The GATT "Codes" on "Non-Tariff Measures"

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I. Introduction

1. The purpose of this paper is to evaluate the "codes" on "non-tariff measures" (NTMs) negotiated in the Tokyo Round of Multilateral Trade Negotiations (MTN) and now being applied by the main industrialised countries. In this paper we shall briefly note the scope and coverage of these arrangements, the impact of these new, detailed understandings on the trade relations system, and more particularly, we shall note how these codes affect the trade policy relationships of the smaller countries, particularly the developing countries. We shall, in the process of evaluation, be considering what can be learned from the process of negotiation which produced the codes, and what can be concluded from the short experience of administering or managing them. Throughout the paper the text and context of the various codes are taken as given - because there exist readily available texts and commentaries which, accordingly, need not be reiterated here.[1] The emphasis in this paper is on assessment and evaluation, in terms of the impact of the NTM codes on the trade relations system and on the interests of the developing countries.

2. The terms "codes" and "non-tariff measures" have been put between quotation marks in the first paragraph because both these terms should be put in context, for both are somewhat misleading. To take the concept of "code" first: commercial policy arrangements between countries can vary as between say, a set of "guidelines" adopted in the OECD by a consensus in the committee concerned, or a code of conduct setting out norms of

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1. For the texts of each of the MTN agreements, see GATT: Basic Instruments and Selected Documents, 26th Supplement, March 1980; for a commentary, see GATT: The Tokyo Round of Multilateral Trade Negotiations, April 1979, Chapters VIII and X of Part I and III and V of Part II.

behaviour in a particular policy area, such as the UNCTAD arrangement concerning restrictive business practices, and a more contractual arrangement. The GATT itself, which in its language and style is derived from standard pre-World War II trade agreements, is cast in a contractual form. Signatories acquire rights and obligations, and are subject to sanctions for non-compliance. The NTM "codes" are also cast in what is more or less a contractual form. They are concerned with stating obligations and rights, rather than norms of behaviour. However, the difficulty of reaching agreement in some of these areas was such that there was some recourse to declaratory or normative language, designed to obscure the fact that agreement could not be reached on a balance of rights and obligations with regard to certain issues. Nor are all the agreements equally clear. The Procurement Code, for example, is relatively precise in its prescription of procurement procedures, but it covers very little of the total area of government purchasing. The Subsidies/Countervailing Agreement, at the other extreme, is replete with declaratory, normative statements, and obscure and ambiguous phrases. Much of the ambiguity was much negotiated, virtually none of it is accidential; the language masks the inability to advance in certain key areas regarding subsidy policies and practices. Moreover, there are a number of written, although non-contractual, statements which provide glosses on the code language in regard to certain issues. But nevertheless, it would be correct to say that the NTM codes are essentially contractual arrangements, meant to reflect a balance of rights and obligations which the principal negotiators, and the countries they represented, intended to be enforced by the imposition of retaliatory sanctions; these enforcement provisions, imported into each of the codes, were taken from the GATT itself, i.e. GATT Articles XXII and XXIII, and adapted to the subject area of the various agreements.

3. The term "non-tariff measures" also requires clarification; it is an inherently unsatisfactory term but has been used so generally in regard to the results of the MTN that it will be used here. The conventional usage is to put into one category the tariff as a form of intervention in trade (as a mechanism by which governments regulate the price competition between imports and domestic production) and to lump all other measures into the category "non-tariff" measures. This is open to two objections. First, valuation for customs purposes is clearly part of the tariff structure; it is simply confusing to treat it as being a "non-tariff" device. The same comments can be made in regard to other aspects of the customs system - such as problems that relate to procedures or nomenclature. Second, it is necessary to divide the measures which are distinct from the tariff and customs structure into different categories, in order to better understand what was being attempted in the MTN. One way to approach this problem of developing a meaningful classification is to categorise measures as to whether or not they are applied at the frontier, and whether or not they are part of the commercial policy system. Thus import quotas, anti-dumping duties and countervailing duties are applied at the frontier; government procurement rules requiring a preference for domestic products in such purchasing are not applied at the frontier. But these are all commercial policy devices; product standards and food and drug regulations may be applied to imports at the frontier but they are not part of the commercial policy system; they are measures devised in regard to other policy objectives, but may be used, perhaps deliberately, to have an unduly restrictive effect on trade. Another useful distinction is the difference between measures that relate to price (tariffs, anti-dumping duties, countervailing duties, import surcharges or import deposit requirements for balance of payments purposes and price preferences for domestic products in procurement rules) and non-price devices, such as import quotas, "voluntary" export restraints, product standards, which of course may well have a discernible impact on prices, but which are not expressed in

price terms. It should be noted that while a wide range of measures were examined during the preparatory stage, the negotiators in the MTN concentrated much of their effort on price measures which are explicitly part of the commercial policy system: namely, anti-dumping duties, countervailing duties, subsidies, procurement and valuation. In the non-price area, attention focussed on import documentation and other consular and customs procedural barriers, on product-related restrictions, and on product standards (called "technical barriers to trade"). The attempt to deal with this last area resulted in an agreement designed to create procedural obligations which would preclude product standards being used to restrict trade, although, of course, it is accepted that product standards inevitably have an impact on trade. This is, potentially, an important extension of the practical authority of the GATT.

4. One of the aspects of the so-called "non-tariff measures" codes which puzzles commentators is how "reciprocity" is achieved in the negotiation of any one of such codes. How is a balance of rights and obligations established? How does one measure reciprocity? In a sense the concern about reciprocity is mistaken, it is a transfer of the traditional quantitative technique of presenting the results of a tariff negotiation to a policy area where a quantitative formulation of the outcome of negotiation is even less relevant that it is in regard to tariffs. The problem of working out a balance of rights and obligations - which is a better description of what is required than the term "reciprocity" - in regard to the development of a detailed agreement regulating the use of a non-tariff device , had been faced in the Kennedy Round of trade negotiations - in the working out of the code on anti-dumping practices. The experience gained in that negotiation was drawn on in the MTN and that code was a model for important parts of the NTM codes,

particularly the sections of the Subsidies/Countervailing Agreement that relates to the use of countervailing duties. In the Kennedy Round negotiations regarding the use of anti-dumping duties it became apparent that, from one perspective, reciprocity meant that all trading countries could improve their position. They did this by agreeing in detail on how what could be a punitive device, a device which could be used to harass legitimate trade, could properly be used, and by setting up international procedures to scrutinise the use of the device. Moreover, each major participant in such a negotiation is bound to have a number of precise objectives in regard to the practices of other countries, and a number of precise objectives in regard to its own practices, which it wants reflected in the international agreement. Sometimes there are conflicts as between the objectives of the various participants; if there are serious conflicts the result is likely to be either a trade-off or, all too frequently, an exercise in ambiguity. In any event, in this sort of context, the question of whether one country was "contributing" more than another to the agreement (i.e. having to alter its practices to a greater degree) was not a question of great priority.

5. An example in the MTN where a major difference between the objectives of the various participants was "papered over", or hidden in ambiguous drafting, is Article 10 of the Subsidies/Countervailing Agreement, which deals with export subsidies on agricultural products. These particular paragraphs have now become the subject of disputes in the GATT; it is not unreasonable to argue that the existing provisions of the GATT (Article XVI:3) have been weakened rather than reinforced or made more precise by this particular code provision.

6. Not all countries concerned with the use of anti-dumping duties found that they could accept that reciprocity lay in all participants adapting their anti-dumping regimes to an agreed international format and agreed administrative guidelines. A number of developing countries concluded that the new system was biased against them. For reasons of development policy and

in order to conserve foreign exchange reserves, they maintain regimes which raise domestic prices above world prices; hence, when such products are exported, they can be held to be dumped. There was extensive discussion on this issue, between the end of the Kennedy Round, in mid-1967, and the Tokyo Round. The developing countries, as a group, preferred to advance their views on the anti-dumping code in meetings of the Contracting Parties and in various groups in the MTN negotiating committee structure. At the end of the Tokyo Round this issue was still outstanding. We should note that the developing countries did not choose an alternative course which was in fact open to them - that is, to sign the Anti-dumping Code and thus become full members, as of right, of the administering committee (The Anti-dumping Practices Committee) and use that as a base from which to recommend the changes required in the code. Unlike some of the NTM codes(for example,procurement) the Kennedy Round Anti-dumping Code did not require a signatory to put in place a fully-fledged anti-dumping regime, but only to undertake that if it did legislate an anti-dumping system, such a system would conform to the code. Thus countries without anti-dumping systems could sign the code and participate in its administration. For some MTN negotiators, this was perceived as a potential hazard, and accordingly efforts were made to ensure that the NTM codes, while providing for "special and differential" treatment in developing countries, did so only in a manner which required a developing country signatory to assume meaningful positive obligations (see, for example, Article 14 of the Subsidies/Countervailing Agreement).

7. The issue of "reciprocity" for a developed country in the MTN in relation to the non-tariff codes had a number of other dimensions. It is important to recognise that for one major participant - the United States - what the MTN involved was not so much a negotiation to achieve trade liberalisation as a negotiation to bring about a substantial measure of reform of the rules. After all, the legislative mandate for the United States negotiators, the Trade Act of 1974, was originally called the Trade Reform Bill. It was apparent from

the beginning of the Tokyo Round discussions on non-tariff issues that, subject by subject, the United States representatives had clearly in mind how they proposed to draft the relevant domestic legislation, and that their negotiating objectives were, in part, to ensure that the new international agreements were consistent with what they planned in their domestic laws, and, indeed, that international cover or international sanction would be provided for their proposed legislation. Other negotiating countries understood this; however, they too had provisions or practices which they felt had to be reflected in the international agreements, in order that suitable international legal cover be provided for what they considered to be essential elements of their systems. Reciprocity was secured, in a sense,by accommodating these various demands in the texts of the codes. This produced a result which certainly could have been foreseen, and no doubt was by some negotiators and commentators; we can call this the perverse result. In any negotiation to set limits to the restrictive use of a given non-tariff measure - a negotiation which, on the surface, might appear to be aimed at trade liberalisation - if a number of participants each succeed in getting into the agreed text cover for their particular restrictive practice, then each signatory acquires the right to use all these practices. A signatory may then devise a new legislative scheme, and a set of administrative practices, which in some particular respects, if not in total, may be more restrictive than existed before the negotiation. There are numerous examples of this perverse phenomenon. One example: the Canadian anti-dumping system, which was strongly criticised by exporters prior to the Kennedy Round, became more restrictive, in certain respects, after the system was revised to bring it into line with the Kennedy Round code. Another important example: prior to the MTN the United States did not levy countervailing duty retroactively (that is, the duty became payable on imports entered only after the final decision to impose a duty); however the NTM code allows for a provisional duty to be levied in a period of 120 days before the final decision is taken. This has been adopted in the new United States law. In this important regard, the new United States system is significantly more restrictive than the system

in place before the code was negotiated. Another example: in the Kennedy Round Anti-dumping Code there was provision for duties to be applied retroactively for an additional period to counter so-called "sporadic" dumping, or what could be called "hit-and-run" dumping. This provision was drafted to deal with a Canadian problem in the textile and clothing sectors; however, this provision in the Anti-dumping Code (Article 11) was translated into the Subsidies/Countervailing Agreement to deal with "hit-and-run" imports of subsidised exports. The United States insisted that the code had to allow for quick and punitive action against such potentially damaging imports. Article 5, para.9 of the code therefore provided for a special measure of retroactivity for the application of countervailing duty when there are found to be massive imports of subsidised products. The code thus provided international cover for a type of restrictive action which, prior to the MTN, no country had taken, and indeed, which was not provided for in the domestic legislation of any signatory. (This "perverse result" problem should be taken into account in any further negotiation to codify administrative practices in regard to the use of some device of intervention or in regard to trade in some particular sector or sectors, for example, services).

8. We can turn, after these introductory remarks to some brief comments on each of the major NTM codes, and to comment on the unresolved issue of "safeguards", which in an intellectual sense, is related, on the one hand, to some of the code concepts, and, on the other, to the varying experience of participants under the Multifibre Arrangement.

II. The "Standards Code" (Agreement on Technical Barriers to Trade)

9. The purpose of negotiating this code was to try to provide a procedure, backed by possible sanctions,to deal with those cases in which product standards unduly restrict trade.Admittedly the consultative and adjudicative provisions of the GATT(Articles XXII and

XXXIII) could be used for such a case, but it was felt necessary to provide a more specific set of procedures and a more detailed administrative apparatus. It was soon recognised that the GATT agreement could not impinge on the right of signatories to develop product standards and to enact food and drug standards, for example, which they would apply equally to domestic production and to imports. Clearly there would be an impact on trade; what was at issue was dealing with unduly restrictive action, whether deliberate or not. The NTM code does not in any sense provide for the drawing up of technical regulations or standards; that is the function of other bodies. Instead, the code endeavours to get at the trade-restricting impact of such standards. Accordingly, the code provides, inter-alia, that governments will avoid unnecessary obstacles to trade, that they will give non-discriminatory, indeed, national treatment to imported products with respect to product standards, that, in order to avoid the creation of unnecessary obstacles, they shall endeavour to use international standards, where they exist, and that governments should work towards the creation of international standards. In order to administer these arrangements, governments are required to give notice to other countries of proposals to establish standards and to provide for information. In regard to standards established by voluntary bodies or by other levels of government, the signatories accepted a "best endeavours" clause (the so-called "second-level obligation"). The provisions of Articles XXII and XXIII of the GATT were translated into the specific framework of the standards code and a committee of signatories established. There are a number of provisions in the code directed at meeting the special needs of developing countries; a number of these are directed at their special requirements for information as to the standard practices of other countries to which they expect to export, and more particularly there is provision for technical assistance from developed countries to developing countries under the aegis of the code. (see Article 11 of the code). Under Article 12 of the code, specifying measures of special and differential treatment for developing countries, developed countries are required to take into account

the "special development, financial and trade needs" of developing countries in the implementation of the agreement, and in the formulation and application of standards. Moreover, developing countries may adopt special standards designed to preserve their own technology. It was apparent at the end of the MTN that it would take some time for the new international rules to be put into effect and for countries, particularly federal countries, to establish the internal administrative mechanisms required by the code. It is as yet too early to say, therefore, whether the code will be successful in restraining the tendency to manipulate product standards to restrict trade, and whether the various provisions regarding special and differential treatment are of any particular value.

III. Import Licensing Procedures

10. Import licences are sometimes used for essentially statistical purposes, but of course in any such so called "automatic" system it is feasible to delay or obstruct the issue of a licence in order to effect a restriction on imports. If import licences are used to implement an import quota (or to allocate the quota among importers) or to reinforce the administration of "voluntary" export restraint measures, they may increase sometimes to a marked degree, the restrictive effect of an agreed quantitative control measure. The various provisions of this agreement are designed to mitigate, and to provide for scrutiny of, the unduly restrictive application of licensing provisions. The code does contain some limited provisions covering "special and differential" treatment for developing countries; for example, a two-year delay is allowed in regard to the obligations concerning the administration of "automatic" licensing procedures. While, in general, application by developed countries of the criteria and practices of the code should remove some, although perhaps only minor, obstacles to trade, it is apparent that it is developing countries themselves which rely significantly on licensing techniques. In that sense the provisions of the code are directed

at developing countries. On the other hand, it is of importance that in the negotiation the developing countries which faced restrictions on their exports of manufactured goods did not use this occasion, and this text, to press the claim that "voluntary" export restraint arrangements (and preferential tariff quotas) should be administered, through the usual permit or licensing procedures, by exporting countries, not by the developed importing countries. It is only in this fashion that the price increase caused by the agreed restriction (the rent of restriction) accrues to the exporting country rather than to the importer or the importing country.

IV. Customs Valuation

11. As noted above it is only by conventional usage that the methods by which customs officers calculate the base to which ad valorem tariffs are to be applied is referred to as a "non-tariff" measure. The essential element in the NTM code is acceptance that all countries should value all imports at the actual value of the import transaction at issue and not by reference to other transactions. This approach was designed to outlaw valuation techniques based on the prices ruling in sales in the domestic market of the exporting country for like products (the method used by Canada) or on prices ruling in the market of the importing country (the method used in the United States for certain products: the so-called American Selling Price (ASP) method). However, the true transaction price is not necessarily the same as the stated price on a commercial invoice; accordingly much of the code is taken up with rules to determine what should be added to and subtracted from the commercial invoice price to derive the correct transaction price, and with rules regarding how the true transaction price is to be determined when the transaction has taken place between related parties. It is said that in this fashion the scope in using valuation to increase the protective effect of a given ad valorem rate of duty will be minimised. More specifically, countries (such as Canada) whose valuation systems were closely related to their

anti-dumping systems recognised that these existing systems allowed them to require that duty be paid on a value which represented an undumped price (although the actual invoice price could be at a dumped price); in the new system the dumped price is the transaction price. The result could be to throw rather more of a burden on anti-dumping systems, if the resulting lower ad valorem duties create difficulties for domestic producers. This is not necessarily an improvement in the commercial policy system taken as a whole.

12. One aspect of the MTN valuation agreement should be made clear: it was not intended that such changes in valuation as were necessary to adopt the new transaction price system would reduce the protective effects of ad valorem tariff rates. In the Kennedy Round negotiation regarding the ASP system of valuation, which was applied by the United States to imports of certain chemicals and rubber footwear, it was contemplated that the existing ad valorem rates for the items with ASP would be applied to the basic United States valuation technique. This would have lowered the protective effect of the existing ad valorem rates. However, in the MTN the United States authorities calculated what would be the effect of the change in the base for ASP items (and for others - the so-called "final list" items), and indeed for the items which had specific duties which were to be converted to ad valorem equivalents. The purpose was to ensure that the adoption of a new valuation technique would not, in itself, result in any reduction in protection, as expressed in ad valorem terms, but merely in a simplification of customs entry procedures, and a reduction, it was said, in the scope for harassment of importers. (There were problems created for a number of countries by these "conversions", particularly where there was a specific duty component involved; the average ad valorem equivalent of these specific duties in a representative period might be higher for some classes of imports than the rate which had applied for imports from a given country). This decision by the United States made it inevitable that other countries would follow this example. The Canadians, who

considered that in switching from a valuation system based on "fair market value" in the country of export (a base very similar to the concept of "normal value" under the Anti-dumping Code) to a transaction price system, they would be agreeing, for certain products, to a drastic reduction in values for duty, insisted that their implementing of the agreement be dependent on the conclusion of negotiations (under Article XXVIII of the GATT) to restore the ad valorem equivalents of their various tariff rates as applied to their existing valuation base. Another way of putting the Canadian problem is that, particularly during the current recession, many exports are made at prices much lower than the prices obtained in the domestic markets of the exporter - i.e. that there is a great deal of dumping. In any event, it is important to note that the valuation agreement was not intended to bring about a reduction in the protection afforded by existing tariff rates.

13. In one respect the valuation agreement differed from other NTM codes: it involved the use of a body outside the GATT to assist in the administration of the code. Like the other codes, the valuation code provided for a committee made up of signatories to the agreement. However, in order to involve the Customs Co-operation Council, which has long had competence in regard to valuation, a technical committee was established, apparently subordinate to the committee of signatories, but under the "auspices" of the Customs Co-operation Council. This Technical Committee has detailed administrative authority (Annex II to the Code) and it would not be surprising if, over time, it became the key administering body.

14. Developing countries had special difficulties with the draft code when it got to the stage that the major developed countries could accept it. There were, of course, provisions for special and differential treatment - for example, that developing countries could delay for five years their implementation of the agreements, and could delay the coming into force of certain articles (notably, the provision for the use of "computed" value) and there was provision for technical

assistance. But these did not go far enough. Accordingly, developing countries tabled an alternative text and both the texts were formally open for signature. However, later negotiations (concluded after the end of the Tokyo Round, in November 1979) effected technical amendments to the developed countries' text; in particular the amending protocol envisaged the possibility of a delay in implementation by developing countries beyond five years, and opened the possibility for a number of technical reservations which, if made by a developing country, would have to be accepted by the signatories.

15. The technical difficulties raised by developing countries were addressed to major components of the transaction price system; there were developed countries which shared the views of developing countries on such issues as to how to treat transactions by transnational corporations (i.e. trade between related parties) and as to how to deal with prices which are offered only to the importer concerned (the "not fully offered" problem). Essentially, the valuation code involved an understanding between the European Economic Community and the United States in an area in which each of the two major trading groups had an interest in securing an international agreement, primarily in order to provide a framework or cover for domestic reform. In these circumstances representatives of other countries could have no more than a marginal impact.

16. The difficulties faced by developing countries with certain provisions of the code, and the partial resolution worked out in late 1979, should not obscure the fact that the adoption of the transaction price system by industrialised countries should be, <u>in itself</u>, a gain for developing countries. Systems of valuation, such as the Canadian, which were based on prices ruling in the country of export, brought about very high values for duty in regard to imports from those developing countries which, for various reasons, sometimes for fiscal considerations, maintained severe import restrictions and high import tariffs and in which domestic prices for such manufactured products as

might be exported are much higher than world prices. The change to a transaction value system, which rules out such techniques of valuation, should thus be of considerable value to developing countries. We have, however, emphasised the term: in itself, above - because what is not yet clear is to what extent the change in valuation will bring about increasing recourse to anti-dumping proceedings or increased use of export restraint measures (or import quotas) under the Multifibre Arrangement.

17. We have commented on the valuation (and, indeed, on the other codes) without describing the code in any detail; to do so would require a very extensive paper. The valuation code is already the subject of one full length book, and that account is not in any sense as detailed as is required to properly understand the working of this complex arrangement. The most that can be done in this short paper is set out a point of view, and to draw attention to some important features.

V. Government Procurement

18. Article III of the GATT provides, in effect, that, apart from import tariffs (and apart from such import quotas as may be permitted under other articles of the agreement), imported goods are to be treated in all other respects in the same manner as domestically produced goods. This is the "national treatment" concept as it figures in the GATT. However, the exception to this rule is that national treatment is not required in relation to government purchases of goods for use by government ("procurement"). Two points should be made clear. First, this exception does not cover so-called "state trading" arrangements; the GATT provides that state trading firms should act in accord with commercial considerations, that is, as though they were private entities. Second, the exception covers purchases by governments of goods for their own use, or goods for the manufacture of goods for use by government. Thus in one legal case in the United States a state law requiring an electricity generating authority to apply a preference for domestic goods

was struck down, on the basis that electricity is a good, and that therefore the procurement exception to Article III did not apply. It is the case, nevertheless, that in many developed countries public utilities which sell goods (or services - on which the GATT is, in the main, silent) either apply a domestic preference in procurement, or are required by law to do so. Prior to the MTN, there had been discussion (for some 14 years) in the OECD about working out an agreement on procurement. This discussion was transferred to the MTN, and in due course a code on government purchasing was agreed by the major developed countries. This discussion took place in parallel with discussions within the European Economic Community about creating a common internal market for procurement within the Community. These discussions ran into difficulties,because many member states wished to be free to use government purchasing for various purposes - to promote high-technology industries, to aid disadvantaged regions, etc. There was one important difference between the efforts being made within the Community and the discussion in Geneva. Within the Community abolishing procurement preferences in regard to any category of purchases would have meant that goods from some other member state would be competing on the same terms as domestically produced goods; in Geneva what was at issue was trying to remove preferences in domestic goods which apply over and above customs duties.

19. The agreement that emerged provides, in summary, for the abolition of procurement preferences in all purchases in contracts over a threshold of Special Drawing Rights 150,000 by the entities specified by each of the signatories. The agreement sets out rules regarding tendering procedures, information requirements, transparency requirements, dispute settlement and so forth. However, once the format of the agreement was settled (drawing on the discussions in the OECD) the real negotiation took place over the list of entities, the purchases of which were to be covered by the agreement. It should be noted that only central government entities are involved, although there was some discussion of how entities of state or provincial governments might be included. On balance, it is fair to say that major areas of procurement, that is, in product terms - such as railway rolling stock, signalling equipment, electricity

generating and distributing equipment, telecommunications equipment, urban mass transit equipment - are not covered by the agreement. That is to say, the entities which purchase such products are not covered by the agreement. It is in part because of this, that it is provided that three years from the entry into force of the agreement there are to be further negotiations, to see if the scope of the agreement can be widened, and, inter alia, to see if service contracts can also be covered.

20. Because the subject area of the agreement is an exception to the GATT, the agreement re-states a number of GATT concepts and provides for a number of exceptions and deviations from the otherwise general rules of the agreement that would not be necessary in regard to an area which was not outside the GATT. Thus the national treatment concept has to be explicitly stated, and there is provision for such standard exceptions as national security.

21. The provisions for developing countries are extremely detailed. In a sense they state, in terms of procurement, the various special provisions for developing countries that are set out in Article XVIII and Part IV of the GATT. Moreover there is provision, as in many others of the codes, for technical assistance to be made available. Developed countries which become parties to the procurement code are to take account of the development, financial and trade needs of developing countries, and moreover, the least developed countries are to be given especially favourable treatment. Developing countries may adhere to the code yet remain free to take a number of special procurement measures (in regard to their entities covered by the code) to assist their economic development; however, it is important to note that important changes proposed by a developing country - such as any proposal to change the list of its entities, the purchases of which are covered by code procedures - require the approval of the committee of signatories. Moreover, aside from regional arrangements or arrangements that apply only as between developing countries, it is contemplated that developing

countries will apply the most-favoured nation rule - i.e. they will not favour suppliers from one party over suppliers from other parties. It is noteworthy too, that developing countries are free to insist on incorporation of domestic content, to require so-called "offset" procurement and to require the transfer of technology as criteria in awarding contracts. By and large, developed countries are not free to take such action (although on certain of these points the agreement language is equivocal).

VI. Subsidies and Countervailing Duties

22. We have already set out some comments on the changes in countervailing duty practice that resulted from this key agreement. This code is particularly difficult to summarise because it is two separate agreements which are included, for historical and presentational reasons, in one document. From the beginning of the negotiations, the United States, which did not have an injury test in its countervailing duty provisions (save in regard to duty-free goods) insisted that it could not agree to give up its rights under the Protocol of Provisional Accession, which allowed an exception to the GATT rules for pre-existing mandatory legislation, unless it got in return some improvement in the GATT rules on subsidies (as set out in Article XVI). Accordingly, the code, as it developed, provided for a set of procedural rules regarding countervailing duties modelled on the Kennedy Round Anti-dumping Code, but with some important changes, and for a set of provisions on subsidies. The latter were little more than declaratory, and did not advance from what the GATT already contained.

23. Taking subsidies first, the code makes clear that countries may, quite properly, use subsidies for a wide variety of national and economic policy purposes - to assist development in areas of less than full employment, to aid research and development, etc. However, in their use of subsidies, countries should seek to avoid adverse impacts on other countries. In so far as such subsidies affect exports, the importing country may

apply its countervailing duty provisions. If injury is caused by the displacement of imports by subsidised domestic production, or if the result of subsidisation is to replace the exports of another country to a third country, then that other country may take the issue to the committee of signatories. That committee may apply procedures and rules modelled on GATT Article XXIII; if there is material injury caused and the matter cannot be resolved otherwise, compensatory action may be authorised. From the point of view of some commentators. particularly from the United States, it appears that the recognition that domestic subsidies could be countervailed, if the result was the subsidisation of exported goods, even if the bulk of the subsidised production was not exported, was an important gain (this is an important example of the general rule that the MTN was more about reform of the rules than about liberalisation). However, in United States law there had been cases of domestic subsidies - that is, not export subsidies, as such - being countervailed, and the precedents established that if even a very low proportion of the total product was exported there could be countervail. From the point of view of several countries that exported to the United States (the only country with an active countervailing duty system) there was thus nothing new in this provision of the code. With regard to export subsidies, the attempt was made to modernise the existing GATT provisions. The GATT, in Article XVI, provides that, in regard to primary products, contracting parties are to avoid granting export subsidies which would result in them obtaining a more than equitable share of world export trade. These undertakings were restated in slightly revised language in the code; some asserted this was at least a modest improvement, from the point of view of increasing the discipline over subsidies. Others have asserted that the relevant GATT sentences, being thus re-interpreted, were weakened. At the present time these particular provisions of the code are a matter of considerable controversy, as between the European Community and the United States (There is an interpretive letter from the United States to the Community which, it is understood, is relied upon by the latter.

This letter, of course, has no standing in the GATT nor any authority for other participants in the negotiation). With regard to export subsidies on non-primary products, the GATT provides, for those developed countries which accepted the obligation, that export subsidies that reduce export prices below domestic prices are prohibited (the "dual pricing" requirement). There is an "illustrative list" of such prohibited subsidies; in the code this list was modernised. In particular, the new list attempts to include the provisions of the so-called "gentleman's agreement" on export credit, and to deal with export subsidies through tax systems. In particular, the list incorporated a sort of settlement of the disputes between the Community and the United States regarding certain provisions in the United States, French, Dutch and Belgian tax systems regarding the taxation of profits from export activities. These disputes had been triggered by the United States introduction of a special provision within its tax structure regarding income from exporting (the Domestic International Sales Corporation or "DISC" provisions). These arrangements have more recently become a matter of controversy in the GATT Council, despite the attempt to resolve the issue in the context of the MTN. It is important to note that the agreement does not state the "dual pricing" requirement; it is silent on this subject, which of course is still contained in GATT Article XVI (as noted above, there is a consultation and dispute settlement mechanism, modelled on the existing GATT Provisions, but particularised for the subsidy - and countervailing duty - area and relying for an ultimate sanction, on the authorisation of compensatory action). On balance, it is fair to say that there are no very detailed rules as regards subsidies, there is no detailed framework of rights and obligations, and that it is clear that the existence of the agreement has not prevented the major industrial countries from paying substantial subsidies to various industries (automobiles, steel). With regard to subsidies for primary products (for example Community "restitutions" for agricultural exports) disputes are now developing which will make clear whether or not the code provides for any discipline additional to that in GATT Article XVI.

24. With regard to countervailing duties, as noted above the code provisions were modelled on the Kennedy Round Anti-dumping Code, but with two major changes. Because countervailing involves one government applying a compensatory tax to offset the policy of another, there is provision for early and frequent consultation between governments. This is in contrast with the anti-dumping understandings for the reason that was at issue in an anti-dumping proceeding is not the policy of the government of the exporter, but only the pricing practices of a particular firm. The code provided an occasion for the United States to accept an injury test for countervail, although congressional opposition to such an injury test ensured that the code language does not impose a particularly high threshold of pain. In the working out of language regarding the test of injury, attention focussed on the concept of causality. Article VI of the GATT requires that the subsidised imports must be causing (a threatening) injury to the domestic industry if countervailing duty is to be applied. The Kennedy Round code had specified that only when the dumped imports (in this code, the subsidised imports) were the principal cause of injury could action be taken. This wording implied that "injury" is synonymous with the total illness of the industry and that only if the imports at issue are the most important of all the various causes of that ill-health can action be taken. However, the illness or "injury" had to be of the degree that could be called "material", whatever that might be. It was conceivable that the total "injury" might be material, but that portion due to its principal cause might be less than material. In any event, an alternative reading of GATT Article VI was that what was required was a showing that injury had been caused by such imports as were dumped or subsidised, and that injury alone was shown to be "material". This was what was called the concept of "separable" injury, by some negotiators. Following this logic, the Kennedy Round language was abandoned, and the code does little more than re-state the Article VI language on causation. A number of observers have argued that this was a weakening of the language agreed in the Kennedy Round; others have felt that that language was

not very rational, and not in accord with the GATT (Neither Canada nor Australia accepted the anti-dumping code language in their post Kennedy Round legislation; both stayed with language based on the GATT proper. The United States language on causation, in the dumping area and now in regard to countervail, also follows the GATT language).

25. Another feature of the countervailing code in which the Kennedy Round model was amended was in relation to the definition of a regional market. The 1967 code contemplated that if there was an industry serving only part of the national market, but that that industry and that market was sufficiently isolated from the rest of the national market, anti-dumping action could be taken if dumping affected that regional industry. In the Kennedy Round, however, the criteria were drawn so carefully that it seemed no such regional industry could be found to exist. This tight language suited exporters who dumped; however, the United States Congress objected to this and to other features of the Kennedy Round agreement. Accordingly, when the same issue was addressed in the countervailing negotiation it was decided to rewrite the criteria so that a genuinely regional industry could get the protection of countervailing duties, but not to go beyond what would be sensible economic characteristics of a really distinct and separate regional industry. These revised criteria appear both in the countervailing duties code and in the revised anti-dumping code; from some points of view this seemed to be a weakening of the previous international agreement, in that it allowed for restrictive action that had not been permitted hitherto. On the other hand, the earlier provisions had been found not to be workable; a judgement has to be made in terms of the detailed criteria and of how they are applied in national legislation (there is a current case in the United States in which these criteria are being applied; the finding being reviewed by the US Court of International Trade).

26. It is important to note that the code does not define material injury. It does say that in assessing injury the matters to be looked at are the volume of subsidised imports, their effect on prices for like products in the import market, and the consequent impact of these imports on domestic producers. Moreover, it makes clear that the evaluation of this impact is to be in terms of all relevant factors and indices, such as declines in output, sales, market share, profits, return on investment etc. This guidance to administering authorities stands in place of a definition of injury. Moreover, the modifying work "material" used in the code only in a footnote, is not anywhere defined. This has made it possible for these to be definitions in natural legislation on this point, as other issues on which the code is silent.

27. The subsidies/countervailing code (and the revised anti-dumping code) gives considerable attention to the possibility of resolving issues by the giving of an undertaking - to stop subsidising, to raise prices,to fix a limit on the quantity of exports (or to cease dumping, by raising prices or by ceasing to export). It is envisaged that by entering into an undertaking on contract, a countervailing duty proceeding or an anti-dumping proceeding can be terminated, but that national legislation may provide for severe penalties for the breach of an undertaking. Some commentators have seen this concept of dealing with questions of damaging export subsidies (or of damaging dumping) by negotiating understanding as a highly interventionist, highly discretionary form of trade regulation, very much in contrast with the notion of trade being regulated only by a published and "bound" tariff rate. Others see this as a most practical method of dealing with "unfair" and disruptive pricing practices. It is quite evident that the European Economic Community favours the use of negotiated undertakings to deal with these issues; in the United States the law provides a very detailed set of requirements that narrow the scope for the exercise of discretion by officials in working out such arrangements.

28. As will be evident from the above comments, the Kennedy Round anti-dumping code was revised in the MTN as a by-product of the negotiations on countervail. The European Community made United States acceptance of the anti-dumping code a condition of the MTN; however, the changes necessary in the Kennedy Round code, in the event, were arrived at in the context of considering causality, injury, regional industry and the concept of undertaking in the countervail discussions.

29. The subsidies/countervailing code incorporated an attempt by the key developed countries to deal with the special needs of developing countries in the subsidy area in a manner which would enable a number of such countries to adhere to the code. There were detailed negotiations with certain developing countries over the special provisions embodied in Article 14 of the code. The need of developing countries to use subsidies, including export subsidies, was acknowledged, and if they wished to adhere to the code they need not immediately accept the obligation not to pay export subsidies on non-primary products, but subject to working out a "commitment" with developed countries to reduce and to eventually eliminate these export subsidy practices. If a developing country made such a commitment, then these subsidies could not be the subject of compensatory action by other parties, except for countervailing duties, but of course applied with an injury test. It had been made clear that the developing countries would accept countervail if there was a meaningful test of injury. In regard to subsidies other than export subsidies, it was proposed that no action against such subsidy be authorised, if the result was additional exports to a third market; however, if the subsidy created production that replaced imports, that would be the basis of a complaint to the Committee. As noted above, exports however subsidised, could be the subject of countervail proceedings. All this was intended to provide a measure of discipline and of international scrutiny of developing country subsidy practices, but much less rigorous than that which developed countries were accepting for themselves.

30. The United States - the main trading country with an articulated countervailing duty provision - took the position that it would not extend the injury test to countries which did not sign the agreement; this was believed by some others to be a breach of the GATT most-favoured nation provisions (Article I). Moreover, the United States took the view that a developing country signing the code had to enter into the commitment envisaged in Article 14. This dispute was complicated by the fact that the United States decided that a number of countries not signatory to the GATT, and not, of course, signatory to the code, had most-favoured nation treaties with the United States in which the obligation was so phrased that they could not be denied the benefits of the code in United States law. It thus appeared that there was most-favoured nation treatment better than the GATT most-favoured nation treatment. The controversy this generated has not been concluded; there have been a number of countervail proceedings in the United States involving imports from non-signatories, and consequently, without involving a test of injury.

VII. Other Accords and Arrangements

31. This completes the brief set of comments on the main non-tariff agreements negotiated in the MTN. There are, however, a number of accords and arrangements which fall outside the description of "non-tariff measure codes" which should at least be listed. A number of them concern specific products: the Arrangement Regarding Bovine Meat, the International Dairy Arrangement, the Agreement on Trade in Civil Aircraft; there were also a number of Declarations, many of which dealt with the trade policy interests of developing countries, such as the "Enabling Clause" regarding preferences, "safeguard" action for development purposes, and the "understanding" which partially codified the GATT notification, consultation and dispute settlement measures. These latter declarations are not codes or contracts, although the declaratory language was highly negotiated, but certainly they do add substantially to the body of GATT law. In the context of a study of the non-tariff codes the one other area we should consider is the attempt to work out

a new or revised "safeguard" understanding; this work did not reach a conclusion in the MTN and is still continuing in the Contracting Parties.

VIII. Safeguards

32. By "safeguards", in this context, we mean measures to deal with imports of particular products that cause or threaten injury to domestic producers of like goods (Article XIX), not comprehensive import control measures taken for balance of payments purposes or for development purposes. Reform of these provisions was high on the priority list for the negotiations. There were three major objectives, which were not entirely consistent. The United States emphasised that many safeguard actions were being taken outside the rules and criteria of Article XIX, aside entirely from the elaborate set of derogations from XIX tolerated under the Multifibre Arrangement. Their objective was to establish procedures under which all safeguard actions would be reported and scrutinised in terms of Article XIX - such as, for example, the existence of a threat of serious injury, the application of import measures on a non-discriminatory basis,and the measures being maintained no longer than justified. Thus the United States wanted to bring into the open, and under surveillance, the wide variety of restrictive measures negotiated by other governments - and sometimes on an industry-to-industry basis; it was not clear whether the United States thought that identifying and illuminating these measures would cause some of them of be abandoned or whether fuller knowledge of the extent of these restrictive actions would provide a justification for restrictive actions by the United States (many measures in force in other countries to restrain imports, such as industry-to-industry understandings, could not be legally instituted in the US). The European Economic Community, in contrast, wanted it accepted that measures applied under Article XIX could be applied "selectively", that is on a discriminatory basis, and not in accord with the most-favoured nation obligations of Article I of the GATT. Thus, they wished to turn Article XIX into something more like the Multifibre Arrangement, in which discrimination is allowed in return for certain arrangements about orderly growth in export levels. Developing countries,

and other smaller trading countries, wanted to improve the statement of criteria and of conditions for taking restrictive action in Article XIX, and they wished to improve international procedures for surveillance. However, they strongly opposed the Community's concept of "selectivity"; in their view (and in the Japanese view) this meant giving the Community the right to restrict imports from them while not restricting imports from the United States and other European countries. At one point in the negotiations it appeared that some developing countries would accept "selectivity" in principle, but only on condition that there be prior international approval. This condition was not acceptable to the European Economic Community. All that now appears to have broad support is that surveillance mechanisms should be improved. It may be that if the safeguards issue is reopened in any further negotiation, the Community proposal for "selectivity" will reappear (the word, "selectivity" has also come to mean, in discussions outside Geneva, the use of measures on particular products rather than across-the-board import restrictions; in Geneva, during the MTN, the term was a synonym for discrimination, in the sense of restricting imports of a given product from one source but not from others). From the point of view of developing countries, the MTN discussions were not a defeat, in that, while they failed to improve the international machinery, they successfully resisted the intense pressure to agree to discrimination. Statements that the safeguard discussions were a failure should be evaluated in this light.

IX. Conclusions

33. This completes our brief survey of the codes themselves. We can turn now to state some general conclusions or considerations about the GATT trade policy system as it looks now that the MTN tariff reductions and the codes are being implemented.

(i) The Style of Negotiation

34. Developing countries have frequently alleged that they were not drawn into the negotiations sufficiently, that they were presented by deals already worked out, and then that they

were confined to the effort of refining the provisions regarding "special and differential" treatment. This view of the MTN procedure is largely correct, and it is not a sufficient reply for the European Economic Community and the United States to note that they each had a large number of bilateral consultations with developing countries. A number of the smaller developed countries also concluded that they were not being allowed to play a full part in making a number of the key decisions, that the essential issues were being settled by the Community and the United States alone - occasionally with Japanese concurrence. Of course, particular representatives of particular smaller developed and developing countries did from time to time play active roles in regard to particular issues. However, on balance, it is impossible to avoid the conclusion that in the main the MTN was negotiated between the "Big Two". This has implications for the rules for any further set of negotiations; developing countries may wish to consider what procedural rules might help ensure their fuller participation in the substance of negotiations.

(ii) The Character of the System

35. The GATT as originally drafted seem to envisage a system of trade relations in which the tariff was to be the central instrument; other devices for regulating trade were to be abolished or minimised. True, anti-dumping and countervailing duties were permitted, and there was the "escape clause" or "safeguard" provision (Article XIX). However, for countries not in balance of payments difficulties, the GATT regime was to be a tariff-centred regime. We can now see that the emphasis has switched and that the post-MTN system relies much more on measures of "contingency" protection - such as safeguards, measures of managing trade (such as the Multifibre Arrangement) more extensive use of anti-dumping proceedings (and of techniques of managing trade based, in a legal sense, on the anti-dumping system - for example, the Trigger Price Mechanism); such as the countervailing duty system, now being adopted in the European Community, Japan and Canada (UNCTAD refers to the distinction we make here as between a tariff-centred system and a system centred on "contingency" measures as being the

switch from reliance on "fixed" measures of protection to greater reliance on more "flexible" methods of protection). With hindsight, we can now see that the switch in emphasis began in the years before the Kennedy Round, with the increasing use of anti-dumping measures by the United States; it was followed by the growing pre-occupation with "unfair" trading practices in United States Congressional circles and was reflected in the detailed revision of the "escape clause" (the domestic equivalent of GATT Article XIX) and in the drafting of the Trade Act of 1974.

36. It is not clear that a system of low or zero tariffs, combined with elaborate legal and procedural arrangements under which an elaborate attack can be mounted against imports, is a more liberal system than a régime of moderate, "bound" tariffs. In the emerging highly discretionary system, you can get protection if you can make a case for it; of course, it does take resources, in terms of money and management time, to make a case; and it takes money and management resources to defend a case. Moreover, the proliferation of techniques of administering trade - for steel, for agriculture, for fisheries, for textiles and textile products -is clear evidence that important areas of trade are being "administered", rather than taking place within a straightforward tariff-centred regime as pointed in the GATT. All this constitutes a fundamental change in the character of the trade relations system.

37. One important feature of the emerging systems is the virtual collapse of the most-favoured nation principle. There are two quite different senses in which one can say it is being abandoned, or has collapsed. One sense is that tariffs and quotas are now being applied by many countries, not on a most-favoured nation basis,but on a preferential basis. In Europe the thrust of commercial policy has been, first to create a customs union (which to outsiders involves tariff discrimination), then to work out tariff preference arrangements with those other European countries not part of the Community (the industrial free-trade agreements), and then to build around this central area a variety of discriminatory arrangements, of various sorts

and of various durations - with the Mediterranean basin countries, with the Mahgreb, with the African,Caribbean and Pacific countries, etc. These all involve tariff preferences and, whatever their justification, are not exercised in most-favoured nation treatment. Among developing countries the thrust of trade policies has been not to apply most-favoured nation rates,and not to insist on most-favoured nation treatment, but rather to seek preferential tariff treatment from developed countries (under Generalised System of Preferences and under Lome) and also within groups of developing countries (ASEAN, ANDEAN, etc.). In North America, Canada and the United States have in place a preferential agreement in the automobile sector, involving many billions of dollars of trade annually. Thus, as a practical matter, for many countries the bulk of exports goes to tariff preferential markets, and the bulk of imports enters under some kind of tariff preference. Whether this is good or partly good,or partly bad, or all bad, it is certainly not the most-favoured nation concept of Article I of the GATT.

38. The GATT most-favoured nation clause is set out in the unconditional form; that means that a GATT signatory gets, as a matter of right, the benefits of tariff concessions, and of other concessions regarding import regimes, which any other GATT signatory accords, perhaps as a result of negotiation with only a limited number of other GATT countries. This is the unconditional form of the clause, in contrast with the older,conditional form which required some reciprocity from each participant in the system for each new concession. It is important, in looking at the NTM codes, to note that one major industrial country is applying two of these codes (Procurement and Subsidies/Countervailing) on the basis of "conditional" most-favoured nation or "reciprocity". The United States proposes not to extend the benefits of the procurement code to countries which have not signed the code (other than to the least-developed countries), despite the provisions of Article I of the GATT; we have already noted that the United States will not extend the injury test in countervail to countries which do not sign the subsidies/countervailing code. The history and the current emphasis (in

the United States) on the concept of "reciprocity" requires a separate examination; what is important to understand here is that the concept of "conditional" most-favoured nation (or "reciprocity") was born again in the negotiation of the MTN non-tariff codes. It has, of course, been a feature of domestic legislational and administrative practice in the services area.

39. There are many aspects or facets of the new system sanctioned by the NTM codes which could be examined in detail. One of the key matters is the role of the concept of injury (to domestic producers or to a domestic industry). This concept is not the central concept of international trade relations law and policy. It appears in a number of GATT articles and instruments: material injury (Article VI, anti-dumping and countervail, and the relevant codes); serious injury (Article XIX, the safeguard article); damage and undue damage (Article XVIII); prejudice to the interests of another country (Article XVI, regarding subsidies); adverse effects, (in the GATT Subsidies agreement); market disruption (in the Multifibre Arrangement). What is important to note is that negotiations have not succeeded over the years in giving these concepts significant economic content. The thrust of GATT law is that "injury" is for the government of the importing country to determine, and that the onus is on the exporting country if it wishes to show that this determination is incorrect. There is no onus on the importing country to establish its case before any international surveillance body (except to a very limited extent under the Multifibre Arrangement provisions). At the same time, by legislation and by case law, the concept is being given detailed legal content. This is a serious weakness in the "contingency" trade policy system, from the point of view of trade liberalisation. The question arises as to the utility of extending the use of this concept to trade in other products before there is substantial international agreement as to the economic meanings of the various "injury" formulations.

40. Another feature of the "contingency" system is that a number of measures central to such a system operate to the advantage of the larger industrial countries and to the disadvantage of smaller countries. Countervailing duty systems are an example. Given that all countries are subsidising industrial development, and that firms in a small country export proportionally more than comparable firms in a large country, the firms in a smaller country are much more threatened by countervail by the large country than vice versa. Countervail by a large country can have a significant impact on the willingness of firms to locate in a small country, if to produce there they must export a significant part of their production. In contrast, the use of countervail by smaller countries is little more than an irritant. This essential asymmetry in countervail, as a trade-regulating device, explains why few (if any) countries have applied countervail to United States exports; it is not that the United States does not subsidise industry, rather, the contrary. In this context it should be noted that in the subsidies/countervailing agreement there is no provision as to how to measure the extent of a given subsidy; however,United States legislation did address this issue, and the result is that United States countervail is, in respect of the calculation of a net subsidy, more punitive now than it was before the MTN (this is the so-called "offset issue"). As for anti-dumping, it is commonly accepted that these systems work against the interests of developing countries which for a variety of reasons maintain fiscal regimes and/or import regimes which have the effect of maintaining domestic prices higher than world prices. The anti-dumping system, some would say, is the centre-piece of the "contingency" system, and it is therefore a major concern that, within the context of the anti-dumping system as sanctioned by the GATT code, a stricter (i.e. more trade restrictive) régime is being applied to price discrimination in import trade than in domestic trade (this issue is now being examined, in terms of broad legal policy and economic policy, by some scholars in the United States and Canada). This question is, in fact, another aspect of the "injury" concept; it is the lack of any requirement that "injury" from dumping must involve an "anti-competitive" effect that is at issue.

41. If we look at the new trade policy system, centred on and sanctioned by the GATT codes, according to the criteria or point of view set out above, certain objectives for developing countries (and indeed, for all smaller countries dependent on trade) become evident. In summary, and not necessarily in order of economic importance, developing countries might well address the following NTM code issues:

(a) Develop criteria regarding the various "injury" formulations, with the aim of establishing international norms, with economic content, for this central concept.

(b) Develop effective reporting and surveillance mechanisms for all "safeguard" type actions, but without reopening the question of "selectivity".

(c) Attempt to get agreed rules as to the meaning and scope of the GATT most-favoured nation clause, and agreement as to what sorts of undertakings and rights should be dealt with on a "conditional" or "reciprocal" basis; this issue should not be dealt with unilaterally. This has particular relevance to countervail and procurement.

(d) Revise the anti-dumping and countervailing duty arrangements to mitigate the "big power" bias inherent in the use of these central agreements on "injury" will be one component; another will be a meaningful definition of "material" (in the phrase "material" injury); another will be rules to calculate subsidies in countervailing duty proceedings; yet another will be to contemplate changes in the relationship between domestic rules regarding price discrimination and the international rules (this may involve introducing the concept of "anti-competitive" effect into the anti-dumping system and also limiting the right of cartelised or monopolised industries to seek protection under anti-dumping systems).

(e) There are of course, other issues which developing countries should address in considering how to improve the trade regulations system as it emerged from the MTN - an obvious one is to consider to what extent the key developing countries have an interest in securing preferential tariff entry into developing country markets whether their interest would not be better served by insisting on rigorous enforcement of the most-favoured nation clause. However, such issues fall outside the scope of a paper directed at assessing the impact of the NTM codes.