

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Proposals Regarding Article XVIII:A and C of the General Agreement
on Tariffs and Trade 1994 in Terms of Paragraph 9(a)(i) of
the Geneva Ministerial Declaration

Communication from India

The following communication, dated 4 October 1999, has been received from the Permanent Mission of India.

Issue

1. Article XVIII on Governmental Assistance to Economic Development recognizes that the attainment of the objectives of the GATT will be facilitated by the progressive development of the economies of developing country Members, particularly those the economies of which can only support low standards of living and are in the early stages of development. It recognizes that it may be necessary and justifiable for such Members to take protective or other measures affecting imports in order to implement programmes and policies of economic development designed to raise the general standard of living. It was accordingly agreed that additional facilities should be provided to them to enable them, *inter alia*, to "maintain sufficient flexibility in their tariff structure **to be able to** grant the tariff protection required for the establishment of a particular industry."¹
2. Sections A and C of Article XVIII lay out special procedures to deal, respectively, with modification or withdrawal of concessions included in such Member's Schedule, and those cases where there may be circumstances where no measure consistent with the provisions of the WTO Agreement is practicable, to permit such Member to promote the establishment of a particular industry with a view to raising the general standard of living of its people
3. These provisions are intended to recognize that it would be more difficult for Members with limited resources at their disposal or depending on primary production to rely exclusively on measures consistent with the WTO Agreement in order to solve the problems that may arise from the implementation of their programmes of economic development.
4. Accordingly, a Member coming within the scope of paragraph 4(a) of Article XVIII proposing to modify or withdraw a concession included in the appropriate Schedule shall enter into

¹ According to Note *Ad* Article XVIII, the reference to the establishment of particular industries shall apply not only to the establishment of a new industry, but also to the establishment of a new branch of production in an existing industry and to the substantial transformation of an existing industry, and to the substantial expansion of an existing industry supplying a relatively small proportion of the domestic demand. It shall also cover the reconstruction of an industry destroyed or substantially damaged as a result of hostilities or natural disasters.

negotiations with any Member with whom such concession was initially negotiated and with any other Member determined to have a substantial interest therein. In case agreement is not reached within sixty days after notification provided under Section A:7(a) or Section C:14 as the case may be, the Member can, apply to the WTO Members, acting jointly, for approval of its proposed modification or withdrawal of concession or its specific measure affecting imports. As a result of their consultations, as laid out in paragraph 7(b) or 16 of Article XVIII, as relevant, the WTO Members, acting jointly, under specified circumstances could release the concerned Member from its obligations under the relevant provisions of the WTO Agreement to the extent necessary to apply that measure.

5. The key issue is that while the WTO Members, acting jointly, can concur in the measure, even if no agreement is reached within 60 days of the notification of the proposed measure, in order to adequately safeguard the interests of other relevant Members, the Member concerned may be required to make additional concession during such time as the deviation from other provisions would remain in force or to face temporary suspension by these other Members of a concession substantially equivalent to the impairment due to the introduction of the measure in question.

6. The ability of a Member in the process of development of its economy to offer additional concession or to face temporary suspension of a concession substantially equivalent to the impairment is limited. Furthermore, it is important that developing country Members are actually enabled to extend governmental assistance to domestic industry beyond the earliest stages of manufacturing and to nourish more advanced competitive industry. However, the compensation requirements are so onerous, and the threat of suspension of concessions so real, that these provisions have had little or no practical effect in promoting particular industries with a view to raising the general standard of living of the people in developing countries. Accordingly, few Members have had recourse to Article XVIII:A or C. The 1999 Trade and Development Report of the UNCTAD observes "such examination is particularly desirable in respect of Article XVIII, sections A and C, of GATT 1994, where the compensation requirements are so onerous that they are likely to nullify the very intent of the article, which is to allow developing countries to promote new industries."

Proposal

7. In order to ensure that a developing country Member is enabled to grant tariff protection and to take specific measures affecting imports aimed at promoting the establishment of a particular industry under Article XVIII:A or C, it is proposed that for the purposes of paragraph 7(b) and 18(b) of Article XVIII, as the case may be, it shall be sufficient for WTO Members, acting jointly, to concur in the proposed measure if they are satisfied that all reasonable efforts have been made by the concerned Member to reach an agreement with any relevant Members.
