

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

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CONTRACTING PARTIES  
Fourth Session

WORKING PARTY "D" ON QUANTITATIVE RESTRICTIONS

DRAFT REPORT TO THE CONTRACTING PARTIES

TERMS OF REFERENCE

1. The Working Party was appointed at the 11th meeting of the Fourth Session with the following terms of reference:

To explore the application of the provisions of the agreement to

- (a) quantitative import restrictions, and
- (b) quantitative export restrictions

which are being applied for protective, promotional or other commercial purposes; and

to recommend action for the review provided for by Article XII: 4 (b) and other action under the Agreement as may be appropriate.

I. QUANTITATIVE EXPORT RESTRICTIONS

2. Preliminary to its discussion, the Working Party established the following provisional list of provisions of the Agreement as being relevant to the problem of quantitative export restrictions:

Article XI; Article XIII; Article XIV, paragraphs 2, 4 and 5; Article XV, paragraph 9 (b); and Article XX.

3. The Working Party then proceeded to examine several types of export restrictions which are being applied for protective, promotional or other commercial purposes and appear to fall outside the exceptions provided for in the Articles of the Agreement listed above, namely:

- (i) export restrictions used by a contracting party for the purpose of obtaining the relaxation of another contracting party's import restrictions;
- (ii) export restrictions used by a contracting party to obtain a relaxation of another contracting party's export restrictions on commodities in local or general short supply, or otherwise to obtain an advantage in the procurement from another contracting party of such commodities;

- (iii) restrictions used by a contracting party on the export of raw materials, in order to protect or promote a domestic fabricating industry by assuring an ample supply of materials; and
- (iv) export restrictions used by a contracting party to avoid price competition among exporters.

General Considerations

4. In the discussions of the Working Party, there emerged two important general

points, viz:

- (a) In the case of each of these four practices, it is assumed that it is maintained for the purposes described, and is not justified on other grounds for which the General Agreement specifically permits export restrictions to be used.
- (b) The Protocol of Provisional Application will in some cases exempt a given export restriction from the provisions of the Agreement which otherwise would appear to be inconsistent with the Agreement.

Given these two significant qualifications, certain useful conclusions can be reached with respect to the types of export restrictions listed above in their relation to the provisions of the Agreement.

Discussion of Type (i)  
Obtaining Import Restriction  
Relaxation

5. Three variants of this practice were mentioned at various stages of the Working Party's deliberations:

- (a) Tying-in export licences for certain specific commodities in local or general short supply with the grant by another party of import licences for certain other specified products of the exporter;
- (b) In the course of negotiating lists of exports and imports in bilateral agreements, requiring commitments to permit the import of certain stated products as a quid pro quo for including on an export list certain other products in local or general short supply; and
- (c) Employing the threat of export restrictions as a bargaining weapon for obtaining the relaxation of import restrictions.

6. As regards method (a), in particular, the Working Party could not find any provisions in the Agreement which would justify the linking of sales of a particular product with the sales of any other particular product.

7. More generally, in each of the three cases, a contracting party through the use of export restrictions would be seeking to obtain from another contracting party the relaxation of balance-of-payment import restrictions. It was pointed out that the obligations of the contracting parties to one another regarding the use of balance-of-payment import restrictions were governed by Articles XII to XIV of the Agreement. It was agreed that the use of export restrictions as a bargaining weapon to obtain the relaxation of import restrictions was inconsistent with the provisions of the Agreement. However, whether any particular export restriction could justly be regarded as having the assumed purposes would depend upon the facts in each particular case.

Discussion of Type (ii)  
Procuring Short Supply Items

8. The suggestion was made that export restrictions of this nature, although otherwise appearing to be prohibited by the Agreement, would in some circumstances be justified under the provisions of paragraph II (a) of Article XX. The Working Party discussed the proviso to that paragraph requiring the observation of the principle of equitable shares for all contracting parties in the distribution of the international supply of a product in local or general short supply.

9. General agreement existed on the following statements :

- (i) Apart from the provisions of Article XX, paragraph II (a), the practice referred to was inconsistent with the provisions of the Agreement.
- (ii) Grants by contracting parties of an excessive share of a product in short supply to individual countries (which might or might not be contracting parties) would defeat the achievement of the principle that all the contracting parties are entitled to an equitable share of the international supply of such a product.
- (iii) What would not be regarded as an equitable share if it were the result of a unilateral allotment by a contracting party could not appropriately be defended as equitable within the meaning of Article XX, paragraph II (a) simply because it had been the consequence of an agreement between two contracting parties.
- (iv) The determination of what is "equitable" to all the contracting parties in any given set of circumstances will depend upon the facts in those circumstances. In any case, the concept of equity in Article XX, paragraph II (a) is not meant to be identical with the concept of non-discrimination in Article XIII.

Discussion of Type (iii)  
Promoting a Domestic  
Fabricating Industry

10. It was noted at the outset of the discussion that the Agreement contains no provision which would justify the use of

export restrictions with the stated motivation. However, it was pointed out that restrictions on exports to assure essential quantities of domestic materials to a domestic processing industry might be justified when associated with a governmental stabilization plan involving the maintenance of a lower price for the material than prevails on the world market, provided the measure was non-discriminatory, did not operate to increase the exports of or the protection afforded to the domestic industry and adhered to the other limitations contained in the preamble to Article XX.

11. The Working Party concluded that the fact that export restrictions were being applied with relation to an industry which was protected by an import restriction in accordance with the provisions of Article XVIII did not, on the one hand, establish a basis for asserting that the export restrictions had the purpose or effect of furnishing additional protection to that industry, or, on the other hand, imply that the approval given by the Contracting Parties to the import restriction under Article XVIII would provide justification for the export restrictions.

12. The Working Party also agreed that the exemption under certain circumstances of export restrictions associated with governmental stabilization plans, contained in Article XX, paragraph I (i), might be difficult in practice to interpret, since in many cases the measures referred to would be bound to increase the exports or the protection afforded to a domestic industry.

13. The Working Party concluded that export restrictions imposed on the export of a raw material in order to protect or promote a domestic fabricating industry by insuring an ample supply of materials to that industry were inconsistent with the provisions of the Agreement, but that the question of the objective of any given export restriction would have to be determined on the basis of the facts in individual cases.

Discussion of Type (iv)  
Avoiding Price Cutting

14. The Working Party discussed a wide variety of circumstances in which exportation may be

restricted in order to maintain the export price. The cases discussed included a commodity whose value might be greatly reduced if its supply to the world market were not controlled and a commodity whose world price was liable to be impaired by the collusive action of importers.

15. The Working Party concluded that where export restrictions were in fact for the purpose of avoiding competition among exporters and not for the purposes set out in the exception provisions of Articles XI and XX, such restrictions were inconsistent with the provisions of the Agreement. However, it was concluded that the question of motivation would have to be determined by the facts in each individual case.

Recommendations 16. (To be suggested by the Working Party).

II. QUANTITATIVE IMPORT RESTRICTIONS

17. The following provisions of the Agreement were considered by the Working Party as those under which the application of quantitative import restrictions could most usefully be examined for the present purpose:

Article XI; Article XII; Article XIII; Article XIV and Annex J; Article XV, paragraph 9 (b); Article XVIII; Article XIX; and Article XX.

18. In discussing the application of the Agreement to import restrictions applied for protective, promotional or other commercial purposes, the Working Party devoted attention principally to the numerous restrictions which are at present maintained by most of the contracting parties for balance-of-payments reasons. It was recognized that such restrictions will inevitably have the incidental effect of protecting and promoting domestic industry. Nevertheless, the Working Party considered that an important problem arises through the possibility, or, as some would say, the actuality, that some governments may now have lost sight of the original motive for the imposition of the restrictions and, what is perhaps more important, the undoubted tendency on the part of some industries to exert pressures for the maintenance of these restrictions as a permanent protective device.

19. The Working Party has therefore examined the methods by which countries applying balance of payments restrictions can seek to minimise the undesirable incidental protective effects resulting from such restrictions. A number of such methods are employed by different countries and others have been suggested in the course of the Working Party's discussions. The Working Party has not attempted to discuss the question of how far the provisions of the Agreement might require countries to adopt such techniques; but it has taken note in this connection of the provisions of sub-paragraph (h) of Article XII (2) that contracting parties applying restrictions under sub-paragraph (a) shall progressively relax them as conditions improve, maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application, and shall eliminate them when conditions would no longer justify their institution or maintenance under that sub-paragraph. It does, however, suggest that the Contracting Parties should commend these methods to the individual contracting parties as useful methods which countries might where possible employ, in their own interests and in the spirit of the Agreement, in order to stimulate efficiency on the part of their domestic industries and to prepare them for the time when import restrictions can be relaxed or removed.

20. Accordingly the Working Party draws the attention of the Contracting Parties to the following six measures :

- (i) Availing encouragement of investment in enterprises which could not survive without this type of protection beyond the period in which quantitative restrictions may be legitimately maintained;
- (ii) Finding frequent opportunities to impress upon producers who are protected by balance-of-payments restrictions the fact that these restrictions are not permanent and will not be maintained beyond the period of balance-of-payment difficulties;
- (iii) Administering balance-of-payments restrictions on a flexible basis, and adjusting them to changing circumstances, thereby impressing upon the protected industries the impermanent character of the protection afforded by the restrictions;
- (iv) Allowing the importation of "token" amounts of products which otherwise would be excluded on balance-of-payments grounds, in order to expose domestic producers of like commodities to at least some foreign competition and to keep such producers constantly aware of the need ultimately to be prepared to meet foreign competition;
- (v) Avoiding the allocation of quotas among the various supplying countries, as far as balance-of-payment and technical considerations permit, in favour of quotas which may be filled by more than one country or of general licences unrestricted in amount applying to the supplying countries concerned;
- (vi) Avoiding as far as possible narrow classifications and restrictive definitions of products eligible to enter under any given quota;

21. The Working Party also discussed the presence of protectionist motives in the negotiation of quotas for imports and exports in bilateral trade agreements. It appeared to the Working Party that it was not particularly relevant to the Agreement whether such practices were determined unilaterally or in the course of bilateral negotiations, and they considered that the use of restrictions not for balance-of-payments reasons but as a weapon either for the purpose of securing an advantage or for retaliation was inconsistent with the Agreement.

22. Several instances and several hypothetical cases of the application of restrictions were put forward, but the discussion led the Working Party to conclude that, although the general review of the problem had served a useful purpose, most rapid progress would be made in the future if interpretations of the provisions of the Agreement were based upon specific situations adequately documented rather than upon hypothetical cases or upon cases put forward with incomplete statements of the facts.

III. THE REVIEW OF RESTRICTIONS REQUIRED  
BY ARTICLE XII:4 (b)

(To be completed after discussion of this subject in  
the Working Party).

