

GENERAL AGREEMENT
ON TARIFFS AND
TRADE

ACCORD GENERAL SUR
LES TARIFS DOUANIERS
ET LE COMMERCE

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Review of Application of Quantitative Restrictions on
Exports designed to Stimulate Exports or to Afford
Protection to Domestic Industry

Memorandum submitted by the United States

In recent months, many of the acute shortages of commodities which have heretofore provided the principal motivation for the maintenance of export restrictions by member countries have begun to disappear. As the problem of commodity shortages declines in intensity, it brings the time closer when the Contracting Parties might profitably take stock of the existing export restrictions which the individual contracting parties are maintaining in effect. In recommending that the Contracting Parties should begin a review of the problem at this Session, the United States is motivated by the belief that the problem continues to be a significant one for many of the contracting parties, on which initial progress can best be made through a general review by the Contracting Parties.

Although export restrictions have been applied by some countries for many years, they have been imposed for the most part since the end of the war, as adjuncts of the bilateral trade agreements which were developed by most countries of the world as a means of meeting their existing payments difficulties. As the systems of bilateral trade agreements have come to be extended and refined, the motivations for the retention of export controls have become more complex, including motivations which relate only indirectly to balance-of-payments problems. Thus, for example, some countries have imposed export controls in order to tie in sales of non-essential with essential products. Export restrictions also have been maintained as a means of using the export of essential products to obtain essential products from other countries. Still other restrictions have been maintained to protect or promote a fabricating industry by insuring an ample supply of domestic raw materials for such industry. Finally, in some cases, such controls have been maintained to avoid price cutting among the exporters of the country concerned.

As shortages have disappeared and competition has intensified in international trade, there has been some relaxation of export restrictions. But it is already beginning to be clear that, at best, competition in many major products in world trade will remain less than perfect even in the absence of world shortages. And as long as balance-of-payments problems exist, export controls may still be used as a means of exerting bargaining power, even for products not in world shortage.

The general rule of the GATT on the subject of export restrictions is contained in Article XI, paragraph 1, which provides:

"No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses, or other measures, shall be instituted or maintained by any contracting party on the ... exportation or sale for export of any product destined for the territory of any other contracting party."

Paragraph 3 of the same Article defines "export restrictions" as including restrictions made effective through state trading operations.

There are a number of major exceptions to this general prohibition. One group of such exceptions applies to situations arising out of commodity shortages. Paragraph 2 (a) of Article XI provides that the general rule of paragraph 1 shall not extend to "export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting ... country". This exemption, however, does not relieve the contracting party applying restrictions from the provisions of the GATT requiring non-discriminatory treatment.

Article XX, paragraph 1 (1) exempts from the provisions of GATT any measures "involving restrictions on exports of domestic materials necessary to assure 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 a part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination ...", and subject to the further requirements that such measures are not applied in a manner which would constitute a disguised restriction on international trade. Finally, Article XX, paragraph II (a) exempts from all the provisions of the GATT until not later than January 1, 1961 any measures essential to the acquisition or distribution of products in general or local short supply, or essential to the control of prices by a contracting party undergoing shortages subsequent to the War; but here again arbitrary or unjustifiable discrimination is not tolerable and the principle must be observed that all contracting parties are entitled to an equitable share of the international supply of the scarce product.

Another important exception is found in Article XIV, paragraph 4, which authorizes export controls by countries in balance-of-payments difficulties where such controls are necessary to divert the country's exports to hard-currency markets.

It should also be noted that under the Protocol of Provisional Application, the part of the Agreement relevant to this problem is applied only provisionally, that is, "to the fullest extent not inconsistent with existing legislation."

The summary of the relevant provisions of the GATT set out above suggests that some practices commonly being employed

by a number of countries may well be inconsistent with those provisions. Among the practices which may call for particularly close scrutiny in the light of the provisions and objectives of the GATT are : the practice of tying the export of non-essential products to that of essential products; the practice of releasing essential products in return for the release of essential products by another contracting party; and the practice of setting minimum prices on exports. There are no doubt other types of export restrictions used for the protection or promotion of industry which other member countries may wish to suggest for consideration by the Contracting Parties in the light of the relevant GATT provisions and objectives.