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WORKING PARTY D ON QUANTITATIVE RESTRICTIONS

Note by the Belgian Delegation

The Belgian Delegation had deemed it advisable to state in writing the views it has already expressed concerning quantitative restrictions on exports and imports.

I. With regard to the third case of quantitative restrictions on exports, as mentioned in the Memorandum submitted by the United States delegation (document GATT/CP.4/14), namely "the restrictions on export of domestic material necessary to assure essential quantities of such material to a domestic processing industry", the Working Party noted that such restrictions were justified under Article XX, I (i), "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". (Art. XX, I (i)).

So far as the criterion of "increased protection" is concerned the Belgian delegation ~~draws~~ the attention of the Working Party to the following case which the Belgian Government has had occasion to note.

Country A normally exports, and has for a long time been exporting, to the territory of country B quantities of raw materials which are used in the manufacture of a product in country B. Nevertheless, country A, wishing to introduce domestic manufacture of the product in question and to protect it against competition from country B, has instituted protection against imports in the form of a quota system. In addition, country A, in order to increase this protection, restricts exports to country B of the traditional and normal quantities of the raw material which country B requires in order to maintain full employment in its industry manufacturing the product in question, thereby reducing the production capacity of country B and its capacity to compete with the domestic industry of the other party. Another result in the case cited has been that 3,000 workers from B have been obliged to leave their country with their tools in order to carry on their trade in country A. It is therefore clear that the restriction on exports of the raw material in question constitutes an "increase in the protection afforded to a domestic industry" and that, accordingly, the provisions of Article XX, I (i) do not apply.

II. With regard to restrictions on imports, the Belgian delegation does not dispute the fact that any contracting party with a maladjustment of its balance of payments is entitled, under Article XII, paragraph 3 (b)(ii), to give priority to imports of the products most essential to it within the framework of the policy of full employment and reconstruction, or that this actually renders the protective incidence of quantitative restrictions inevitable. Nevertheless experience of restrictive practices with regard to imports and also of bilateral negotiations has shown that, in establishing and administering import quotas, certain countries were guided not only by the criterion provided under Article XII, paragraph 3(b), but more especially by a protectionist intention contrary to the General Agreement. A further proof of this may be found in the protectionism which several delegations frankly admitted during the bilateral negotiations in order to justify, among other things, their refusal to include some particular product in their lists of import quotas.

The Belgian delegation believes it is in a position to confirm the remark in the Memorandum submitted by the United States delegation (document GATT/CP.4/13) that "once a country has initiated a system of import restrictions to meet its balance-of-payments difficulties, it is under constant pressure to adapt that system of restrictions to the specific object of protecting domestic industry, rather than of protecting its monetary reserves".

The examples quoted below justify the following statement by the Belgian delegation .

The Belgian delegation would be grateful if the Working Party, when drafting its report, would take the following cases into consideration:

1st case: The refusal of a country when a bilateral quota agreement is being negotiated or import quotas are being fixed unilaterally, to include in the list of import quotas, even in the smallest quantities, a product which competes with one produced by a domestic industry.

It can be proved that in cases of this kind the aim is clearly protectionist. Such is the case, for example, when a country refuses to import a semi-essential commodity while agreeing to import certain quantities of commodities which are obviously less necessary within the framework of the policy mentioned in Article XII, paragraph 3 (b). If it is proved that the product refused is one in which there has been normal and fairly considerable trading between the parties concerned, it may be presumed that the refusal is mainly designed to avoid competition and that it "prevents unreasonably the importation of ... goods in minimum commercial quantities, the exclusion of which would impair regular channels of trade". (Article XII, paragraph 3 (c)(ii)).

The protectionist aim appears still more obvious if the refusal to import applies only to products from a single country, or from a few countries, whose competition is especially to be feared. Cases of this kind adversely affect a Contracting Party and may justify a complaint under paragraph 4 (d) of Article XII.

The same remarks apply in similar cases where a country, without categorically refusing to import a specific product, nevertheless admits it only in inadequate quantities as compared with the normal volume of trade in this product and the currency available to the party applying the restrictions.

Since several members of the Working Party considered it advisable, in the interest of efficiency, to deal with typical concrete cases, the Belgian delegation feels able to cite an example in support of the foregoing remarks.

A country which is a customer of Belgium refuses to import a whole series of products which were always supplied by Belgium. This refusal is total in the case of 10 important items in the tariff list, and partial in the case of a whole series of items on quota.

The loss of exports to U.E.B.L., as a result of the total prohibitions, may be estimated at 500 million Belgian francs per annum and the loss due to quota measures at 400 million Belgian francs per annum.

This total of 900 million Belgian francs refers only to industrial commodities and takes no account of additional restrictions arising from Government control and certain import monopolies.

Prohibited imports affect, in particular: chemical products, cement and products of the glass industry.

Restricted imports affect especially : non-ferrous metals, chemical products, certain textiles, certain products of the metal industry, products of the wood industry, products of the glass industry and certain products of the food industry.

The scope of the protective measures and of the list of products affected makes it clear that cases of this kind can hardly be reconciled with the provisions of Article XII (h) and 3 (c).

2nd case : obstacles placed by a country in the way of full utilisation of a quota granted either under a bilateral agreement or unilaterally.

It frequently happens that a country refuses to grant import licences for a product originating in a given country although a quota has been provided for the importation of that product.

When a bilateral quota agreement is concluded between two countries, such agreement generally stipulates that the parties will endeavour to issue licences "pro rata temporis" and without discrimination between the quotas. This clause means that the two countries must place no obstacle in the way of quotas of non-essential commodities being utilised on a basis of equality with quotas of essential commodities.

Now it has been observed that, as soon as the quota comes into force, certain countries endeavour, either by delaying the issue of the licence, or even by refusing it, to prevent the importation of products competing with a domestic industry. It also happens that some months after the entry into force of the agreement such countries find that as a result, on the one hand, of the considerable imports of essential commodities which sometimes exceed the amount of the quotas provided, and, on the other hand, of insufficiency of exports to the partner country, the maladjustment of their balance of payments threatens to increase. They then invoke that menace of maladjustment as a pretext for justifying their refusal to issue import licences for those products which they regard as less essential.

Similar cases arise when quotas have been allocated on a unilateral basis.

These administrative manoeuvres are once again a perversion of monetary motives to protectionist ends. They are at variance with Article XIII, para. 2 (d) which provides that "no conditions or formalities shall be imposed which would prevent any contracting party from utilising fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate".⁽¹⁾

Cases of this kind also adversely affect a contracting party and may form the subject of a complaint in virtue of Article XII, para. 4 (d).

3rd case: refusal to grant import licences for a non-essential commodity coming from another contracting party which refuses to sign a bilateral agreement which it does not consider satisfactory.

It is clear that the mere fact that a contracting party refuses, on various grounds, to conclude a bilateral quota agreement, does not authorise the opposite party to restrict imports of certain products coming from the contracting party which refused to negotiate the agreement.

In the absence of a bilateral quota agreement, the contracting parties are strictly bound by the provisions of Article XIII, para. 2 (d), which provides that "in cases in which this method is not reasonable practicable", (i.e. agreement on the allocation

(1) It is obvious that in the case cited, it is the importing country which is preventing importation within the prescribed period.

of the quota with parties having a substantial interest in supplying the product concerned) "the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product".

NOTE: As was pointed out in the Working Party, this case should be compared with export restrictions imposed on similar grounds.