential treatment. For example, recognition of the right to preferential treatment should be made more comprehensive and positive and should not be decided on a case-by-case basis as an exception to article I of the General Agreement.

(b) Economic objectives

10. In general terms, the negotiations should help to speed up the growth of the developing countries, diversify their economies, increase their share in world trade, and solve their external sector problems through the expansion and diversification of their exports and markets.

(c) Commercial objectives

11. The aim is to achieve certain specific overall and sectoral goals, which must be identified at the national, regional and world levels, for the expansion and diversification of exports. In fixing these goals account will have to be taken, where appropriate, of the goals the developed countries set themselves for the negotiations, which will have to be examined in the light of the particular problems and interests of developing countries.

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<sup>4/</sup> "The forthcoming negotiations will, in fact, constitute an effective review and suggest possible improvements in GATT rules and procedures. Action on any such changes should therefore be kept in abeyance until the negotiations have shown what adaptation may be necessary".  
Statement by Mr. Olivier Long to the Symposium on International Economic and Business Co-operation, Tokyo, 14 April 1972 (GATT/1108).

## II. SPECIAL TECHNIQUES AND MODALITIES FOR DEVELOPING COUNTRIES IN NEGOTIATIONS ON TARIFF BARRIERS

14. Tariff negotiations are more important in the case of industrial products than in that of agricultural products. Nonetheless, the points indicated below could serve as the basis for a set of special techniques and modalities in the negotiations on both types of product to be held between the developed and developing countries, so that no distinction need be made between the two sectors at this stage.

15. The special techniques and modalities in respect of tariff negotiations should allow for three separate levels of negotiations of particular interest to the developing countries:

- (a) negotiations on products included in the generalized system of preferences (GSP);
- (b) negotiations on products not included in the generalized system of preferences;
- (c) negotiations dealing specifically with the problem of tariff scales.

16. General agreement could be reached on a set of basic guidelines as to the action to be taken at each level, regardless of the general techniques and modalities that the developed countries might agree to adopt in negotiations among themselves; where necessary, special techniques and modalities could be established in accordance with the special requirements of the developing countries. Consequently, the following guidelines could apply to all the cases mentioned.

- (a) Negotiations on products included in the GSP

17. The following specific guidelines should be adopted: (i) preference margins should be increased or at least consolidated in the negotiations; (ii) should existing margins be reduced as a result of negotiations among the developed countries, adequate compensation should be secured, by increasing other margins, granting preferences in respect of tariff items not included in the generalized system of preferences, by means of preferences in non-tariff sectors or through financial compensation; (iii) as regards products whose tariff classification is open to modification, the preference should be maintained by introducing an appropriate sub-group.

/(b) Negotiations

developing countries as a whole. Moreover, the possibility should not be overlooked of a group of countries negotiating on a collective basis, for which precedents already exist in the GATT.

- (ii) The statistical basis must be adapted in the specific negotiations in which developing countries participate so as to allow for the special circumstances in which they find themselves. Three methods of calculation could be employed for this calculation could be employed for this, according to whether the negotiations relate to (a) traditional export products of the developing countries, (b) products deriving from one of the developing countries' dynamic export sectors, or (c) products that the developing countries could export. In case (a), the statistical basis of the negotiations must be the value of the real exports of a given product or sector; in case (b), the real export trends as observed over a reasonable period and projected into the future; and in case (c), the export capacity as calculated on the basis of specific development and investment plans for a given sector or area of the economy.
- (iii) Similarly, the concessions that could be granted to the developing countries should be calculated in terms of the value of the exports of the beneficiary countries and not on the basis of the real or potential receptive capacity of the market of the country granting the concession.
- (iv) The scaled tariff reductions for products of interest to developing countries should be introduced immediately for imports from those countries or at least before they are applied to imports from developed countries
- (v) Offers of concessions and requests for tariff reductions which developed countries address to the developing countries should be made on a systematic basis and by product in the case of requests based not only on the economic and growth requirements of the developing country to which they are directed but also on the level of economic development of the developed country.

1. Non-tariff barriers on industrial products

25. The Committee on Trade in Industrial Products of GATT has made very little progress in the study of possible techniques and modalities for non-tariff barriers. Although some possible solutions in connexion with customs value and licensing systems have been offered to the governments, important problems such as quantitative restrictions on imports, prior deposits and domestic duties and charges, are still pending. That fact that the developed countries have not yet taken up a final position within GATT on which non-tariff barriers are to figure in the negotiations, nor on the bases or framework for negotiations, speaks for itself.

26. It is probable that any progress in this depends on the overall progress of the trade negotiations, especially where the basic interests of the developed countries are concerned. Hence the developing countries should reach some degree of understanding of the regulations which will govern the negotiations in areas of special interest to them. At the present moment, it seems advisable that these special techniques and modalities should be designed according to the trade characteristics of the different sectors, and therefore that the detailed negotiations on these special techniques should be based on a sectoral approach.

27. While there exists no adequate definition of the sectors of special interest for the developing countries, individually and collectively, and while the non-tariff barriers affecting the exports of the developing countries in these sectors remain unidentified, it does not seem possible to make any progress towards a concrete formulation of the special techniques and modalities which should govern the negotiations in each sector. It is, however, possible to distinguish some important elements which could constitute the basis for these techniques and modalities for various important non-tariff barriers in trade in industrial products. Some of the elements which can be used to determine negotiating techniques and modalities for these barriers are listed below. This is not an exhaustive list, and it should be carefully revised at a later stage.

28. Export subsidization

(i) Export subsidization affecting products the export of which is of interest to the developing countries should be suppressed as a matter of high priority;

(ii) In the case of the negotiation of a code of conduct on export subsidization, based on Article XVI of the General Agreement on Tariffs and Trade, or a modification of it, a flexible attitude should be adopted towards the developing countries, bearing in mind their pressing need to expand and diversify their trade.

/29. Countervailing

35. Prior deposits

Imports from the developing countries should be exempt from the requirements of prior deposits. Elasticity should be maintained in the application of these measures by the developing countries in the light of their need for development.

36. Credit restrictions on imports

Credit restrictions on imports from the developing countries should not be applied. In any case, where overall restrictions are applied, preferential credit facilities should be granted to imports from the developing countries.

37. Domestic charges and duties.

Domestic charges and duties should not be applied to products imported from the developing countries, especially where products exported exclusively by these countries are concerned.

Where some duties and charges are maintained, all discriminatory treatment among developing countries should be suppressed.

38. Standards and principles of quality

Special attention should be given to the adaptation of these standards and principles to the export possibilities of the developing countries.

2. Non-tariff barriers and agricultural products

39. The Working Group on Techniques and Modalities of the Agriculture Committee of GATT has been analysing in depth the merits and possibilities of various techniques and modalities for the negotiation of non-tariff barriers, although it pointed out that the list of techniques examined could not be considered exhaustive and that the achievement of further progress would lead to discussion of the aims of the negotiations, the fixing of which was not part of the Group's mandate. There was, however, some degree of concurrence regarding the need for: guaranteeing stable markets and a regular expansion of trade in agricultural products, intensifying the co-operation between exporters and importers, giving special attention to the particular interests of the developing countries and promoting the substantial suppression of the barriers. The GATT secretariat, as for industrial products, undertook to prepare a document on the implications for the developing countries of the different techniques and modalities suggested for the coming negotiations on agriculture.



43. Sanitary regulations

(i) To suppress sanitary measures which have no real influence to protect animal, vegetable or human health and which open the way to disguised import restrictions on products of interest to the developing countries;

(ii) in the case of measures which are indispensable for the ends indicated, to avoid discriminatory application which may be harmful to imports from the developing countries;

(iii) to procure through multilateral agreements the maximum harmonization of the sanitary measures and controls applied to the import of products of basic interest to the developing countries, and

(iv) to set up consultative machinery at the multilateral level, to which the developing countries which regard themselves affected by sanitary measures which they consider discriminatory or harmful to their legitimate interests can have recourse.

44. Variable duties

(i) To replace the variable duties by fixed duties, giving preference to the developing countries;

(ii) to maintain the system, to fix maximum upper limits for duties on imports of interest to the developing countries;

(iii) to grant the developing countries percentage reductions which will take the form of preferential margins.

45. Fiscal duties

(i) Elimination of fiscal duties applied by the developed countries to products from the developing countries;

(ii) to give priority to products which do not compete with national products from the developed countries;

(iii) to maintain these charges, refund a proportion of their exports to the developing countries, or create a fund for non-reimbursable aid to these countries.

#### IV. PARTICULAR ASPECTS OF AGRICULTURAL SECTOR

##### 1. Production policy

50. The policies and measures adopted by the industrialized countries to support and promote production in the agricultural sector have helped to create disequilibria in world supply and demand in respect of agricultural products, seriously affecting the interests of developing countries, which particularly need to expand their production and trade in this sector. Therefore, specific techniques should be used in trade negotiations to secure concrete commitments from the industrialized countries regarding the elimination of direct or indirect subsidies that have served to encourage inefficient production, particularly in cases where it has led to the creation of surpluses which disrupt international trade in agricultural commodities.

##### 51. (a) Price measures

- (i) To secure certain commitments from the industrialized countries to reduce domestic prices of subsidized products within a fixed period in order to bring them more closely into line with world prices;
- (ii) to give priority to and accelerate this price adjustment process in the case of products of particular interest to developing countries.

##### 52. (b) Measures affecting production factors

There is a wide range of factors affecting production in terms of official measures. They comprise factors with direct influence and factors with indirect influence on government policy.

- (i) To endeavour to secure the maximum commitment from the developed countries with respect to as many of these factors as possible; and
- (ii) if this is not possible with respect to some factors, to propose the establishment of codes of conduct covering them.

57. The needs of developing countries may be grouped under two heads:

(a) Trade: ways of increasing the foreign exchange earnings and, in more general terms, the capacity to import of developing countries parties to commodity agreements. These agreements should maintain the preferential treatment invoked for all the tariff measures mentioned above - basically a specific exception for developing countries - and should provide for the adjustment of price margins in the event of currency fluctuations.

(b) Co-operation: co-operation policies channelled through such agreements would include, inter alia, measures in relation to:

- (i) financing of stocks;
- (ii) diversification;
- (iii) promotion of international demand;
- (iv) market studies;
- (v) food aid, where appropriate;
- (vi) new uses;
- (vii) synthetics and competitive substitutes produced in developed countries;
- (viii) promotion of exports of highly-processed primary products;
- (ix) research, training and extension services when not provided by international institutions.

58. The commitments in favour of developing countries in commodity agreements should be consolidated within the context of GATT in order to ensure, on a contractual basis, an examination as to their compliance within a broad framework, with a view to the adoption of corrective measures or adjustments, and even compensating measures in other areas, without prejudice to the machinery for penalizing any failure to comply included in the text of the commodity agreements.

comprehensive information document available for consideration by the developing countries. To sum up, the safeguard clauses of the General Agreement are found in articles XI, XII and XIX, and a second group of quasi-safeguard clauses in articles XX and XXI 2/.

63. In view of the broad objectives and scope envisaged for the 1973 multilateral trade negotiations, it may be assumed that they will result in new views and approaches with regard to the coverage of safeguard clauses and the rules for their use. The developing countries should obtain the necessary assurance that the concessions which may be agreed on will not be vitiated or their value nullified by the invocation of such safeguards. At the same time, the developing countries should insist on a proper differentiation being made when the commitments relate to all the Contracting Parties.

64. With respect to differential safeguard clauses for developed and developing countries in the case of general commitments, the circumstances and conditions of application should be more rigid for developed countries. Particular emphasis should be placed on the provisions relating to the period of application, and in connexion with the system of multilateral consultation and prior decision, where the safeguards necessarily affect the developing countries. However, the developing countries should, in principle, be excepted from the application of restrictive measures through the rise of safeguards. Where such exceptions cannot be made, they should be compensated for by tariff or non-tariff preferences, or financial compensations. Moreover, a more flexible and automatic use of safeguards, in terms of both circumstances and conditions, should be possible in the case of the developing countries, in view of their greater economic vulnerability at the international level and their urgent development needs.

65. As regards safeguards relating to concessions granted only "to developing countries", it should be borne in mind that the waiver adopted by GATT in connexion with the GSP established that the tariff preferences would be granted on a temporary basis that such concessions would not constitute a strict commitment and, in particular, that there was nothing to prevent their complete or partial withdrawal, or a subsequent reduction of the tariffs established on the basis of most-favoured-nation treatment, whether unilaterally or as a result of international tariff negotiations.

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2/ See annex 3 concerning safeguard clauses considered of interest.

reasonable to assume that, in view of the transcendental repercussions of a total negotiation, the major developed countries would wish to consider the question of safeguards before adopting a decision regarding the techniques and modalities of the negotiation, and even before requesting the relevant legislative authorization. Accordingly, the subject of safeguards would constitute not only a factor linked to the effective operation of the system and the equal participation of developed and developing countries, but also a parameter for determining the scope of the 1973 multilateral negotiations.

Annex 1

STATEMENT BY THE UNITED STATES WITHIN THE WORKING GROUP ON TECHNIQUES  
AND MODALITIES (AGRICULTURAL COMMITTEE) OF GATT\*

(How to eliminate the disruptions in trade in  
agricultural commodities caused by the  
operation of price support systems)

To be feasible, any formula for solving the main problems arising in trade in agricultural commodities, must be based on the application of the comparative advantage principle. The goods would be produced wherever this could be done most efficiently. Trade would develop and flourish and concurrently, the trade flows motivated by a temporary political advantage would be freed from a number of political pressures and uncertainties deriving from trade disruptions.

This necessarily involves a fundamental reform of present policies and practices affecting trade in agricultural products. The objective of the negotiations within the context of GATT should be to promote this reform.

Clearly, the Contracting Parties cannot and should not ignore the political needs of each nation in order to ensure an adequate income for farmers.

The urgent need to liberalize trade is another issue which should not be overlooked in the forthcoming negotiations, since it would be of particular advantage to the developing countries. The general trade negotiations which will take place in 1973 should contemplate the special problems arising in the trade of countries which represent the bulk of the world's population.

Governments have attempted to solve these problems by means of agricultural support systems, which disrupt production, consumption and trade. These support systems should be thoroughly overhauled. Internal support policies should abandon the price support formula and replace it by a system of compensatory payments designed to maintain income levels. These payments should have a minimal impact on trade.

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\* Retranslated from the Spanish, as original English version not available.

give a preliminary estimate of the equivalent fixed duties, and this estimate would be examined by GATT. In this way, a basic level of protection would be established for items covered by variable levies or quotas. In principle, both variable levies and quotas could be converted into fixed duties. Exceptions to this principle could be negotiated.

3. An objective could be established for maximum levels of protection - for example, 20 per cent ad valorem - to be reached over a period of 10 years. This objective may vary according to the product or sector; it could be zero or a harmonized level. This could also be negotiated and vary from one product to another. It could also include items of particular interest to developing countries.

4. The consolidated duties would then facilitate a programmed reduction to specific levels within a given period, for example 10 years.

5. A programme could be established for the elimination of export subsidies in respect of trade markets within the same period of 10 years, during which the import duties and support levels would be gradually reduced. As in the case of the protection of imports, a basic level of subsidies could be calculated, and annual reductions could be calculated on that basis. Production which has no outlet with this subsidy would be stored or utilized for purposes of food aid in terms of concessions. Meanwhile, in the case of States which are not contracting parties, importing countries could, at the request of a supplier not granting subsidies, find themselves forced to apply compensatory duties. The question of whether or not a subsidy exists and at what level would be a matter for arbitration. Compensatory duties could be charged for all products from all the countries granting subsidies. GATT could adopt a decision in this respect at the start of the negotiations.

6. Agreement on the principle that the additional payments favouring the maintenance of agricultural income should be such as to have the least possible impact on production of a certain type of products. One such system could be to make direct payments to farmers with low incomes in order to keep their incomes at the same level as those of industrial workers in the area. The method of doing this and the level of income maintained would be a matter for each country to decide, subject to the general agreement discussed above and with the reservation that it may be examined within the context of GATT.

7. The preferential agreements on agricultural commodities not eliminated through the above-mentioned changes could be suppressed, gradually increasing the preferential duty up to the most-favoured-nation duty over the same period. GATT could adopt a decision in this respect prior to the negotiation.

Annex 2

ESCAPE CLAUSES

1. For the most part, the purpose of escape clauses has been to facilitate or establish a new pattern of multilateral conduct while at the same time allowing for a certain degree of flexibility in complying with the relevant commitment. As such, the most frequently employed phrases are "where appropriate", "as far as possible", "to the fullest extent possible"(Art. XXXVII of the GATT), "where feasible", etc. The flexibility which this terminology has permitted and continues to permit relates to three main areas: (a) non-execution of the agreement by those not so disposed, (b) late, gradual or partial compliance and, (c) suspension of provisions that have entered into effect.

2. The third of these eventualities was originally intended as temporary suspension. However, the trend of national policies of developed countries in respect of their commitments has given rise to negative situations which have tended in practice towards permanency. Doing away with these distortions is one of the objectives pursued by certain developed countries in the forthcoming multilateral round of trade negotiations. Insofar as more absolute commitments are devised than those already included in the General Agreement or advocated in UNCTAD, escape clauses are a particularly important negotiating point for developing countries.

3. It is in UNCTAD that the most ambitious innovations are propounded in terms of the reorganization of economic relations between the developed and developing countries. Logically, enough the attitudes of developed countries towards escape clauses are also more varied and subtle than those referred to. The extent of their agreement or disagreement is reflected in a number of common and successive stages, such as: voting in favour but with an express reservation. Even a simple vote in favour of a resolution does not necessarily prove that the intention exists to implement the measures or policies adopted either immediately or subsequently.

4. The concept of escape clauses in the GATT is not limited to the phrases inserted in particular undertakings commitments but is amplified by the addition of permissive articles which serve as de facto exceptions to the general orthodox rules. Such is the case of Article XXIV. 5



Annex 3

CERTAIN RELEVANT MEASURES OF SAFEGUARD

1. Montevideo Treaty: Art. 23 (excessive area import); Art.24 (unfavourable overall balance of payments); Art. 25 (situations calling for immediate action); Art. 26 (excessive duration of the escape clause). Precedents have also arisen in practice, such as a regulation introduced in the fifth ordinary session of the Conference of LAFTA countries and subsequent decisions adopted by delegated authority by the Permanent Executive Committee.
2. Cartagena Agreement: Art. 78 (situations envisaged in chapter VI of the Montevideo Treaty as a result of factors unconnected with liberalization programme provided for in the Cartagena Agreement); Art. 79 (serious injury) Art. 80 (alteration of normal competitive conditions as a result of the devaluation of the currency of one of the member States); Art.81 (non-application of saving clauses to products included in sectoral industrial development programmes or in the programme of trade liberalization provided for in the Montevideo Treaty).
3. Protocol relating to trade negotiations among developing countries: Section 11 (references to "serious decline in its monetary reserves" and "achieving a reasonable rate of increase in its reserves"; Section 12 (alteration of the value of a concession); Section 13 (serious injury).
4. Long-term arrangement regarding trade in cotton textiles: Art. 6 (b) (substitution of textiles of other fibres); Art. 6 (c) (competition of non-participating countries).
5. Treaty of Rome; Art. 108 and 109 ( disequilibrium of the balance of payments of a Member State); Art. 226 (serious difficulties which are likely to persist in any sector of economic activity or difficulties which may seriously impair the economic situation in any region). Article 26 also refers to "any Member State encountering special difficulties".