GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
LIMITED
GATT/CP/4/37
30 March 1950
ORIGINAL: ENGLISH

CONTRACTING PARTIES
Fourth Session

DRAFT

First Report, 1950 by the Contracting Parties on the Discriminatory Application of Import Restrictions under the Transitional Period Arrangements of Article XIV

I. INTRODUCTION

1. Paragraph 1 (g) of Article XIV requires the CONTRACTING PARTIES, (that is to say the contracting parties to the General Agreement, acting jointly), to report not later than 1 March 1950 on any action still being taken by individual contracting parties under the transitional period arrangements provided in paragraph 1 of that Article.

2. To prepare for the writing of this Report, the Secretariat addressed an enquiry to contracting parties on 7 October, 1949, (document GATT/CP/39). In reply to this enquiry twenty contracting parties* acknowledged that they were applying import restrictions under Article XII in order to safeguard their external financial position and were taking advantage of the transitional period arrangements of Article XIV for not fully observing the rule of non-discrimination. These countries were : Australia, Brazil, Canada, Ceylon, Chile, Czechoslovakia, Denmark, Finland, France, Greece, India, Italy, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Sweden, Union of South Africa and the United Kingdom. [The reports of the individual countries on their import restrictions and on the discriminatory methods they have employed will be found in Annex A of this report.]

3. The CONTRACTING PARTIES at their Fourth Session - 23 February to 3 April, 1950 - examined the replies and discussed the details of the import control measures with representatives of the contracting parties named in the preceding paragraph, with the exception of Brazil whose reply to the enquiry arrived too late to be taken into account. This Report received the approval of the CONTRACTING PARTIES on 1 April, 1950.

---

*The term "contracting parties", as used in this Report, includes the four governments which will adhere to the General Agreement pursuant to the Annecy Protocol of Terms of Accession and which submitted replies to the Secretariat's enquiry. Burma and China did not reply to the enquiry, and the status of Indonesia as a contracting party in its own right was not established until February 1950. Belgium (including Belgian overseas territories); Cuba, Haiti, Lebanon, Luxemburg, Syria and the United States are not taking action under Article XII.

II. THE AUTHORITY FOR AND PURPOSE OF DISCRIMINATION

4. Article XIII of the Agreement lays down the general principle that contracting parties applying quantitative restrictions under Article XII for reasons relating to their monetary reserves, should apply such restrictions in a non-discriminatory manner as between other contracting parties. In Article XIV the contracting parties recognize, however, that the aftermath of the war has brought difficult problems of economic adjustment which do not permit the immediate full achievement of non-discriminatory administration of quantitative restrictions, and therefore require exceptional transitional period arrangements. Most of the contracting parties are in fact operating at present under an authority to discriminate which is available only during the post-war transitional period.*

5. Contracting parties have had a choice between two sets of rules limiting any deviation from the strict rules of non-discrimination during this period. The first ("Havana" option) is contained in Article XIV and, in general, permits -

(a) the maintenance of discriminatory trade restrictions having an effect equivalent to exchange restrictions which the contracting party concerned may at the time apply under Article XIV of the Articles of Agreement of the International Monetary Fund, and

(b) the maintenance (and adaptation to changing circumstances) of any discrimination involved in balance of payments import restrictions which were being applied on 1 March, 1948, but which would not be covered by (a) above.

On the other hand those countries which have elected to be governed by the provisions of Annex J (the "Geneva" option) are entitled to administer their balance of payments import restrictions discriminatorily in such a way as to increase the total of their imports above the level which could be obtained if restrictions were applied without discrimination between sources of supply.**

---

* See Article XIV (1) (f) of the General Agreement. Contracting parties may operate under the provisions of Article XIV (1)(b) or (c) or Annex J only so long as they avail themselves of transitional arrangements under Article XIV of the Articles of Agreement of the International Monetary Fund or (in the case of a non-member of the Fund) a corresponding provision of a special exchange agreement between the contracting party concerned and the CONTRACTING PARTIES ~~jointly~~. Sixteen of the countries which replied to the questionnaire and which are taking action under Article XIV are availing themselves of the post-war transitional period arrangements of the Articles of Agreement of the International Monetary Fund. Ceylon has entered into a special exchange agreement with the CONTRACTING PARTIES and has availed itself of the analogous provisions of that agreement. The other three - New Zealand, Pakistan and Sweden - are to join the Fund or to enter into similar agreements with the CONTRACTING PARTIES by November, 1950.

** In their use of exceptions to the rule of non-discrimination fifteen contracting parties are taking action under the provisions of paragraphs 1 (b) and/or 1 (c) of Article XIV as follows: Australia, Brazil, Chile, Czechoslovakia, Denmark, Finland, France, Greece, India, Italy, Netherlands, New Zealand, Norway, Pakistan, Sweden, and five are taking action under the provisions of Annex J: as follows:
Canada, Ceylon, Southern Rhodesia, the Union of South Africa and the United Kingdom.

6. Both Article XIV and Annex J include procedures for reporting, and many important provisions aimed at avoiding the misuse of discriminatory import measures and limiting any longer-term adverse effects that such discriminatory practices might tend to produce. For this reason the above statement should not be used as a basis for considering the consistency of any particular import practice with the terms of the General Agreement. For this purpose, direct reference to the terms of the Agreement itself would be essential. For convenience of reference the texts of Article XIV and Annex J are reproduced in an Annex to this Report; but it should be borne in mind that these Articles must be read in the context of the General Agreement as a whole.

7. Many countries in the post-war period, when many of the world's currencies are inconvertible, have been unable to acquire, either directly or indirectly, the amounts of the various currencies which their importers would desire to spend under régimes of non-discriminatory importation. The provisions of Article XIV and Annex J are designed to enable countries to obtain additional imports with their available means of payment by departing from the rule of non-discrimination. This rule, if strictly enforced, would necessitate uniform import restrictions and thus might require certain countries to contract their imports from some sources while they still possessed unutilized means of financing such imports. It may therefore be claimed that by departure from the rule of non-discrimination it has been possible to bring about an increase in the total trade of countries in balance-of-payments difficulties.

III. IMPORT CONTROL PROCEDURES.

8. The administrative basis of all restriction is a general prohibition of imports. To this general prohibition, some countries grant exemptions for imports from some or all "soft currency" sources or for certain products from all sources, but for the most part exceptions to the prohibition are regulated by the issue of licences pertaining to specific transactions. In the restrictions applied for balance of payments reasons, the fundamental consideration in the issue of licences is, perforce, the actual or prospective availability of the currency in which payment is to be made.

9. Article XIII of the Agreement provides, inter alia, in respect of non-discriminatory import restrictions, for the use of quota arrangements either on a global or country by country basis in preference to the licencing of imports on any ad hoc item by item basis without the establishment of quotas. It is not always possible to use quota arrangements where discrimination is exercised. Even in this case however, it may be possible for countries to use general licences unrestricted in amount or unallocated quotas applying non-discriminatorily to a number of countries. The controlling authority may also establish quotas for various products and allocate them among supplying countries in relation to the amounts of various currencies that will be available during the period in question. It is usual for licences to be issued in accordance with a "plan" or "programme". When quotas are applied or import programmes established, they are usually subject to frequent revision in accordance with the availability of the currency required for payment.

10. Because of payments difficulties the reporting countries have generally found it necessary to apply stricter standards of review to the licensing of imports from"hard" than from "soft currency" areas. As a rule, licences are not granted for imports from "hard currency" countries unless it can be shown that the goods are deserving of a high degree of priority, for example, essential foodstuffs, fuel, raw materials or essential industrial or agricultural equipment. Several countries reported that licences for imports from other "soft currency" countries are issued with great freedom and, in some cases, the requirement for such licences has been entirely waived or is merely a formality. Usually each "hard currency" importation, on the other hand, involves a separate administrative decision requiring scrutining of the need for the importation in the light of the availability of comparable goods in"soft currency" countries. Lists of items that may be imported from the "hard currency" area may be established by the licensing authority but generally the amount and value of the imports are not programmed in detail in advance except for relatively short periods. It was also indicated that many types of goods imported from the dollar area do not lend themselves to the use of quotas or to accurate import planning since they consist largely of capital equipment the importation of which is non-recurrent.

11. Information furnished has indicated that contracting parties which have elected to discriminate under Annex J have implemented the price provisions of that Annex in varying degrees and by different administrative procedures. In respect of Canada, for example, commodities which would otherwise have been procured in"soft currency" markets under the provisions of Annex J, are permitted to enter from"hard currency" sources if prices in "soft currency" areas exceed by more than a reasonable margin prices in"hard currency"areas. The United Kingdom also exercises a general scrutiny and comparison of relative prices in the"hard"and"soft" currency" areas. In a number of cases, commodities available in "soft currency" areas are still being procured in the "hard currency" area because of the unduly high prices of "soft currency" supplies. Several contracting parties indicated that self-interest would require due attention to relative prices in the "hard" and "soft" currency" markets regardless of the provisions of Annex J. Some of the contracting parties (Southern Rhodesia and Union of South Africa) operating under the provisions of Annex J either have lists of commodities for which import licences from "hard currency" countries may not normally be issued, or if no such lists are actually in existence, administer their import restrictions in a manner which excludes certain commodities from "hard currency" countries whilst goods of a like nature are being admitted from "soft currency" countries. It was indicated that some flexibility exists with respect to these procedures, but the use of such lists might tend to limit the application of the price criterion of Annex J.

12. The contracting parties availing themselves of the provisions of paragraph 1 (b) and (c) of Article XIV expressed the desire of their governments to obtain imports at lower prices whenever the limitations imposed by their foreign exchange availabilities permitted such action. In general, however, this group of countries, while emphasizing the importance of price and other commercial considerations in procurement in currency areas with which they had no payments difficulties, indicated that it had frequently been necessary to pay higher prices in "soft currency" areas in order to conserve their "hard currency" reserves. Contracting parties establishing quotas for export and import under bilateral agreements indicated that the allocation of such quotas was usually affected by price and other commercial considerations. The importance of such considerations in allocating quotas may be limited, however, by the need of such countries to conserve their "hard currency" resources for the purchase of essential commodities. It was pointed out by several of the delegations that currency devaluation has substantially reduced the degree of price discrepancy which formerly prevailed for many products between - "hard" and "soft currency" markets.

13. Discrimination enters also into the operations of state-trading agencies, for decisions to purchase are governed by the availability of currencies as well as by the usual commercial considerations. In Czechoslovakia, where foreign trade is in the hands of monopoly companies, and in several other countries, e.g., the United Kingdom (where about half of total imports are purchased by State agencies), State-trading plays an important part. As in the case of trade on private account, discrimination among sources of supply for balance of payments reasons is frequently an important feature of import policy.

IV. BILATERAL AND GROUP ARRANGEMENTS

14. An examination of the answers to the Secretariat's enquiry shows that while in some cases the degree of discrimination exercised by countries is determined entirely unilaterally by the country concerned, in others it is governed to a greater or lesser extent by the existence of bilateral or group arrangements. A large part of the trade of contracting parties in Europe and South America is in fact arranged bilaterally, or through groups.*

---

* In the Secretariat's enquiry governments were invited to forward copies of their trade and payments agreements which have a bearing on the operation of their import restrictions. Seven countries (Czechoslovakia, Denmark, Finland, France, Netherlands, Norway and the United Kingdom) submitted copies of agreements in response to this request. In all, copies of about 240 agreements were received. Of these nearly 100 may be classified as payments or financial agreements. Of the trade agreements, the great majority incorporate some commitments in respect of the issue of licences. These commitments vary from an estimate or target for total imports in a specified period of time, or a schedule of quotas for products for which the importing government is prepared to issue licences, to an undertaking to purchase or supply fixed quantities of certain commodities.

15. An important feature of restrictions in these countries, and an important means by which discrimination may be effected, appears in the schedules of commodities and the quotas contained in bilateral trade agreements. The agreements are negotiated mostly between "soft currency" countries, though there are exceptions such as those negotiated by or with Belgium and Switzerland and some of the South American Republics. Where quotas are fixed in this manner, with commitments to issue licences up to the limit of specific quantities or values, discrimination may or may not be involved.

16. In cases where import quotas are included in bilateral agreements they are, however, normally an integral part of a discriminatory pattern of trade restrictions intended to expand trade while avoiding the risks of a loss of scarce currencies. As a result, the parties to the agreements may trade quite freely in relatively less essential goods, while imports of similar goods from third countries are restricted because of the risk of depleting "hard currency" reserves.

17. Where these import concessions are accompanied by commitments on the part of the trading partners to deliver to each other certain more essential goods in return for import concessions for less essential goods, cumulative tendencies may be established for trade expansion along bilateral lines. Similar tendencies may also arise from the attraction of relatively high prices prevailing in "soft currency" markets. Whether these results will be paralleled by a diminution (relative or absolute) of exports to others, notably the "hard currency" areas, depends on a number of factors, including the availability of export supplies from "soft currency" countries, the extent and effectiveness of the efforts made by these countries to stimulate exports to the "hard currency" area, and the existence of factors in the "hard currency" area which may limit the volume of its imports. In this connection representatives of several countries employing bilateral arrangements on an extensive scale pointed out that increases in production have enabled them to exploit their dollar markets to the fullest practicable extent and that bilateral commitments have not interfered with such exploitation. Devaluation was also pointed to as perhaps the most drastic action that could have been taken to assure maximum dollar sales. However, the danger remains that bilateral arrangements together with continuing relatively high prices in certain "soft currency" markets may attract to such markets goods which might have found a dollar market and thus have served to reduce balance of payments difficulties.

18. Contracting parties operating under Article XIV or Annex J have not, of course, found it possible to employ non-discriminatory quotas because of exchange difficulties with certain countries. This factor, however, need not preclude the establishment of a non-bilateral quota in which all suppliers, with which the country applying the quotas has no payments difficulties, may participate. However, in some instances the non-discriminatory application of such quotas may present technical difficulties. It is also clear that the replacement of existing restrictions by such quotas cannot be considered as of equal importance either to the complete abolition of quotas or to the adoption of a system of open general licences. Moreover trading partners may be unwilling to grant concessions for imports from countries which in return offer only a share in a non-bilateral quota available as well to other countries. In the case of Canada, the establishment of quotas for two groups of countries rather than on a global basis is based on the desire to promote the re-establishment of more normal patterns of import trade in place of the trade patterns that emerged immediately after the war as a result of war-time dislocations and the time required for the reconstruction of war-damaged economies.

When quotas are based on pre-war trade patterns, the result may be substantially different from that which would have emerged from the application of global quotas, unrestricted importation or open general licensing arrangements.

19. Most of the twenty contracting parties taking action under Articles XII and XIV belong to one or other of two groups which have cooperative arrangements either for the inter-convertability of their currencies or in respect of payments for their mutual trade. The financial arrangements have in each case been accompanied by exemptions or reductions in import restrictions for the members of the group while generally maintaining the restrictions against outside countries. The first group is the sterling area and the second comprises the members of the Organization for European Economic Cooperation.

20. In general each member of the sterling area imposes a stricter control on imports from countries outside the area than from countries which are members. The United Kingdom's reply to the Secretariat's enquiry stated: "The economy in imports by sterling area countries from hard currency countries" necessary to protect their reserves is secured by a voluntary understanding between the members of the sterling area to limit such imports so as to avoid any unjustifiable expenditure of gold or convertible currencies." Imports from other sterling area countries may be free of all restrictions and formalities or may be subject to only a lenient licensing procedure. The exemptions are frequently extended to all "soft currency" countries, but for purchase in dollars and other "hard currencies", the licensing control is strictly enforced. The severity of the control of imports and the degree of discrimination naturally vary greatly from product to product and from time to time. For example, in July 1949 the United Kingdom and the other sterling Commonwealth countries (excluding South Africa) agreed to endeavour to reduce demands on their central reserves in respect of dollar imports by 25% below the level of 1948 in order to halt the severe drain on those reserves.

21. Restrictions are imposed by each member of the sterling area against those countries with which the sterling area as a whole is in balance of payments difficulties or, in other words, against countries whose currencies are "hard" relative to sterling. Thus, even though a sterling area country may have a favourable balance with a country outside the area, it may, nevertheless, limit imports from such a country below its earnings of the country's currency if the sterling area as a whole does not earn sufficient of the country's currency to permit non-discriminatory admission of its products.

22. The relative freedom of trade between most countries of the sterling area as compared with restrictions imposed on imports from other countries, particularly the dollar area, is of course bound up closely with the fact that intra-area payments are, for the most part, made in sterling and that no exchange control is maintained by the United Kingdom on transfers of sterling within the area. The balancing of intra-area payments on a multilateral basis which reflects this pattern of trade and the comparative freedom of capital movements is of course related to the fact that the economies of the members of the sterling area are in large measure complementary. This process has been encouraged by the use of a common currency and by certain other intra-area arrangements. Broadly speaking, and subject to monetary arrangements between the sterling area and certain other countries, payments in respect of individual transactions between traders within the sterling area and those in other currency areas are conducted largely in sterling.

23. Until recently the discrimination practised by the contracting parties in Western Europe in their licensing policies and negotiation of quotas was an individual matter with each of them. But through the O.E.E.C., they have now endeavoured to reverse, within the group, the general tendency towards controlled trade by extending the sector of commercial transactions that is free of quantitative restrictions. While maintaining the long term aim of restoring a universal multilateral trade system, these countries have embarked upon a programme of trade liberalization among themselves which, as a rule, has not been extended in the same degree to non-members. The quantitative restrictions upon imports of a large number of products originating in O.E.E.C. and certain other countries have been removed. The removal of restrictions on this scale has been made possible through the alleviation of payments difficulties, both by the progress of economic recovery in Western Europe, and by means of the intra-European payments scheme. Under this scheme the currencies required by debtor countries on intra-European account have, in large part, been provided by their creditors as a result of arrangements under the European Recovery Programme.

24. The liberalization began in the third quarter of 1949; by 15 December the restrictions were to be removed from at least 50% of the goods imported on private account from the other members of the O.E.E.C. as a whole. The action taken thus far has not been uniform in its application to individual members of the organization or in its extension to overseas dependent territories; generally "hard currency" countries within the O.E.E.C., and in some cases other members as well, have been excluded from some, or all, of the benefits of the removal of restrictions. On the other hand, some members have extended the liberalization to "soft currency" countries outside the organization. It is expected that these divergencies of treatment accorded to countries within the O.E.E.C. will be eliminated as a more comprehensive programme is developed. Meanwhile, it has been agreed in principle that the liberalization will be extended further during 1950, provided a satisfactory agreement is reached on the establishment of a clearing union to replace the present Payments Scheme.

V. THE EFFECTS OF DISCRIMINATION

25. The application of import restrictions whether in a discriminatory way or not is of course subject to the undertaking of Article XII, paragraph 3 (c) (iii) to apply restrictions in such a way as to avoid unnecessary damage to the commercial or economic interests of any other contracting party. In this connection the General Agreement provides for consultation between contracting parties affected.

26. International trade since the war has been subject to such varied and powerful influences that it is not possible to attribute any particular development or trend solely to restrictions applied under Article XII or to action taken under Article XIV. Consequently, it is difficult clearly to assess the significance of the discriminatory action in which most of the contracting parties are now engaged. It is

evident, however, from a review of the information supplied in response to the Secretariat's enquiry that the action taken under the provisions of Article XIV and Annex J has had the effect, as far as trade among the contracting parties is concerned, that the twenty countries applying restrictions have encouraged the expansion of trade among themselves while reducing purchases in convertible currencies notably in United States dollars and Swiss francs and in other relatively "hard currencies" such as Canadian dollars and Belgian francs, and avoiding unfavorable trade balances that would require settlement in these currencies or in gold.

27. In respect to the effects of discriminatory import restrictions on the export trade of the contracting parties replying to the Secretariat's questionnaire, several countries noted that their exports have been adversely affected. This was particularly emphasized by countries imposing no discriminatory restrictions, and by those applying such restrictions to a relatively small portion of their total imports.