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WTO Rules and Good Practice on Export Policy

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Abstract

The WTO has increased international disciplines on export policy, but there is still scope for the use of export subsidies and other measures to promote exports. Under macroeconomic and trade reforms of the last decade, many countries have reduced or eliminated import measures which operate as an implicit tax on their own exports. While more needs to be done in this regard, various export promotion measures other than subsidies may be useful as a transitional device for countries which are proceeding in a phased manner towards more outward oriented policies. It is also important to identify and eliminate internal constraints to export, including fiscal burdens and bureaucratic procedures. Such efforts can be complemented by continued efforts to open external markets in trade negotiations. However, trade liberalization and domestic deregulation also contribute to efforts to increase productivity, which together with macroeconomic stabilization programmes, help maintain a realistic, stable real exchange rate that is so crucial to a successful export effort.

Key words: WTO; export promotion, developing countries; dumping; subsidies.

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I. Introduction

1. Many developing and transition economies are undertaking major reforms of trade and related policies, generally in connection with macro-economic stabilization programmes. However, there has often been some disappointment with the delay in generating the supply response. This is partly related to the time needed for structural adjustment policies to work and for economies to become re-oriented towards a more open trading environment. Criticisms have also been made of protectionism in major markets, partly addressed in various rounds of trade negotiations. Some efforts have also been made in the developing and more recently the transition economies to inject some life into export efforts by much more pro-active policies. These include reducing the anti-export bias associated with restrictive import policies, other efforts to eliminate domestic obstacles to exports and active export subsidization and promotion programmes.

2. This paper discusses WTO provisions on exports, with particular reference to developing countries. There are numerous provisions in WTO Agreements which permit members to utilize measures affecting exports in a positive or negative manner. The main measures discussed in Sections II are private sector dumping, export subsidies and export restrictions. This is followed by a discussion of counter measures such as anti-dumping duties, countervailing measures, safeguard actions and other forms of contingency protection. Exporters have reacted in several ways to anti-dumping procedures in particular, including by concerted action to tighten disciplines in the WTO. It is noted that, even where export measures are allowed, only exceptionally are importers barred from taking counter actions.

3. While there has been an increase in disciplines in the WTO on the use of export and counter measures, it is necessary to look beyond the WTO to establish guidelines for good practice in export policy. In Section III we take a broad look at the good and bad practice in export policy, drawing to a substantial degree on experiences in Latin America.

4. Section IV contains some concluding remarks.

II. WTO Rules

(a) Export Measures

5. The main focus of attention on GATT/WTO rules affecting exports is on the trade defence mechanisms under Article VI of the GATT 1947 concerning Anti-dumping and Countervailing Duties, as elaborated, in particular, in the Tokyo Round Codes and in several WTO Agreements. However, there are a number of other WTO rules touching on export policy, which are discussed later.

(i) Dumping

6. Article VI:1 of the GATT 1947 concerning Anti-dumping and Countervailing Duties set the groundwork for export pricing by stipulating that dumping occurs if "a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

(*a*) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,

(*b*) in the absence of such domestic price, is less than either

(i)the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

(ii)the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit."

7. This paragraph and other elements of the WTO rules on anti-dumping have been the subject of numerous dispute settlement cases as well as refinements in various negotiations over the years. These cover issues such as "normal value", "like products" "ordinary course of trade".

8. Of particular concern to the transition economies is the possible use of constructed costs of production under Article VI:1(b)(ii), rather than a price comparison. Since the socialist countries were not considered to be market economies, developed countries typically held that price comparisons were meaningless and constructed costs of production, even using developed country data, were sometimes used in determining dumping margins. These constructed costs also allowed a margin of profit, which, in the United States, is set at an 8 per cent margin of profit. In the European Union (EU), Central and Eastern European countries as well as the Baltic states are now considered as market economies, reducing the chance of being subject to the constructed cost method.

9. There may be a number of reasons in commercial practice why a firm would wish to engage in price-differentiation across markets, including meeting competition in import markets. However, the pricing provision of Article VI does not make reference to supply and demand conditions in the importing country: if the domestic industry engages in price-cutting for whatever reason, foreign suppliers cannot reduce their prices to maintain their market shares. Indeed, experience shows that, over time, dumping complaints have tended to focus more on comparative costs, rather then dumping *per se*. The essential focus in the GATT system is the notion of dumping based on a desire to drive domestic firms out of business so that prices can be increased in the longer term. If this situation existed, then indeed it would be in the national interest to prevent dumping for predatory purposes. In fact, experience shows that such "predatory dumping" is most unlikely in practice. An examination of hundreds of U.S. cases finds no evidence of such behaviour (Palmeter, 1988). Moreover, there is evidence to suggest that large corporations in the iron and steel and chemicals industries, in particular, are using the anti-dumping mechanisms to reduce competition from foreign firms Messerlin (1990); this way they can maintain high prices (and profitability) in their home markets.

10. Recently, there have been examples of rejecting the anti-dumping approach and focusing on the effects of dumping on competition. Thus, within the European Union, within the European Economic Area and in the Australia-New Zealand Agreement on Closer Economic Relations, the anti-dumping mechanism is no longer used in trade within these groups. Instead, the provisions of competition law determine the outcome of complaints about the trade practices of a firm from another member of the agreement. The key criteria then is whether these practices will weaken competition in the area. In essence, this is bringing the question of dumping back to its intellectual roots which were mainly concerned about predation (Viner, 1921).

11. The bottom line is that, whatever may be regarded as normal business decisions within a market, subject to rules on competition policy, may lead to serious retaliatory action if applied to export markets.

(ii) Subsidies

12. Article XVI, Section A of the GATT 1947 states the obligation of any country that uses "subsidies, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory" to notify the Contracting Parties (now members of the WTO) of "the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary". Section B, paragraph 4 of the same Article, added in 1955, required contracting parties to cease "to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product..."

13. The Tokyo Round code on subsidies and countervailing duties, formally known as the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII, provided rules intended to protect access commitments with respect to the domestic market and to control intrusions into foreign markets via government assistance through subsidy payments or indirectly by waiving the payment of taxes which would otherwise be due.

14. The code outlawed export subsidies on manufactured products, while allowing export subsidies on certain primary products provided they did not result in a signatory to the code "having more than an equitable share of world export trade in such product" (Article 10.1), a provision which saw the proliferation of such subsidies, and something of a subsidy war between the United States and the European Union. Production subsidies were recognised as being important to promote social and economic policy objectives, but they were not to be used in a way that adversely affected the industry of another country, or nullified or impaired in any way benefits that would otherwise accrue under the GATT, e.g., by affecting the conditions of normal competition in markets.

15. The provision of GATT Article XVI to eliminate export subsidies was not subscribed by developing countries, and the Tokyo Round code formally recognised that subsidies were "an integral part of economic development programmes of developing countries". This referred to subsidies on industrial products, since subsidies on primary products were still generally allowed (more later). However, developing country members of the code committed themselves not to cause serious prejudice of other signatories, and in return their subsidised export were not to be presumed to result in adverse effects, as would developed country exports. It was also recognised in Article 14:5 of the Code that a developing country signatory to the code should endeavour to enter into a commitment to reduce or eliminate export subsidies "when the use of such export subsidies is inconsistent with its competitive and development needs". Developing countries which accepted to use subsidies only in accordance with this commitment were excluded from countervailing measures. An important point to recall is that, in keeping with the plurilateral nature of the Tokyo Round agreements, only countries which joined the code were entitled to benefit from the provisions of the code. More specifically, some developed countries took the view that they need not apply the injury test to developing country members which did not subscribe to the undertaking of Article 14:5. In practice, few developing countries acceded to the code, mainly because it did not provide the protection they sought to continue to use export subsidies, although failure to join did not provide any protection against countervailing measures and in the United States they could not benefit from the injury test.

16. A general appreciation that the Tokyo Round code had not met expectation led to effort in the Uruguay Round negotiations to restrain the use of all subsidies and to improve the rules on countervailing duties. These negotiations resulted in the WTO Agreement on Subsidies and Countervailing Measures which defines a subsidy as a financial contribution by government (including by non-collection of taxes that would otherwise be due) and clarifies the rules on the use subsidies. These are now classified under three different categories: prohibited (red), actionable (amber), and non-actionable (green box) subsidies (the "traffic lights approach").

17. Prohibited subsidies include non-agricultural export subsidies and subsidies contingent upon domestic content requirements. They will be subject to new dispute settlement procedures whose main feature include an expedited timetable for action by the Dispute Settlement body. A Illustrative List of Export Subsidies was provided in Annex I to the Agreement, and is included as an annex to this paper. Among the more important exclusions from the list are (i) duty drawback schemes, where the precise amount of duty is rebated on the export of a component incorporated in a final good, is not considered to be an export subsidy, and (ii) the precise exemption or remission of indirect taxes that are normally payable in respect of production and distribution of like good sold for domestic consumption, e.g., sales taxes or value added taxes, but not direct taxes, e.g., on wages, profits, etc. Prior to the Uruguay Round, import duties could not be rebated on imported inputs, such as fuels, used in the production process, but this is now allowed under the Guidelines on Consumption of Inputs used in the Production Process (Annex II to the Agreement). Export credits and export credit guarantee or insurance programmes below cost are prohibited, but not if the loans are made above cost but below market rates.

18. An important prohibition is on the provision by governments "of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption..." (Item (d) on the Illustrative List). This is a sweeping condition that affects a number of widely used export performance schemes such as the reduction of tariffs on imported inputs up to an equivalent value of exported final goods. To give a concrete example, Brazil waives its current 70 per cent duty on imported components used in automotive assembly up to the equivalent value of exported automobiles. The difference between this and a duty drawback is that under the latter schemes the precise amount of duty is waived or rebated on the same parts (or identical domestically produced) that are re-exported. The export performance schemes do not require the same or identical components to be re-reported, and, as such, may be considered as export subsidies. Exports from export processing zones would typically also fall under this provision.

19. Actionable subsidies are those that cause injury, nullification or impairment of benefits, or serious prejudice.[1] Matters related to this kind of subsidy may be referred to the Dispute Settlement body of the WTO. Finally, non-actionable subsidies include all non-specific as well as specific subsidies that involve assistance to industrial research and pre-competitive development activity, assistance to disadvantaged regions, and subsidies for environmental adaptation, so long as such subsidies meet certain criteria. Subsidies on agriculture are not covered by the provisions of this Agreement.

20. The Agreement also sets out disciplines relating to the initiation of countervailing cases, investigations by national authorities and rules of evidence. In addition, there are disciplines for the calculation of subsidy as well as the basis for the determination of injury to

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[1]Serious prejudice occurs in cases where the amount of the total *ad valorem* subsidy exceeds 5 per cent, or when subsidies are used to cover operating losses, or when there is direct debt forgiveness.

domestic industry. Countervailing investigations are to be withdrawn in cases where the amount of subsidy is less than one per cent on an *ad valorem* basis. In general, all countervailing investigations will be concluded within one year, and in no case can their proceeding stretch beyond 18 months. Finally, all countervailing duties are to be terminated within five years of their imposition, unless such act can lead to the continuation or recurrence of subsidisation and injury.

21. Several provisions in the Agreement introduce greater flexibility for the less wealthy developing countries. Any developing country with an annual per capita income of less than $1,000 is allowed to maintain export subsidies. Furthermore, non-recurring subsidies in developing countries which are linked to privatisation programmes are not subject to multilateral action under this Agreement (although they may stilol be countervailed). Once a developing country graduates (i.e., its per capita income exceeds $1,000), then that country is given a maximum of eight years to phase out export subsidies (there is however some provision for extension). Economies in transition are given a maximum of seven years to do the same. The prohibition of subsidies linked to domestic content requirements will not apply to developing countries for five years, and to least-developed countries for eight years from the entry into force of the WTO. Finally, *de minimis* provisions exempt developing countries from countervailing duties when their subsidy levels do not exceed two per cent (or three per cent in case a country accelerates the timetable for eliminating export subsidies), or import shares are less than four per cent, and cumulatively among countries benefiting from this provision, less than nine per cent of total imports.

22. The Agreement contains incentives for developing countries to curtail the practice of offsetting domestic protection with export subsidies, and as such, it goes a long way to curb their open-ended use. Furthermore, the possibilities of abusing the use of countervailing duties for protectionist purposes in some industrial markets have been curtailed. The combination of these factors should do much to relieve friction in this area.

23. In the GATT, agriculture was exempt from the general prohibition on the use of export subsidies, unless this would result in the exporter gaining an "inequitable" market share (Article XVI:3), as noted earlier. In the Uruguay Round, rules for the use of export subsidies in the area of agriculture were clarified and specific commitments were made to reduce their use. WTO members agreed not to use export subsidies except as specified in the rules, and the type of export subsidies subject to the reduction commitments were listed. Under Article 3.3 of the WTO Agreement on Agriculture, the use of export subsidies on products not specifically listed in the country schedules is now prohibited. For products covered by the commitments, it was agreed to reduce budgetary expenditures for export subsidies by 36 per cent (24 per cent for developing countries) over the six year implementation period, while quantities exported with subsidies were to be reduced by 21 per cent (14 per cent for developing countries). Reductions are being made in equal annual instalments from the 1986-90 base, or, as agreed at Blair House, from average 1991-92 levels if higher than the base period (but to be completed by the end of the term for products starting from the 1986-90 base).

24. It may be noted that the Agreement on Agriculture does not place any quantitative limit on exports *per se* - only on subsidised exports. Any WTO Member is free to export as much as commercial considerations dictate.

25. Developing countries are exempt temporarily from the reduction commitments on certain marketing-cost reduction subsidies, including subsidies on the internal transport and freight of export shipments.

26. While all countries are bound by the new rules on export subsidies, the main reduction commitments were made by OECD countries, where the EU is the major user. Eight

developing countries have export subsidy commitments, of which the more important include Brazil (vegetable oils, beef and veal, poultry), Indonesia (rice) and Mexico (coarse grains). As to the nature of the reduction, volume or value, this depends largely on the nature of domestic policies. Thus, Hathaway and Ingco (1995) argue that the EU reform of the CAP will lower domestic intervention prices (mainly arable crops) and, in consequence, the commitment on export subsidies will mainly be met by the volume constraint of 21 per cent below the volume in 1986-90. On the other hand, in the base period the United States had lower expenditures per unit than the EU so that, unless world prices are significantly higher than in the base period, the constraint for the US will be the 36 per cent reduction in expenditure. Canada has already eliminated the rail subsidy paid essentially on exports under the Western Grains Transportation Act.

27. Overall, it is difficult to predict what will happen to export volumes from individual countries or the prices of individual commodities. The roll-back in subsidized exports appears to be relatively important in wheat, beef and some dairy products. The international wheat market has been particularly subject to tensions, with competitive export subsidization to maintain or expand market shares. The extra disciplines may help to reduce these tensions. However, it is also expected that wheat prices will firm up during the implementation period of the Uruguay Round commitments for reasons unrelated to the Round, as has already happened.

28. It is also important to note that the agreement does not specify how remaining export subsidies can be used nor does it define the markets to which they may be directed. This contrasts with the GATT Article XIII requirement on non-discrimination in the use of import and export restrictions (see below).

29. Countries newly acceding to the WTO, such as the transition economies, are covered by the general rule of the Agreement on Agriculture (Article 3:3) that no export subsidies may be used by a Member unless that Member has undertaken a specific subsidy reduction commitment on the products concerned. In this context export subsidies are defined in Article 9:1 - it includes subsidies paid directly for the export of agricultural products, sales of non-commercial agricultural stocks for export by governments at prices lower than those charged on the domestic market, export subsidies financed by producer levies, marketing cost subsidies and certain transport subsidies. Measures that do not fit into the Article 9:1 category, but are contingent on export, cannot be used in a manner that circumvents commitments (Article 10).

30. Thus, acceding countries must examine all measures at both the federal and sub-national level that could fit into the definition of export subsidies. Any specific commitments for acceding countries generally are the subject of negotiation, and it might be expected that acceding countries will have to make a commitment to scale back the use of such measures. On the other hand, if no export subsidies are currently applied on agricultural products, the commitment required from an acceding country would be not to introduce such export subsidies in the future.

(iii) Export restrictions

31. One of the key rules affecting exports is Article XI:1 on General Elimination of Quantitative Restrictions which specifies that "no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party". Certain exceptions to this general prohibition are allowed. For example, export prohibitions or

restrictions may be temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party. Also, it is also allowed to use export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade. Where such measures are used, Article XIII stipulates that they must be applied on a non-discriminatory basis (unless to increase export earnings when the measure is being applied for balance of payments purposes).

32. In a number of product areas, export licences are used to administer export restrictions imposed as a condition of preferred access to foreign markets. For example, quotas are administered in this way on high quality Hilton beef to the European Union (by a number of exporters) and on sugar to the United States market (where tariff quotas have replaced quantitative restrictions).

33. Article XI is the basis of the belief that it was wrong to consider voluntary export restraints (VERs) as "grey area" measures, i.e. of uncertain legality. GATT Article XIX on Emergency Action on Imports of Particular Products only allows action on a non-discriminatory basis, so that importers wishing to arrest or reduce imports from a particular supplier (although this is not explicit in the Article) engaged in negotiations with exporters, persuading them that it would be in their interests to restrain exports rather than have import restrictions applied under Article XIX. Governments often participated in such talks, for example, in the United States or European Union negotiations with the Japanese in the automotive sector. Exporters on whom VERs were forced came to take an equivocal view about the measures, because the VERs also offered them the opportunity to avoid the inferior outcome of import restrictions and to extract economic rents from the restrictions. Only the importers, urging the restraints, were in a position to complain that Article XI was being breached.

34. Despite the challenge that this posed to the rule-based system, up to the end of the 1980s VERs became the most important instrument of trade intervention, even though their use was mainly restricted to iron and steel, automobiles, footwear and electronics. Strictly speaking, textiles and clothing restraints under the WTO Agreement on Textiles and Clothing (and previously the Multi-fibre Arrangement, MFA) are also VERs. VERs were mainly applied by OECD countries against each other (especially against Japan), but some of the more advanced developing countries were also targets (Korea, Brazil, India, etc).

35. Although many countries were dissatisfied with the operation of Article XIX and felt that the use of VERs was an attack on the credibility of the GATT system, the issue of improved rules evaded solution in the Tokyo Round and was one of the most difficult issues to resolve in the Uruguay Round. Developed and developing countries had diametrically opposed objectives in the negotiations. On the one hand, developed countries sought to allow protection of industries in difficulty through temporary import restrictions applied selectively against the source, while developing countries sought the elimination of "grey area" measures (VERs) that restricted imports and the respect of the basic GATT principle of non-discrimination as they feared that they were to be the targets of such selectivity.

36. In the end, the WTO Agreement on Safeguards provides for a more flexible use of safeguards but under tighter disciplines. It eliminates the use of all VERs, and similar "grey area" measures that may restrict imports or exports within four years. All existing safeguard measures are to be eliminated in five to eight years. Prior to the application of new safeguard measures, countries must demonstrate serious injury or threat thereof, and must notify immediately such measures to the GATT Committee on Safeguards.

37. Overall, the Agreement on Safeguards is a mixed blessing, a typical GATT compromise: safeguards may discriminate among suppliers but only in exceptional circumstances where imports from a member country increase disproportionately. Under such circumstances, the country applying the restrictions may allot to affected exporters shares which reflect historical performance. However, it may also seek agreement on quota allocation among suppliers with substantial interest in the affected product. Thereis, therefore, a risk that concealed VER-type measures could re-emerge. The Agreement also weakens the obligation to provide compensatory liberalization remedies if a safeguard measure is taken.

(iv) Other measures

38. GATT 1947 Article VII:3 on Customs Valuation stipulates that "the value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund".

39. Article VIII:1(a) on Fees and Formalities connected with Importation and Exportation says that "all fees and charges other than import and export duties ... imposed in connection with importation or exportation shall be limited to the approximate costs of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes". In paragraph 1(b) of the same article members of the WTO recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements. This article does not explicitly cover the use of multiple exchange rates except that it is considered to condemn the use of exchange fees and taxes as a device for implementing multiple currency practices, unless these are being used for balance of payments purposes with the approval of the IMF.

40. Article XVII:1(a) on State Trading Enterprises requires each WTO member to undertake 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 purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders." This article covers marketing boards, whose operations have come under increasing scrutiny in the GATT and the WTO.

41. Article XVIII on Governmental Assistance to Economic Development provides for special consultation procedures for developing country exporters of a small number of commodities which could be adversely affected when a (developed) country takes action Article XII on Restrictions to Safeguard the Balance of Payments.

42. Article XX on General Exceptions has a number of provisions which are of particular interest in respect of exports. This is the legal cover in the WTO for export restrictions applied under the Convention on International Trade in Endangered Species (CITES). Sub-paragraph (g) allows exceptions relating to the conservation of exhaustible natural resources provided that such measures are made effective in conjunction with restrictions on domestic production or consumption. This provision has been used, *inter alia*, to justify restrictions on the export of tropical timbers. Moreover, sub-paragraph (h) may provide cover for export restrictions undertaken in pursuance of obligations under any intergovernmental commodity agreement which is not disapproved by WTO members. This could provide a justification, for example, for sectoral agreements such as those on coffee, tin, etc., although provisions on quantitative restrictions under such agreements have varied at times. The WTO Agreement on Technical Barriers to Trade also makes it clear that a member may take measures "necessary to ensure

the quality of its exports". The use of measures allowed under this agreement are not to be used to "unnecessary obstacles to exports from developing country Members" nor to "create unnecessary obstacles to the expansion and diversification of exports from developing country Members".

43. Article XX (i) allows for exception 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. However, these export restrictions are only allowed if they do not result in an increase in the exports of or the protection afforded to the domestic processing industry. Nor are such restrictions to be applied on a discriminatory basis. There are a number of countries which use export restrictions to ensure supplies for domestic processing industries, for example, oil seeds may be restricted to ensure supplies for the domestic crushing industry, while export restrictions on raw hides and skins are used to ensure supplies for the local tanning and leather goods industries. These measures have certainly been of benefit to local processing industries and have also allowed them to expand their exports. This is one of the reasons why the trends has been to use export taxes instead of export restrictions, e.g., by Indonesia on logs, by Argentina on oil seeds and by Brazil on raw hides and skins. The use of export taxes reduces demand and provides domestic processing industries with access to raw materials below world prices, but not subsidised in WTO terms.

44. Article XXI on Security Exceptions provides legal cover for export restrictions taken in pursuance of obligations under U.N. sanctions. It is also the provision by which any country can take any action which it considers necessary for the protection of its essential security. This is the Article invoked by the United States to justify its actions under the Helms-Burton legislation, and which was also used by a number of countries imposing trade embargoes on Argentina at the time of the Falkland Islands/Malvinas crisis.

45. The WTO Understanding on the Interpretation of Article XXVIII on Modifications of Schedules elaborates the definition of exporters who have principal supplying rights, and hence a right to consultation and possible compensation in the event that an importer wishes to renegotiate tariff bindings; the scope of rights is extended so that the WTO member "which has the highest ratio of exports affected by the concession...to its total exports..." shall have a principal supplying interest even if it does not have an initial negotiating right or principal supplying interest as defined in the GATT 1947 Article. Article XXVIII *bis*, envisages Tariff Negotiations not only on imports but also on exports. While past negotiations have focused on import measures and charges, there have been indications of some interest that export taxes may be included in the next round of negotiations. This is because of a concern that export taxes on raw materials provide processors with cheap supplies and make their processed exports more competitive, although not technically "subsidized" under current WTO rules.

46. Recognition of the rôle that exports could play in economic development was one of the central ideas behind the extension of the original GATT to include Part IV on Trade and Development in 1965. Thus, in Article XXXVI:1(b) GATT Contracting Parties considered, *inter alia*, that "export earnings of the 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." The principle that developed countries did not expect reciprocity form commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries was introduced in paragraph 8. However, apart from various statements of principles and objectives, a number of which touch on exports, there were no specific engagements in this Article.

47. Article XXXVII appeared to go further in requiring developed countries to "(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; and (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..." However, there was little real substance to this, and in the Tokyo Round one of the key objectives of the developing countries was to establish within the GATT a legal framework for differential and more favourable treatment in trade between developed and developing countries, including providing a legal basis for the Generalised System of Preferences (GSP) as well as for preferences among developing countries. This became the Tokyo Round Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (often referred to as the Enabling Clause), adopted by the Contracting Parties on 28 November 1979. However, the Enabling Clause also included in paragraph 7 a "graduation" clause, providing that developing countries would accept greater obligations under the GATT as their economic situation improves, i.e., "that their capacity to make contributions or negotiated concessions... would improve with the progressive development of their economies... and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement".

48. To a degree, these privileges for developing countries under the GATT turned out to be a two-edged sword. Although the Punta del Este Ministerial Declaration launching the Uruguay Round stated that "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", the fact is, however, that there was pressure on developing countries to assume more GATT obligations.[2] More importantly, there was also a sense among some developing countries that making substantive contributions was the one way to be taken seriously and to receive reciprocal benefits, whereas they had been effectively shut out of negotiations at critical stages in previous rounds.[3] This interest was also driven by the developing countries' increasing emphasis on openness and market-based policy reform programmes, their increasing involvement in world trade (particularly manufactures trade) and investment, and a view among a number of developing countries, particularly those in Latin America, that extending their binding commitments was a way of locking in the autonomous reforms which they had been undertaking to insure against the possibility of reversals by future governments in their own countries (Laird, 1995).

49. A new provision affecting exports was included in the new WTO Agreement on Trade Related Investment Measures (TRIMs). This agreement prohibits the use of TRIMs inconsistent with Article III (national treatment provisions) and Article XI (general elimination of quantitative restrictions) of the GATT 1947. The main measures targeted by the TRIMs Agreement are local content plans and export balancing requirements. Thus, the Illustrative List of TRIMs inconsistent with the national treatment requirement includes measures which require "that an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports". TRIMs inconsistent with the obligation of general elimination of quantitative restrictions include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict, *inter alia*, "the exportation or sale for export by

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[2]Part I, B, (v) of the Punta del Este Ministerial Declaration, reproduced in GATT, Focus, 8 October 1986.

[3]A detailed discussion of developing country objectives and the issues confronting them in the Uruguay Round is contained in Finger and Olechowski (1987).

an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production".

50. Under Article 5:1 of the TRIMs Agreement, all members had 90 days from the entry into force of the WTO to notify measures not in conformity with the provisions of the agreement. Measures which were not notified had to be eliminated immediately. Under Article 5:2 of the agreement, developed countries were obliged to eliminate within two years, i.e., by 1997, while developing countries had five years and least-developed countries seven years to eliminate such measures (although least-developed countries may be granted an extension of this time period).[4]

51. The TRIMs agreement could have far-reaching consequences, particularly for the automotive sector in developing countries where local content schemes and export-balancing requirements are widespread. In Latin America, for example, this would affect the automotive industry in the Andean Group, MERCOSUR and Mexico, in particular. The schemes could fall heavily on the auto parts industries which are often the major beneficiaries and have higher employment than automotive assembly in these countries.

(b) Counter measures

52. If exporters follow a set of policies designed to expand their markets then, except in the circumstances mentioned earlier, they may find themselves subject to one or other form of contingency protection allowed by the WTO. Thus, private firms cutting prices on export markets may find themselves subject to anti-dumping procedures, while exporters which benefit from government subsidies may be countervailed. Even, without dumping or subsidisation, there are also measures to counter rapid growth of exports, such as safeguard actions under Article XIX of the GATT, and other devices such as reference prices (now being phased out under the WTO Agreement on Customs Valuation), or even specific rates of duty have greater ad valorem incidence on low-priced goods.

53. With the elimination of VERs under the WTO, anti-dumping has become the prime trade defence instrument. In the first 20 years of the GATT, i.e., up to 1970, there was little use of the anti-dumping mechanism, because there were high tariffs and extensive use of quantitative import restrictions. But with the success of the various rounds in reducing the use of quantitative restrictions and lowering tariffs, anti-dumping began to find greater use among the industrial countries. More recently, developing countries have started to make greater use of the anti-dumping mechanism (WTO, 1996). This predilection for anti-dumping action has arisen in part because industry has successfully lobbied for extensions of the national and international rules to such an extent that the only meaningful definition is "anything you can get the government to act against under the anti-dumping law" (Finger, 1995). National practices increasingly developed beyond the grasp of the code, and anti-dumping actions conveniently served as surrogates for selective safeguards: thus, "the rules were being stretched and abused to achieve results that had never been intended, thereby hampering fair trade" (Croome, 1995).

54. Practice has also shown that anti-dumping measures tend to remain in force for long periods and inhibit structural reforms. Thus, overall there is no substantive case that resort to anti-dumping helps to manage protectionist pressures in a way that promoted the long-term objectives of trade liberalization or allowing trade flows on the basis of comparative advantage to maximise the gains from trade. It has also been very difficult to galvanise counter actions in the importing countries because the interests of consumers and user industries tend to be relatively dispersed and anti-dumping procedures have typically taken little account of their interests.

[4] The precise date of entry into force of the WTO during 1995 varies according to the date of ratification for each country.

55. Why do domestic producers prefer the anti-dumping (AD) mechanism over other trade control measures, such as safeguards under Article XIX of the GATT? There are several answers to this question:

-AD actions are preferred to safeguards because injury test is lower (material injury cf. serious injury);
-AD actions allows discrimination, with anti-dumping duties set for each foreign firm, according to the level of dumping, although it appears that there is now some scope for differential adjustment in quota levels under the WTO Agreement on Safeguards;
-The time-frame is longer, but this differential was reduced in the Uruguay Round so that five years is a limit for AD actions under the WTO, albeit renewable, while safeguards are not to be applied for periods exceeding four years (but extendable to eight years (or 10 for developing countries);
-The use of safeguards envisages adjustment by the domestic industry;
-There is no compensation requirement; and
-Foreigner can be labelled as "unfair" in the propaganda war.

56. There are several ways in which exporters have responded to this use of anti-dumping procedures. In the first instance, there is now evidence that the "chilling" or harassment effect of anti-dumping duties. Messerlin (1988) shows the dramatic reduction of imports under anti-dumping investigations, with further reductions in the event of positive findings. Finger (1993) also makes the point that anti-dumping actions against unfair trade practices increasingly lent themselves to protectionist ends, as much because of the chilling effects of the investigations as the application of anti-dumping duties. The second effect is that, once an anti-dumping investigation is launched, quite often the exporting country will try to negotiate a settlement with the importer to guarantee to maintain export prices at an agreed level, a price undertaking. Like VERS, these price undertakings have the advantage from the exporter's perspective that they transfer rents to exporters, whereas anti-dumping duties are collected by the government of the importing country.

57. Needless to say, countries which were the target of anti-dumping cases have become very concerned about the way the mechanism has been used to target their exports, and they also attempted to use the Uruguay Round negotiations to defend their trade interests. Thus, Japan, Korea, Hong Kong and a number of other developing countries sought to have new disciplines imposed, while the United States and the European Union sought greater latitude for action against new practices such as screwdriver plants and other forms of circumvention. The final Agreement on Implementation of Article VI of the GATT 1994 was a compromise, balancing tightened disciplines on the use of the finding of dumping and injury with new rules on cumulation and further discussion aimed at action against circumvention. Among the disciplines, it was agreed that the existence of dumping could not be assumed just because there were sometimes below-cost sales in the ordinary course of trade in the home market or in third country markets or, for example, sales prices in the export market were not always adjusted immediately to reflect exchange rate movements. In the injury determination more importance was attached to showing that imports were the source of the problems of domestic industry. Investigations were not to be launched without evidence that this was what was sought by the domestic industry, generally defined as "the domestic producers as a whole of like products" or "whose collective output constitutes a mjor proportion of the total domestic production of those products".

58. The Agreement also contains a specification of *de minimis* provisions related to the margin of dumping and volume for terminating proceedings: anti-dumping cases are to be terminated if the margin of dumping is less than two per cent, or if the share of the volume from particular countries in the importing market are below three per cent (or, cumulatively, seven per cent among exporters supplying less than a three per cent share). Under such provisions, cumulation of imports from more than one country in an injury investigation is not permitted. Otherwise, the Agreement allows for "cumulation", i.e., the assessment of injury by aggregating imports across several exporting countries

59. In an attempt to limit the apparent permanency of anti-dumping duties, the Agreement requires that anti-dumping duties remain in place for no longer than five years unless a review demonstrates that

the removal of duty would likely lead to continuation of dumping and injury, the so-called "sunset clause". Developing countries are to be given special consideration, and the possibility of constructive remedies should be explored prior to initiating anti-dumping action against their exports. The new agreement also strengthened the disciplines on the process which must be followed in the conduct of an anti-dumping investigation; these procedures will also strengthen the scope for all interested partied to participate in anti-dumping proceedings.

60. The Agreement does not include any specific provisions for anti-circumvention measures designed to penalise exporters who shift the location of production in order to avoid anti-dumping duties. However, a Ministerial Decision on Anti-Circumvention, recognising the disagreement on a text and the desirability of uniform rules in this area, referred the matter to the Committee on Anti-Dumping Practices for resolution.

61. All told, the Agreement provides clearer and firmer rules in many instances, but it remains to be seen whether these rules will remain subject to discretionary interpretations by national authorities. This is especially relevant in view of the limited extent to which multilateral authority can challenge national anti-dumping laws through the dispute settlement procedures. If the new disciplines do not in practice restrain the tendency towards greater resort to anti-dumping actions, there is a risk that the gains in the market access negotiations may be subverted.

62. As noted earlier, using countervailing measures requires evidence of subsidies which may not be easy to discover in another country's legislation, particularly if the subsidy takes the form of a waiver of taxes, below market interest rates on export finance, cheap export insurance, etc. This is one of the reasons why it has been easier to use anti-dumping measures. But if there is a production subsidy, there may be no difference between the domestic and overseas price, so that the use of anti-dumping measures may be ruled out in such cases, unless based on constructed costs rather than on a price differential in the home and export markets.

63. However, even where there is no dumping or subsidisation, any surge in exports for whatever reason can lead to the application of counter measures by the importing country. Thus, the application of safeguard measures under GATT Article XIX (Emergency Action on Imports of Particular Products) allows the suspension of GATT obligations where "any product is being imported... in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers... of like or directly competitive products." There is no implication in the safeguard mechanism that the imports are somehow or other "unfair".

64. Under the WTO Agreement on Safeguards, which led to the elimination of VERs, there are three special provisions that provide developing countries with flexibility. First, developing countries may maintain safeguard measures for a period of 10 years, instead of eight. Second, they may re-impose safeguard measures after half the time of a previous application in case the minimum two-year period of non-application has elapsed. Third, developing country exporters which account for less than three per cent of a country's imports of a specific product are exempt from safeguard action, provided that all developing country members with less than three per cent share account for less than nine per cent share overall.

65. The net impact of these contrasting factors on developing countries is hard to predict at this stage. Indeed, much will depend on the extent to which governments will take advantage of their new rights under the Agreement to apply quantitative restrictions rather than price-based measures when they take safeguard actions. Furthermore, the impact on developing countries will also depend on whether the new disciplines on anti-dumping and countervailing duties are strong enough to prevent the *de facto* substitution of VERs and other safeguard measures with unfair trade remedies.

66. The WTO system also has a number of other contingency measures which allow members to maintain trade restrictions and impose new ones under certain circumstances. Finger (1995) lists some

20 categories of exceptions, and he notes that his list could have been longer had he included the 10 or so sub-categories of Article XX on General Exceptions, which include, inter alia, measures to protect public morals and the environment. Apart from specific provisions, countries could also ask for a waiver of a rule, and in this past such waivers were often granted, e.g. the waiver to allow the application of the United States Agricultural Adjustment Act. However, under an Understanding negotiated in the Uruguay Round, members have agreed to make the granting of waivers much more limited than in the past.

67. Two new kinds of contingency measures were introduced in the Uruguay Round, in the areas of agriculture and textiles and clothing. These two sectors effectively escaped GATT disciplines throughout most of its 50 years, but the Uruguay Round envisages the re-integration of these sectors under the main WTO rules. However, to cope with any difficulties during the adjustment period, safeguard measures were included in the sectoral agreements.

68. In the WTO Agreement on Agriculture (Article 5.1), provision was also made for special safeguards which may be triggered by volume increases or price reductions. While this article is quite complex, essentially the volume trigger is linked to market access commitments set out in a country's schedule. The price trigger may be activated with reference to 1986-88 average prices expressed in domestic currency. Such special safeguards are only applicable to tariffied products and if the right to invoke their use was specifically reserved in the schedule of the country concerned. Tariff quotas are also used under the Agriculture Agreement for tariffied items so that the lower rate applies up to a certain volume, when a higher rate is applied; this higher rate is to be phased out over the implementation period.

69. The new WTO Agreement on Textiles and Clothing, intended to incorporate this sector under the main GATT rules, also has safeguard provisions. At any stage transitional safeguards may be applied selectively to particular exporters in respect of products not yet integrated into the GATT. These safeguards are to be governed by a demonstrated injury or threat thereof in the importing country. They can only be maintained for a maximum period of three years, and phased out over their duration.

70. Turning away from specific WTO Agreements or GATT Articles, contingency protection can also be afforded by certain allowable devices.

71. First, it may be possible to take offset an increase in imports by increasing the applied tariff. This may be easy if there is a gap between the applied rate and the WTO bound rate, the rate which the government has negotiated on accession or in earlier trade negotiations. Even if there is no such gap, then it may be possible to re-negotiate the binding level, but this requires offering alternative concessions under the provision of Article XXVIII of the GATT. This is not a short-term solution to respond to an emergency situation, but it might be a longer term possibility when emergency measures are due to be eliminated.

72. In many developing countries, reference prices for customs valuation purposes provide a form of safety net against low import prices. Under this system, duties are based on a pre-determined value rather than the invoice price of the imports. Reference prices are allowed for customs valuation purposes for countries which apply the rules of the Brussels-based World Customs Organization (formerly the Customs Co-operation Council). Their use was much more limited under the Tokyo Round Customs Valuation Agreement, but this membership of this code was and most developing countries chose not to participate. The new WTO Customs Valuation Agreement follows the GATT code and, under the Single Undertaking of the Uruguay Round is now binding on all members, subject to certain phasing-in arrangements. Thus, the use of reference prices for customs valuation purposes is due to be eliminated.

73. Variable levies are also used to protect domestic industries against the decline of international prices. Variable levies are based on equilibrating the difference between a pre-determined domestic support price and the world price, whatever that might be. A more sophisticated version is the price

band system, used in the agriculture sector in Latin America. Under this system the reference price is based on a moving average of world prices over several months for each product covered by the system plus a fixed margin. However, the band system also sets a floor and a ceiling on the amount of duty which would otherwise be levied by strict application of the formula. This has the effect of smoothing out the duty to be charged so that farmers have to cope with extreme price movements. Variable levies are, in principle, banned under the WTO Agreement on Agriculture (Article 4.2, footnote 1), but this is being interpreted as meaning that the resulting duty must not exceed bound levels.

74. Specific tariffs, based on some measure of quantity rather than as a percentage of the price, also provide additional protection when import prices decline. In the Uruguay Round, many non-tariff measures and variable levies were converted to specific duties which remain legal. These are used principally in agriculture, but are also common in the chemicals sector. Some countries, like Switzerland, make extensive use of such measures.

III. Good practice in export policy

75. The most important idea behind the GATT and now the WTO is to ensure that countries can export the goods for which they have a comparative advantage, and import the goods produced elsewhere. Economic welfare on a global scale is increased when economies complement each other. Depending on national endowments -land, labour and capital, including human capital - which can be employed to produce goods and services for the home market and for export, each country can produce certain products relatively more efficiently than other products; thus, each country has a "comparative advantage" in the production of certain goods. Through trade, it is therefore possible to consume beyond the limits of national production possibilities, with welfare gains in exporting and importing countries alike; and free trade maximises these gains.

76. Within an economy, in the absence of externalities, the sectoral policy design that is most compatible with comparative advantage is neutral between sectors. Support for one sector, whether by subsidies or import protection has negative effects on other sectors of the same economy and reduces national economic welfare. It has also been shown, using general equilibrium analysis, that import protection for one sector also operates like an implicit tax on exports from other sectors, i.e., it has an anti-export bias (Clements and Sjaastad, 1984).

77. It is possible to develop a theoretical case that some sectors have greater benefits to an economy than other sectors. It used to be thought that both in concept and practice it was possible for the agriculture sector to make large net transfers of resources to other sectors, and, if these resources were used productively, the rate of economic growth could be accelerated (Mellor, 1973). Thus, it was believed that non-agricultural income earners would save at a higher rate than those in agriculture, and these higher savings would lift the rate of investment to generate higher growth. Such policies were believed beneficial to the nation as a whole, if not to farmers. The policies were in practice effected by a combination of measures which turned the terms of trade against agriculture, for example, by imposing price controls on agricultural products, taxation or the use of multiple exchange rates that discriminate against agriculture (Krueger, Schiff and Valdés, 1988).

78. The role of agriculture in development was also downplayed because of a notion that, because of structural rigidities, agricultural production and exports could not respond to devaluation and, therefore, help overcome foreign exchange shortages. For example, under existing systems of land tenure, agricultural production could easily not be increased in response to price incentives, or, if it did, the gains would be offset by a decline in the terms of trade. Moreover, since these countries did not produce a wide range of capital and consumer goods, imports would not fall. Despite these arguments, when the economic situation deteriorated, governments were usually forced to resort to price realignments, devaluation, exchange controls and import restrictions.

79. Another proposition was that there were important gains to be made by channelling resources to manufactures. For example, the sectoral orientation of past policies favouring import-competing manufacturing industry was largely based on Prebisch (1971) on the secular decline in the terms of trade for agricultural commodities and the perception that only manufacturing could provide stability and jobs (import-substitution industrialization, ISI). However, apart from some serious weaknesses in the implementation of these policies, the agricultural sector in many Latin American countries was badly weakened by such policies, which exacerbated rural poverty and encouraged a population movement to urban areas.

80. In fact, there are many countries, typically the developing and transition economies, which have followed this pattern of diverting resources from agriculture to manufacturing.[5] Some of these programmes were even supported by the World Bank in the period up to the 1970s, but as consequences became evident - an increase in rural poverty, falling food production, increased foreign debt and increased urban problems - the Bank's position changed in the early 1980s; policy has been re-oriented towards correcting the bias against agriculture as one of the principal means of combatting poverty.

81. This shift towards greater neutrality of policies was reinforced during the Uruguay Round. While developing countries initially were cool to the inclusion of services in the multilateral negotiations, this position changed markedly during the Round as they realized they had advantages in certain sectors, such as tourism, software development, labour, etc., as well as the growing realization that they need access to services such as banking, shipping, insurance and telecommunications at world prices to develop their exports of goods (Safadi and Laird, 1996).

82. Although such inter-sectoral neutrality in policy-making may be the economist's goal, it is still not fully accepted by most countries. This is for a number of reasons. First, while there has been a substantial shift away from ISI policies, this move is by no means complete. Despite the weight of argument, the authorities in many countries still believe in the infant-industry argument or that there are externalities associated with manufacturing production that do not exist in agriculture or services. This is most evident in tariff peaks and tariff escalation, as well as residual non-tariff measures (WTO, 1996). Second, even where there is a desire to move in that direction, many developing countries still rely on trade taxes as an important source of fiscal revenues. (In a number of cases revenues from import duties have increased as NTB have been eliminated and tariffs rationalized). While the shift to value-added taxes, with their important self-policing component, has substantially reduced this dependency, there is still tax evasion and many governments, striving to reduce fiscal deficits, are unwilling to move to eliminate trade taxes at this time.

83. In cases where governments decide to proceed with a trade liberalization, this is unlikely to take place overnight and certain precautions might usefully be taken in the timing and sequencing of reforms (Papageorgiou, Michaely and Choksi, 1991; Thomas and Nash, 1991). For example, a liberalization package might typically eliminate quantitative controls and reduce or eliminate duties and other taxes. But the elimination of import controls, in the absence of doing something about other measures, can exacerbate the anti-agricultural bias that already exists in many developing countries. It is necessary also to liberalize industrial sector imports and, where necessary, to correct an overvalued real exchange rate.

84. Most developing countries have followed some form of promotion of exports, whether to compensate the bias associated with ISI policies, as part of an export-orientation, or as part of the transition to more open economies (outward orientation). At one extreme this takes the form of direct and indirect subsidisation of mainly manufactured or "non-traditional" (i.e., generally non-agricultural) exports, essentially as an extension of the promotion of manufactures over agriculture in production, although export promotion (and import substitution) can be applied equally in agriculture as in industry.

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[5] See Michaelopoulos and Tarr (1995 and 1996) for a major review of trade policies in the former Soviet Union and the Baltic States.

However, in recent years such programmes have been substantially cut back, partly under fiscal pressures and partly as a result of the effects of counter measures take by importers, such as anti-dumping and countervailing measures. This pressure to discontinue such schemes has been intensified by the WTO Agreement, with progressive elimination for economies with annual per capita incomes above US$1,000, except for the *de minimis* provisions of the WTO Agreement.

85. Schemes which are still maintained by developing countries typically include export credits and insurance schemes at below market rates (e.g., Brazil's PROEX and FINAMEX schemes, which are not considered to be a "subsidy" in WTO terms if above cost, as noted earlier), concessional tax and duty provisions covering earnings, profits, and imported materials and capital goods (e.g., Colombia's Special import/Export Systems, SIEX, which has been notified to the WTO as containing a subsidy element), including for export processing zones, subsidies for non-traditional exports (e.g., Colombia's CERT scheme), including for incremental exports. Some are linked to the use of local value added (e.g., Brazil's FINAMEX programme), while others are linked to export performance (e.g., Brazil's Fiscal Benefits for Special Export Programme, BEFIEX) and the concessional entry for components in the automotive sector, Colombia's SIEX programme, etc.). The services sector, especially tourism, is often a beneficiary of these schemes. Several countries operate subsidies for freight and transhipment fees to export markets (Colombia) or differential freight rates which benefit exports (Peru).

86. Governments usually provide a number of fiscal incentives for industries located in export processing zones (EPZs). In Latin America, the zones are typically linked to outward processing operations (*maquila)* of U.S. companies, predominantly in the textiles and clothing sectors. While EPZs appear to have been successful in generating foreign exchange and local employment, only in a few cases have such operations resulted in a transfer of technology, the establishment of backward linkages into the local economy as a source of inputs, or in the acquisition of skills. Countries where the zones have a major importance in relation to the local economy are the Dominican Republic, Costa Rica and El Salvador, while Mexico's *maquiladoras* account for some 60-70 per cent of Mexico's exports to the United States. However, the preferred treatment of export industries does create a distortion against other sectors of the economy. Thus, in the WTO's <u>Trade Policy Review: the Dominican Republic</u> 1996, it was noted that the success of the tourism industry and the free zones "clearly points up the dualism of the Dominican economy. The liberalization of the economy, by reducing this dualism, should allow the expansion of other potentially competitive sectors". In WTO terms, such zones have a systemic implication similar to that of VERs, in that there is a complicity between importers and exporters to use a device which, to the extent that subsidies are involved, is contrary to WTO rules.

87. Apart from any question of WTO consistency, the efficiency of export promotion schemes is also in doubt. Nogués (1989) notes that these have not been particularly successful in Latin America in the past. The <u>World Development Report 1987</u> (Box 5.2) noted that many export incentive schemes, including in export-processing zones, often fail to counteract the taxing effect of import restrictions. It concludes that "if export promotion is a goal of policy, the most direct means of achieving this goal may be import liberalization."

88. Apart from the general equilibrium arguments about the negative effects on exports of import protection, mentioned above, there is also an overwhelming macro-economic case, namely that import protection reduces the demand for foreign exchange so that the domestic currency appreciates and reduces foreigners' demands for exports. Moreover, there is a corollary to this argument which weakens the case for export subsidies even as a transitional corrective measure, namely, that export subsidies also stimulate the demand for imports: increased foreign demand causes an appreciation of the domestic currency which lowers the domestic price of imports, increasing their demand.

89. This leads to an alternative approach to export promotion which involves <u>reducing fiscal and procedural constraints to exports</u>. As discussed in Section II, the precise exoneration or remission of import duties on imported inputs or domestic indirect taxes on exports is consistent with WTO provisions. For example, Colombia's tax reimbursement certificates (*certificados de reembolso*

tributario, CERT) cover the reimbursement of domestic indirect taxes, charges and other levies paid by exporters, although these also contain a subsidy element which is being reduced. Chile and El Salavdor use rebate schemes based on the f.o.b. value of exports, and which, therefore, do not conform to the provisions on duty drawback. Of course, even when precisely measured and rebated, such measures cannot fully compensate the anti-export bias of a restrictive import régime; this is because the effects of such measures indirectly push up prices of all factors of production, such as wage rates, land prices and the costs of capital, none of which are rebated. They are only a partial substitute for full import liberalization.

90. Increasingly attention is turning to measures to facilitate trade, sweeping away bureaucratic obstacles which are a relic of earlier statist controls in many developing countries. An example of such obstacles is provided in Box 1, which describes procedures for exporting beef from Uruguay prior to the important "debureaucratization" programme. Following the deregulation plan, ten documents related to meat, wool and leather exports, were replaced by the following four: the single loading document (*Documento Unico de Embarque)* mentioned above, a sanitary permit (*Pase Sanitario*), a quality control document by the INAC meat institute (*Control de Calidad de Instituto Nacional de Carnes*), and a sanitary certificate (*certificado sanitario*). Major savings were generated for exporters by simplifying the bureaucratic procedures, but speeding up the processes is also becoming more important in realtion to "just in time" production/stock management practices.

Box I: The Uruguayan Exporter's Way of the Cross

[Prior to the reform] many pre-shipment requirements had to be carried out by meat exporters with the three State agencies controlling these trading transactions, namely, the National Meat Institute (*Instituto Nacional de Carnes*, INAC), the Ministry of Agriculture and Fisheries *(Ministerio de Ganadería Agricultura y Pesca*, MGAP), and the Bank of Uruguay (*Banco de la República Oriental del Uruguay*, BROU).

Official procedures included the filing, presentation and management of 16 forms, thus:

1Authorization (INAC) - The exporter requests approval of the selling price agreed with the customer.

2Affirmative (INAC) - After receiving approval, the exporter submits two forms about the transaction to the State agency.

3Preshipment (INAC) - The exporter submits three additional forms to cover quality control, permission to export and a statement of domestic use in the country of export.

4Shipment request (BROU) - Eigth forms are needed.

5Two copies (BROU - Customs) - One of the two copies of the Quality Control form approved by INAC have to be submitted to each agency.

continued/

Box I (continued)

6Four forms (MGAP) - Submitting:
- Sworn declaration (5 copies), signed by the responsible official.
- Shipment authorization paper (5 certificates), signed by the responsible plant veterinary (depending on the "Slaughter Sector") and by responsible bond veterinary.
- Domestic use - The exporter returns this form to INAC, where the paper has to be signed, and then resubmits it to the Ministry.

With the submission of all previous documents and a request for services, the MGAP agrees to the Port Authorization Request authorising the goods access to the port area, in 3 copies.

The shipment office in charge verifies signatures, that the data are consistent between the different forms submitted, then signs them, seals and returns two copies of the Shipment Paper, and the Sworn Declaration and Certificate Port Entry to the exporter.

The Port Entry Certificate is returned within the day, whereas the Shipment Paper and the Sworn Declaration can take from 24 to 48 hours.

7Warehouse 11 in the Port (MGAP) - The exporter prepares and submits the Inspection Request (3 copies), annexed to the copy of the Sworn Declaration and the Shipment Paper.
Another form indicates the date and time of the shipment for the veterinary inspection.

8The truck arrives at the Florida weighing station (*Balanza Florida)* in the port area with another 3 forms: the Sanitary Pass signed by the last veterinarian to check the goods (either at the meat processing plant or the bonded warehouse), the INAC Movement Clearance Certificate and a Permit from Customs. The Florida weighing station is supposed to have the 3 forms prior to the arrival of the truck, which does not always happen. The truck has to be weighed in the presence of three officers, one each from Customs, BROU and ANP.

9 Warehouse 11 (MGAP) - The truck enters the Sanitary Area with the INAC Movement Clearance Certificate. The veterinary officer receives these papers and delivers a form indictaing that the sanitary inspection has taken place. The truck returns to the green channel with the INAC seal and the veterinary officer's clearance form for delivery to INAC on the first working day of the following week, under penalty of fine.

10The truck unloads next to the ship.

11At the Florida weighing station - The unloaded truck is weighed to deterimine the net weight of the consignement.

12Customs grants clearance for the exportation.

13Next day, the shipment - A MGAP officer collects several forms from the Florida weighing station and another from Warehouse 11, and submits these to the central office of the MGAP.

14The exporter continues on his way (MGAP) - Submits the Sanitary Certificate. The dossier sent by the port service is certified. This contains the documentation previously submitted to this office and the Sanitary Certificate to be signed.

1548 to 72 hours later - Finally the exporter receives the Sanitary Certificate, signed by the Director of the Service. This Sanitary Certificate officially testifies as to the quality of the exported meat; this certification is essential for payment.

This was the Way of the Cross for the exporter.

Source: PLADES (1990). (Translated by the author).

91. A similar simplification of the process for obtaining export authorizations has been carried out in El Salvador. A newer procedure, this has gone somewhat further than the Uruguay reform and operates through of a "single window" at the Centre for Export Documentation (*Centro de Trámites de Exportación*, CENTREX) in the Central Bank (Box II). All exporters must register by completing an Export Registration Card (*Tarjeta de Inscripción de Exportador*). Once registered, the CENTREX issues export documents to registered exporters on presentation of an export application and a commercial invoice; this procedure is the same for both traditional and non-traditional exports. Export documents include the export registry and/or a customs form (for exports within the CACM); and, where necessary, certificates required by importing countries, e.g., certificates of origin or

sanitary certificates. Exports of agro-chemicals, medicines, animal feed, meat, fish, coffee and machinery require sanitary certificates issued by the Ministry of Agriculture, but this is handled by CENTREX and is delivered within 24 hours at the latest.

Box II: El Salvador's Centre for Export Requirements (CENTREX)

CENTREX was established in 1987 as an institution to centralize all permit requirements for imports and exports. Before its establishment the preparation of documentation took from eight to ten (or even 15) days. Initially, the Centre did not function well since it was still necessary to visit a number of other institutions. On average 25 documents had to be provided to the different institutions and the process took about 2 days.

In order to simplify formalities, CENTREX was restructured in 1989. Since then the institution, administered by the Central Reserve Bank under the jurisdiction of the Ministry of Economy, has functioned as a one-stop window where all export formalities can be carried out. CENTREX, therefore, carries out the functions of the three main institutions directly responsible for the issue of export documentation: the Ministry of Agriculture and Livestock (Direction of Plant and Animal Health and the Centre for the Development of Fisheries), the Ministry of Economy (Direction of Investment and Trade), and the Central Bank. Other institutions, such as Customs and the Ministry of Finance, collaborate closely with CENTREX.

In December 1995, Centrex established the Electronic System for Exports (*Sistema Electrónico de Exportaciones*, SIEX) to speed-up export formalities. This service allows enterprises to obtain automatic export permits (*póliza de exportación*) on-line seven days a week. If there is a need for a sanitary certificate that has to be signed, this would be prepared the same day, or the first working day following the request. The introduction of SIEX has reduced the time for the preparation of export documentation to less than one day.

Source: WTO, Trade Policy Review - El Salvador, forthcoming in 1997.

92. It is important to place any discussion of export policy in context of the real effective exchange rate (REER). This is because, over time, the real exchange rate between the exporting country and its foreign markets is one of the principal determinants of trade. The real exchange rate is a competitiveness indicator composed of relative price (cost) movements in the exporting and foreign countries, adjusted by the nominal exchange rates between the domestic and foreign currencies. While monetary and fiscal policy operate on the nominal exchange rate, trade and industrial policy instruments, including the investment régime, are crucial to achieving the productivity increases which reduce the relative cost component of the REER.

93. The importance of getting the exchange rate right has been stressed by Harberger (1988), Thomas and Nash (1990) and many others. While this can be achieved through a market-determined, floating exchange rate, a number of successful exporting countries have followed programmes with progressive currency devaluations, such as crawling pegs, intended to maintain the competitiveness of their exports (e.g., Chile, Colombia, Mexico). However, under various macroeconomic stabilization programmes, the domestic currency has been completely anchored the U.S. dollar, in particular, to help combat inflation, e.g., Bolivia brought inflation down from an annual rate of 24,000 per cent in 1985 to under 15 per cent by 1987.[6] However, such programmes can lead to real exchange rate appreciation, unless accompanied by measures to limit price increases or increase productivity. Thus,

[6]On experiences with fixed exchange rates, see Edwards (1993a and b).

when Argentina introduced the nominal anchor to the U.S. dollar in 1991 (bringing inflation down from the annual equivalent of 27,000 per cent in April 1991 to single digits today), it was envisaged that international competitiveness would be achieved by improving the productivity of the Argentine economy. Initially this did not happen and there was a substantial loss of competitiveness, particularly in the U.S. market, while competitiveness in the Brazilian market has been aided by recent stabilization measures taken in Brazil (as well as the trade-balancing arrangements under the Argentina-Brazil automotive agreement).

94. If a government can achieve a stable, realistic real exchange rate, then it should be unnecessary to continue schemes to compensate the anti-export bias of other trade policies such as special credit lines, insurance schemes, export subsidies, special export promotion agencies, etc. If the liberalization is to be progressive, then in the interim it may be necessary to provide for the rebate of indirect taxes and duty drawbacks on imported inputs. This may buy time to introduce programmes to tackle other internal and external constraints to export growth.

95. Internal constraints on export growth and diversification need to be examined. These include:

-Competitiveness of production (including labour and other production costs, domestic price controls). What is being done to keep costs down to promote exports and, hence create job opportunities in export industries? Is labour part of this effort?

-Capacity constraints. What is the availability and cost of finance for investment in plant and machinery, or to restructure and expand economic farming activities? Is the financial system, including banking and insurance, in need of reform?

-State-trading companies, including marketing board, and other state-owned enterprises may have monopoly rights or have access to financial and other resources, crowding out private sector initiatives. Is there a privatization programme, or at least the opportunity for the private sector to compete in all sectors?

-Competition policy. Is there an effective competition (anti-trust) policy to stimulate competitive conditions in the internal market, as a complement to trade liberalization?

-Are there price controls or price support systems which do not allow the transmission of world prices into the domestic market?

-Are there bottlenecks in infrastructure and transport policy questions (e.g., port and airport facilities, road, rail and waterway links to neighbouring countries, freight conferences, cabotage, back-hauling, etc.)? Is there an efficient telecommunications system?

-Lack of outward-looking entrepreneurship. Is there a need for training, education in the benefits of exporting (also mentioned earlier)? Is language training necessary to help capture foreign markets?

-Lack of labour with specific skills needed in export industries. Is there a need to developing technical and business training in tertiary institutions?

-Health, safety or standards regulations and testing affecting production or sale of goods produced. Can approval and certification processes be streamlined? Are institutions accredited to authorize certificates for major markets? Can national standards be adapted to international standards or those of major markets, such as the United States or the European Union?

-Are there any institutional constraints on the development and application of good trade policy and practices?

96. Other countries' trade barriers have often been identified as an external constraint on developing countries' efforts to expand and diversify their exports.[7] Indeed, there is considerable evidence that tariffs and non-tariff barriers fall heavily on many developing country exports, such as textiles and clothing, iron and steel, footwear, basic metal manufactures and machinery, although in areas such as automobiles, iron and steel, and electronics other developed countries are often the targets (e.g., Japan). This pattern of protection is in evidence in both developed and developing countries (Finger and Laird, 1987). The principal avenues for changing external constraints are the GATT/WTO system for multilateral negotiations, bilateral negotiations with foreign trading partners and the use of dispute settlement procedures to eliminate measures contrary to the rules of the GATT/WTO or particular trade agreements to which a country is party. However, many successful exporting countries in the Far East have built their export industries in the face of such external constraints, and it has been the standard cop-out of many other developing countries to blame other countries' trade barriers on their poor export performance, when the real problems are the domestic supply constraints, as discussed above.

97. In the first instance it would be important to examine the sectors which offer the greatest potential for further development and/or diversification: primary commodities and their processing, manufactures and services. Within these broad sectors it would be straightforward to identify key export items, particularly those where the country has comparative advantage, and to link these to dynamic areas in international trade. The changing composition of exports and key goods exports can be readily identified from the UNSTAT COMTRADE database. Revealed comparative advantage figures (RCAs) can be computed from data obtained from the same source. These can also be linked to dynamic products in international trade, using similar data (perhaps using the UNCTAD TRAINS database and extraction system to speed up the analysis). However, it may be more difficult to identify areas of potential in the export of services which could be of considerable importance for many developing countries. It is also possible to identify the main tariff and non-tariff barriers to trade, using the WTO Integrated Data Base, the UNCTAD Data Base on Trade Control Measures, but it may well be desirable to refine this information with specific market surveys.

98. Apart from specific negotiations, it may also be possible on the basis of this information to develop an effective export promotion schemes. There are numerous variations, but as an illustration, one of the more comprehensive systems is that of Brazil, where, export promotion activities are undertaken by the Ministry of Industry, Trade and Tourism, through the Foreign Trade Secretariat (SECEX), and by the Ministry of External Relations, through the Trade Promotion Department as well as by the trade promotion sections of Brazilian embassies and consulates. These activities cover the provision of information to Brazilian firms on trade regulations, participation in trade fairs, organization of seminars, trade promotion missions and training programmes. SECEX has also been developing a programme to promote new areas of export activity (*Programa Novos Pólos de Exportação*), intended to expand the export participation of small and medium-size enterprises, diversify exports (with respect to products, firms and markets), increase the competitiveness of Brazilian products, and help uncover the export potential of selected products and regions. A wide range of products has been targeted for promotion by SECEX, including consumer and capital goods, agricultural commodities and related processed products, mineral products, ceramic products, clothing, footwear, furniture, automotive

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[7] See numerous UNCTAD reports on Protectionism and Structural Adjustment. See also The Impact of the Industrial Policies of Developed Countries on Developing Countries, prepared by the staffs of the World Bank and the IMF for the Development Committee, Development Committee No. 20, Washington D.C., April 1989.

parts, software and toys. No doubt some of these activities generate externalities which are of benefit to the exporting nation, but some care needs to be exercised that such activities are not simply some form of subsidy under a thinly disguised mercantilist effort (The Economist, 1 February 1997).

IV. Conclusions

99. Many developing and transition countries, as part of a combined macro-economic and structural reform programmes, are adopting more liberal trade and industrial policies, some quickly and some over a prolonged period. In this framework, there has been a trend to reduce import protection as well as cutting back on the use of direct and indirect export subsidisation policies, as well as fiscal and procedural constraints on exports. This trend will help to reduce the anti-export bias associated with such policies. The WTO agreements will on the whole tend to reinforce the curtailment in the use of such measures, pushing members towards more rational export policies.

100. While experience shows that more rapid trade reforms produce more rapid benefits, it is understandable that governments are reluctant to face the full costs of structural adjustment in the short-term, opting instead for a progressive liberalization. A pro-active export policy may have a role to play as a transitional measures towards a more open economy, helping to generate a supply response. This need not mean export subsidy programmes or elaborate EPZ programmes; efficient schemes for the exoneration or remission of import duties on imported inputs and domestic indirect can help. But there is much to be gained in improving export procedures and in removing other constraints to exports, including through a competitive domestic market.

101. Previous research also shows that importance of maintaining a stable, realistic real effective exchange rate, which is influenced by the operation of macroeconomic policies on the nominal exchange rate as well as the effects of productivity gains on costs. Thus, trade reforms, domestic deregulation and the whole gamut of industrial policies work together with responsible macroeconomic policies to improve the competitiveness of a country exports.

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ANNEX I OF WTO AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

(a)The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b)Currency retention schemes or any similar practices which involve a bonus on exports.

(c)Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d)The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available[8] on world markets to their exporters.

(e)The full or partial exemption remission, or deferral specifically related to exports, of direct taxes[9] or social welfare charges paid or payable by industrial or commercial enterprises.[10]

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[8]The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

[9]For the purpose of this Agreement:

The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

"Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;

"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;

(f)The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g)The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes[58] in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h)The exemption, remission or deferral of prior-stage cumulative indirect taxes[58] on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).[11] This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II.

(i)The remission or drawback of import charges[58] in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III.

(j)The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

(k)The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in

(..continued)

"Remission" of taxes includes the refund or rebate of taxes;

"Remission or drawback" includes the full or partial exemption or deferral of import charges.

[10]The Members recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The Members reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any Member may draw the attention of another Member to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the Members shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of Members under GATT 1994, including the right of consultation created in the preceding sentence.

Paragraph (e) is not intended to limit a Member from taking measures to avoid the double taxation of foreign-source income earned by its enterprises or the enterprises of another Member.

[11]Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

(l)Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.